TOWN OF SMYRNA
TOWN COUNCIL WORKSHOP
August 28, 2025
Town Hall
5:00 PM

Smyrna Police Department Chief, Jason Irvin, Presentation -Officer Recognition & Smyrna Police Department's participation in a Feasibility Study for 911 communications consolidation.

Child Advocacy Center of Rutherford County, Inc. Presentation~ Jennings Jones, Jeff Duke, Christina Moody, Jennifer Head, and Sharon De Boer.

Proposed Consent Agenda (Item Numbers 2 thru 13)

Items for Discussion

Public Comment.
Note: The Town's Public Comment Period shall be reserved for those citizens that have signed up to address the Town Council, or a Board or Committee, at least 24 hours in advance of the meeting, pursuant to the Town's Public Comment Policy. Speakers are limited to 3 minutes. Additional comments may be submitted in writing.

1. Consideration and approval of new and revised Smyrna Police Department policies: "Unmanned Aircraft Systems (Drones)" Policy Number: 2-59, "Appearance, Uniform and Equipment" Policy Number: 3-7 and "Procedures for Handling the Mentally Ill" Policy Number: 2-32.

2. Approval of the terms of, and authorization for the Mayor to execute, a contract with Sessions Paving Company for the Sam Ridley Parkway (SR-266) Intersection at Old Nashville Highway.

3. Approval of the terms of, and authorization for the Mayor to execute Amendment No. 2 with Energy Land & Infrastructure, LLC for Professional Services for Phase 2 design of the Weakley Lane Improvements project.

4. Approval of the terms of and authorization for the Mayor to approve the National Pollutant Discharge Elimination System (NPDES) Annual Report.

5. Approval of the terms of, and authorization for the Mayor to execute, a contract addendum with Energy, Land, and Infrastructure, LLC for the design of sidewalks along Rock Springs Road from Mason Tucker to Old Nashville Highway.

6. Approval of the terms of, and authorization for the Mayor to execute, a contract with Civil & Environmental Consultants, Inc. to perform stream monitoring.

7. Approval of the terms of, and authorization for the Mayor to execute, an agreement with Rain Drop Products, LLC for improvements to the SplashTown water slides.

8. Approval of the terms of, and authorization for the Mayor to execute, an agreement with Kimley-Horn to update the five-year Parks and Recreation Master Plan.

9. Approval of the terms of, and authorization for the Mayor to execute, an agreement with Boozer & Associates for easement appraisals for the Highland Avenue Phase I water model project.

10. Approval of the terms of, and authorization for the Mayor to execute, a Professional Services Agreement with Jones Fortuna LP for the water storage reallocation study.

11. Approval of the terms of, and authorization for the Mayor to execute, an agreement with Tyler Technologies, Inc. for case management software for the probation department.

12. Approval of the terms of, and authorization for the Mayor to execute, a Contract with Placer Labs Inc. to utilize their Analytics Platform Solution.

13. Approval of the terms of, and authorization for the Mayor to execute, an agreement with National Sign Plazas, INC for the installation and maintenance of the directional sign program.

14. Consideration of a Resolution relative to a Plan of Services for properties located on Tax Map 20, Parcels 45.00, 61.01, 61.02, and 61.03, and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15.00, 15.01, and 18.01.

15. Consideration of an Ordinance relative to the annexation and C-2 and I-1 zoning of property on Tax Map 20, Parcels 61.01 and 61.03, and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15.00, 15.01, and 18.01 requested by Hamilton Development, LLC on behalf of Hollingshead Land, LLC containing 178.6 acres. The properties are located south of W. Jefferson Pike/SR 266. Second Reading.

16. Consideration of a Resolution in Memorandum of Ordinance #25-21 relative to the annexation and C-2 and I-1 zoning of property requested by Hamilton Development, LLC on behalf of Hollingshead Land, LLC containing 178.6 acres.

17. Consideration of an ordinance relative to the amendment of the existing PRD of properties located on Tax Map 54, Parcel 57.02 and Tax Map 73, Parcels 13.00, 13.01, 13.03, 13.04, and 16.00 owned by Southcoast DFH Nashville LLC containing 67.68 acres, and the rezoning of Tax Map 54, part of Parcel 57.00, owned by SCollins 2 Properties, LLC from R-3 to PRD containing .31 acre. The request is from Gamble Design Collaborative on behalf of the property owners and is located along Rocky Fork Almaville Road and Briley Road. Second Reading.

18. Consideration of an Ordinance relative to the rezoning of Tax Map 18, part of Parcel 10.01, from C-2 to PUD, and for the amendment of the existing PUD on Tax Map 18, part of Parcel 10.01 as well as Parcels 10.02, 10.03, 10.04, and 10.05, and Tax Map 28, Parcels 44.29, 44.30, and 44.31, owned and requested by Sewarts Landing LP. The property requested to be rezoned from C-2 to PUD contains approximately 3 acres, and the parcels requested to have the PUD amended contain approximately 37.94 acres for a total of 40.94 acres. Properties are located on Sam Ridley Parkway, West and Motlow College Boulevard. Second Reading.

19. Consideration of the appointment of one (1) Planning Commission representative to serve on the Historic Zoning Commission.

20. Other.

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 1.
Department: Police Department
Date: August 28, 2025

Subject:
Consideration and approval of new and revised Smyrna Police Department policies: "Unmanned Aircraft Systems (Drones)" Policy Number: 2-59, "Appearance, Uniform and Equipment" Policy Number: 3-7 and "Procedures for Handling the Mentally Ill" Policy Number: 2-32.

Fiscal Impact:

Contract Type:

Contract Term (if applicable):
N/A

Background:
UAS Drones policy
We did not have an active UAS (Drone) policy in place. In order to ensure we are operating any UAS (drone) properly in accordance with the FAA, we needed an established policy that specifically addressed usage, training and deployment of UAS (Drones) by our Department.

Appearance policy
As we proceed through the CALEA process, we will periodically need to update established policies to fall within CALEA guidelines and best practices. Supervisors and Administration had identified an issue with Officers wearing fixed blade knives on their person while on duty. I tasked our Professional Standards Division with identifying other Department's policy regarding carrying knives and what best practices were with CALEA. Professional Standards made revisions to our present policy that addressed what type of knife could be carried and what usage was allowable.

Procedures for handling the Mentally Ill
The revision to this policy became necessary after meeting with Rutherford County EMA (Ambulance service) personnel. Our previous policy required EMA personnel to be the primary when someone dealing with a mental health crisis needed to be transported. EMA ambulance service supervision made us aware that they would no longer be the

primary on these transports unless there was a medical reason. Presently the TCA (Tennessee Code Annotated) aligns with EMA protocol and now with our revised policy.

Summary:
The Unmanned Aircraft System (Drone) policy is new. This policy details the department's operating procedure for deploying drones and how they are used. As you will see by the policy, there are strict guidelines that must be followed when operating drones. These guidelines are dictated by the FAA.

Revisions have been made to the Appearance, Uniform and Equipment policy to address the use of knives while on duty.
Revisions to the policy regarding Procedures for Handling the Mentally Ill concern when the Smyrna Police Department will transport a mental health consumer and when EMS will transport someone in distress due a mental health issue.

The revisions for both of these policies are highlighted.

Recommended Council Action:
Staff recommends approval.

Attachments:
1. Drone Policy (New)
2. Mentally Ill Policy
3. Appearance, Uniforms and Equipment Policy

Smyrna Police Department

Unmanned Aircraft Systems

Policy Number: 2-59

CALEA 41.1.3

Authority: Chief of Police

Amends/Supersedes:

Date of Inception: 06/02/2025

PURPOSE

This policy is intended to provide personnel who are assigned responsibilities associated with the deployment and use of small unmanned aircraft systems (UAS) with instructions on when and how this technology and the information it provides may be used for law enforcement and public safety purposes in accordance with law.

POLICY

Only duly trained and authorized personnel may use/deploy UAS when such use is appropriate in the performance of their official duties. Further, all UAS deployments shall conform to departmental policy and applicable law as will the collection and use of any audio/video recordings or other data originating from or generated by the UAS. All UAS training shall be documented and filed with the General Departmental Instructor.

This policy does not replace the rules and regulations of the Federal Aviation Administration (FAA) that control each and every UAS deployment and help ensure the safe operation of all aircraft. This policy is only intended to complement the direction provided by the FAA and the manufacturer's approved flight manual. In the event of a conflict between this policy and the aircraft manufacturer's approved flight manual, consideration should be given to the flight manual.

DEFINITIONS

Certificate of Waiver or Authorization (COA): A COA is an authorization issued by the FAA to a public operator for a specific UA activity. After a complete application is submitted, the FAA conducts a comprehensive operational, technical, and flight review. If necessary, provisions or limitations may be imposed as part of the approval to ensure the sUAS can operate safely within the National Airspace System.

Digital Multimedia Evidence (DME): Digital recordings of images, sounds, and associated data captured by the deployment of a UAS.

Federal Aviation Administration (FAA): The agency of the U.S. Department of Transportation that controls and regulates the use of airspace.

Federal Aviation Regulations (FAR): The rules issued by the FAA.

Part 107: The section of the FAR that addresses commercial (non-hobbyist) UAS operations.

Pilot in Command (PIC): The person having final authority and responsibility for the operation and safety of the flight. The PIC must have been designated as such before or during the flight and must hold the appropriate category, class, and type rating (if appropriate) for the conduct of the flight [CALEA 41.1.3a, b].

Small Unmanned Aircraft (sUA): An aircraft that is intended to navigate in the air without an onboard pilot. This aircraft is commonly referred to as an "Unmanned Aerial Vehicle (UAV)", "Remotely Piloted Aircraft (RPA)", "Remotely Operated Vehicle (ROV)", or "Drone."

Unmanned Aircraft Systems (UAS): Systems utilized weighing less than 55 pounds and are consistent with Federal Aviation Administration (FAA) regulations governing model aircraft.

UAS Coordinator: A person designated by the chief of police who is responsible for deployment and maintenance of the UAS. This supervisor will maintain all records associated with the use/deployment of the UAS and all records and certifications required by the Federal Aviation Administration (FAA).

UAS Flight Crewmember: A pilot, visual observer, payload operator or other person assigned duties associated with the operation of a UAS for the purpose of flight during a mission or training exercise.

UAS Pilot: A trained person exercising control over an unmanned aircraft during flight.

Visual Line of Sight (VLOS): Within sight of the observer, using only human vision unaided by any device other than corrective lenses.

Visual Observer (VO): A trained person serving as an assistant to the UAS pilot who maintains visual contact with the UAS.

I. UAS Personnel Selection and Retention

A. Vacancies - As vacancies occur requiring the addition of UAS personnel, written notice will be posted for a period of not less than one week notifying all officers of the requirements of the position and application process.

B. Applications - Any person who desires to apply may do so by making a written request directly to the UAS Coordinator. Members of the department who are on disciplinary probation, restricted duty service, or suspension from duty shall not be entitled to apply for a position with the team until such time as they are removed from such status unless specifically approved by the Chief of Police. Additionally, all applicants must have successfully completed at least one year of sworn law enforcement service with the Smyrna Police Department unless specifically approved by the Chief of Police based upon previous relevant experience.

Personnel File Review - Upon application, the applicant's personnel file will be reviewed with special attention directed to the applicant's previous background check, disciplinary actions,

commendations, firearms qualification scores, medical leave record, use of leave time and ratings on yearly performance evaluations.

C. Interview - All applicants successfully completing the previous requirements will be scheduled to attend an interview as needed to further the selection process. The interview board will include the UAS Coordinator and at least two additional supervisors or command staff members. Any current UAS personnel who attend the interview will be eligible to interview and vote on the applicant. The results of the personnel file review will be presented to the interviewing team members prior to each applicant's interview.

D. Appointment -

1. The UAS Coordinator shall have the sole authority to recommend an applicant's addition. The Chief of Police or their designee will have final authority to appoint an officer to this extra function [CALEA 41.1.3a].

2. All appointed persons shall serve a period of six months on appointment probation. During this time, the probationary appointee shall successfully complete initial training specified in this policy.

3. The UAS Coordinator shall have the authority to recommend termination of any member's appointment to this function at any time. The Chief of Police or their designee shall render the final decision. This decision shall not be subject to review, nor shall it be subject to departmental grievance procedures.

E. Roles and Responsibilities

1. UAS Coordinator- Appointed at the direction of the Chief of Police or their designee , the UAS Coordinator is directly responsible for UAS operations. This person is not required to be a pilot or VO but may hold any or all of those positions. The UAS Coordinator shall:

a) Ensure that all UAS operations are conducted safely and in compliance with FAA requirements.

b) Maintain all training, flight and maintenance records for each pilot and VO.

c) Serve as that primary point of contact with the FAA and monitor regulation changes.

d) Monitor and update the waivers as necessary.

2. Pilot- The UAS pilot's primary duty is the safe and effective operation of the UAS in accordance with FAA regulations, agency procedures, and the manufacturer's approved flight manual. Pilots operating under Part 107 must be certified accordingly [CALEA 41.1.3b]. Pilots have the final authority and responsibility for the safety and operation of all flights they undertake. A pilot will also be designated as a maintainer for the UAS [CALEA 41.1.3c].

Pilots/maintainers must:

a) Attend mandatory training.

b) Demonstrate proficiency operating the UAS to the UAS Coordinator prior to operating outside of training.

c) Maintain the UAS and comply with all maintenance requirements and warnings from the manufacturer, the FAA and the department.

d) Document all maintenance, test flights and requested flights.

e) Configure aircraft for flight operations based on operational requirements.

3. **Visual Observer**- The use of a VO is not required by the FAA during Part 107 operations. Any individual can be trained to function as a VO. Pilots may serve as a VO without additional training. The following considerations apply to the VO function.

    a) Each VO must have been provided with sufficient training to communicate clearly to the pilot any turning instructions required to stay clear of conflicting traffic.

    b) The VO is the primary operator of radio communications with patrol units as well as functioning as an observer for anything that may affect the pilot's primary duty. They advise the pilot of any imminent hazards including other aircraft, terrain, personnel, obstructions, and adverse weather conditions.

    c) When the UAS is configured for two-person operation, the VO's primary duty is to operate the UAS equipment including cameras and FLIR.

F. Training

1. Before performing flight duties, pilots must have completed UAS training and obtain a FAA Part 107 certificate [CALEA 41.1.3b].

2. Before performing flight duties (other than training), pilots must have demonstrated proficiency operating the specific UAS.

3. To act as PIC of a mission, the pilot must be current on the aircraft type to be used. Currency is maintained by having performed at least three documented flight events (mission or training) within the previous 90 days. If currency is not maintained, the pilot will attend a training session prior to performing any flights outside of training [CALEA 41.1.3a, b].

4. Each VO must be provided sufficient training to communicate clearly to the pilot any turning instructions required to stay clear of conflicting traffic. VOs will receive training on rules and responsibilities described in: o 14CFR91.111, Operating Near Other Aircraft. o 14CFR91.113, Right-of-Way Rules. o 14CFR91.155, Basic VFR Weather Minimums, cloud clearance, in-flight visibility.

o 14CFR91.17, Alcohol or Drugs. There are no flight currency requirements for a VO.

5. Refresher training will be conducted on an annual basis and may cover the following topics [CALEA 41.1.3b]: Aeromedical, Airspace Restrictions, Weather, FAA Regulations, Specifics of any Waivers, Aircraft Operations, Law Enforcement Specific Operations, Emergency Procedure, UAS Safety, UAS Maintenance and New Equipment.

II. PROCEDURES

A. Applicable State and Federal Regulations [CALEA 41.1.3a]

Operations will be conducted under the FAA Part 107 with a certificate(s) of waiver when required or under a FAA Certificate of Authorization. The Smyrna Police Department performs governmental functions of a political subdivision of the State of Tennessee. UAS owned by the police department are considered public aircraft as defined in Title 49 United States Code 40125. Qualified missions may be conducted as PAO. Each flight will be conducted under one (and only one) of these authorizing conditions. The PIC is solely responsible for determining the controlling factors for each flight and complying with the appropriate regulations and procedures.

B. Search Parameters

According to the Tennessee Code Annotated (TCA) Freedom from Unwarranted Surveillance (39-13-609), the use of a UAS to gather evidence constitutes a search. UAS shall not be used to conduct aerial surveillance in any criminal investigation unless:

1. Use is specifically authorized in a search warrant signed by a judge.

2. Used to counter a high risk of a terrorist attack by a specific individual or organization if the United States secretary of homeland security determines that credible intelligence indicates that there is such a risk.

3. Used to prevent imminent danger to life where there is reasonable suspicion that, under particular circumstances, immediate action is needed.

4. Used to provide continuous aerial coverage when law enforcement is searching for a fugitive or escapee or is monitoring a hostage situation.

5. Used to provide more expansive aerial coverage when deployed for the purpose of searching for a missing person.

6. Used to investigate motor vehicle accidents that occur within the traffic right-of-way or an area open to the public.

7. Used where a criminal offense has occurred on publicly owned property, as defined in TCA 6-54-127(b), or where the law enforcement agency has reasonable suspicion that a criminal offense has occurred on such property.

8. Used at the scene of a fire investigation.

9. The use of Forward Looking Infrared (FLIR) does not in and of itself does not constitute a search. However, any information gathered from such technology in regards to the interior of a home or private residence will be considered a search (Kyllo v. U.S. (533 U.S. 27 (2001)), and will require the issuance of a search warrant.

C. Requests

1. Requests for UAS support must be approved by a shift supervisor or higher departmental authority.

2. Once a UAS request has been approved, the shift supervisor should first contact any pilot who is already on duty. If none are working, an on-call pilot should be contacted.

3. It is the responsibility of the pilot contacted to make the final decision regarding deployment, based on the nature of the incident, environmental conditions, available resources and FAA regulations. If a supervisor disagrees with a pilot's decision, the UAS Coordinator should be contacted for a final decision.

4. Pilots and Visual Observers shall wear clothing that easily identifies them as police department personnel.

D. Equipment- In order to be ready for service, each UAS will include: [CALEA 41.1.3d]

1. A multipurpose camera affixed to the UAS.

2. A flight controller.

3. At least two rechargeable batteries.

4. A charging system for the batteries.

E. Operations

1. Pilots and VO personnel shall refer to the UAS manufacturer's recommendations for pre-flight and post-flight procedures and inspections.

2. The UAS will be operated in accordance with FAA regulations, Tennessee state law, SPD policy and the UAS manufacturer's flight manual.

3. Flight into thunderstorms or other severe weather as defined by the FAA is prohibited.

4. No aircraft will be operated during nighttime hours when the ceiling is less than 1,000 feet.

5. All UAS will be operated within VLOS of the pilot and VO at all times, unless a waiver has been issued to the contrary. The VO may be used to satisfy the VLOS requirement as long as the pilot always maintains VLOS capability.

6. During night operations, the use of an aircraft lighting beacon will be required.

7. In case of an in-flight emergency, the PIC is permitted to deviate from any rule of Part 107 to the extent necessary to meet that emergency.

F. Safety Considerations for Crew

1. Prior to flight operations, crew will conduct a map or photo review to identify any potential hazards.
2. Make on-the-spot corrections of unsafe conditions
3. Beware of size and momentum of the aircraft being operated at all times.
4. Ensure that sound flight principles and procedures are followed for all operations regardless of mission urgency.
5. Review aircraft mishaps and recommend corrective actions and preventive measures.
6. Comply with sound flight principles and safe practices during all flight operations.
7. Electronic messaging or texting is not permitted during flight operations.
8. Report hazards and unsafe conditions or acts to the UAS coordinator.
9. Should the UAS operator develop fatigue or sudden illness, the operation/flight shall be aborted as soon as practical.
10. In the event of a serious personal injury or property damage as a result of UAS operations, the UAS Pilot will file a report and contact the UAS Coordinator, who will ensure that the appropriate federal, state and local agencies are notified.

G. Maintenance

Any UAS that has undergone maintenance or alterations that affects the function or flight characteristics of the aircraft (e.g., replacement of a flight-critical component) must undergo a test flight prior to conducting further operations. This test flight shall be conducted in a manner so as to not pose an undue hazard to persons and property. This test flight will include at a minimum the following checks:

1. Preflight inspection
2. Start-Up Procedures
3. Electronics Systems Check
4. Low Altitude Hover Check
5. Flight Control Function Check
6. Altitude Control Function Check
7. Perform One Full Flight

8. Shutdown Procedures

9. Post Flight Inspection

H. Documentation and Reporting

1. Flight Log- All UAS flight time shall be accounted for and will be documented in the SPD records management system. in a flight log with the following minimum information:

   a) Date and time

   b) Location

   c) Purpose and Duration of Flight

   d) Aircraft Used

   e) Weather Conditions

   f) Pre Flight Inspection Comments

   g) Pilot Name

2. **Maintenance Log-** A maintenance log will be maintained on all aircraft, documenting the following:

   a) Any work performed other than battery charging.

   b) Firmware Updates.

   c) Logs will be retained for the lifetime of the aircraft, plus one year after disposal or destruction of the aircraft. If the aircraft is transferred or sold, the logs will be transferred to the new owner.

I. Digital Media Evidence- Due to the tremendous size of the digital files captured by the high resolution camera equipment on the UAS, it will be standard procedure not to record and store images while the aircraft is flying other than those specifically necessary for the mission or while conducting image capture training. All collection and storage of digital media evidence must comply with TCA 39-13-609.

III. Emergency Response Plan

During UAS operations, exigent circumstances may develop at any time. The primary concern in such incidents is the prevention of injury to persons on the ground and / or other users of National Airspace. Secondary concerns include protection of property. For UAS incidents causing serious personal injury or loss of consciousness and/or property damage in excess of $500 (other than to the UAS), the UAS personnel involved shall take the following actions:

A. Render first aid to any injured person(s).

B. Notify the on-duty/scene supervisor.

C. Notify the FAA and National Transportation Safety Board (NTSB). The NTSB Response Operations Center number is 844-373-9922 or 202-314-6290. Prior to the arrival of the FAA and/or NTSB, ensure the UAS and its contents are moved only to the extent necessary to remove persons injured, protect the public from injury, and/or protect the wreckage from further damage.

D. Survey the extent of the damage to the UAS and/or other property.

E. Provide any additional assistance of information requested by the FAA or NTSB.

F. Notify the Chief of Police or designee.

G. Submit a detailed written report to the chain of command.

Smyrna Police Department

Procedures for Handling the Mentally Ill

Policy Number: 2-32

CALEA: 41.2.7

Authority: Chief of Police

Amends/Supersedes: 2-32 Procedures for Handling the Mentally Ill: 08/19/2020

Date of Revision: 6/06/2025

PURPOSE

The purpose of this order is to establish procedures and guidelines for officers in dealing with mentally ill persons. Officers frequently come into contact with persons displaying disruptive or abnormal behavior. It is the function of the mental health professionals, in such cases, to determine if treatment at a mental health facility is necessary. In cases where there is no violation of the law, or only minor violations of the law, and the individual demonstrates behavior that indicates he may be "mentally ill," it shall be the duty of the investigating officer(s) to take action in accordance with this policy.

POLICY

It shall be the policy of the Department that all personnel adhere to the provisions herein regarding the policy and procedures for interviewing and transporting mentally ill persons.

I. Part Definitions

A. Mentally ill individual - An individual who suffers from a psychiatric disorder; excluding an individual whose only mental impairment is an intellectual disability or autism.

B. Consumer - An individual who has voluntarily or involuntarily entered the medical system for treatment of a mental health-related illness, with or without law enforcement intervention.

C. Crisis Intervention Officers (CIT) - Officers who have received specialized training to identify and respond to mental health crises.

D. Substantial likelihood of serious harm - Where any one or more of the criteria listed in Article VI of this order exists (as defined in TCA § 33-6-501) and there is a substantial likelihood that such harm will occur unless the individual is taken into custody.

E. Mobile Crisis Response Team (MCRT) - A group of mental health professionals (available 24 hours a day, 365 days per year) accessible by the Department and healthcare staff, who are trained to assess the mental status of individuals afflicted with psychiatric disorders and not individuals who suffer solely from alcoholism or drug dependence. **[41.2.7b]**

F. Emergency Detention Form- A document to be completed by the officer or on the officer's behalf (by healthcare professionals), to articulate the need for the detainment and transport of an individual who he / she determines to be mentally ill (TCA §33-6-401). This form is used in conjunction with the Certificate of Need to determine the best course of action for a mentally ill subject.

G. Certificate of Need - A document authorizing the admission and detainment of a mentally ill individual by a hospital or treatment resource for emergency diagnosis, evaluation and treatment under TCA § 33-6-404. Certificates of need are issued by a licensed physician, licensed clinical psychologist, licensed psychological examiner, licensed professional counselor, nurse practitioner or licensed/certified social worker.

H. The following examples of mental illness are to be referenced by Department personnel as a guide only. The degree to which symptoms exist varies within each individual according to the type and severity of mental illness. Symptoms of different mental illnesses include, but are not limited, to the following: **[41.2.7a]**

1. Temporary or Permanent Memory Loss- This may be indicative of mental disturbance, however, the loss of memory should not be confused with loss of memory that often accompanies head injuries, certain medications or aging.

2. Delusions - False beliefs that are not based on reality. They can cause a person to view the world from a unique or peculiar perspective. The individual will often focus on persecution (e.g., belief that others are trying to harm them) or grandeur (belief that they are a god, saint, famous person, or that they possess a special talent or beauty).

3. Depression- A deep, long-standing feeling of sadness, hopelessness or uselessness.

4. Hallucinations - Experiences or events that have no objective sources, but that are nonetheless real to the person (e.g. hears voices, or sees, smells, tastes or feels imaginary things).

5. Manic Behavior - Exhibited by accelerated thinking and speaking,

or hyperactivity.

6. Confusion - An abnormal condition or state of mind in which a person has trouble understanding the environment and may react or respond to it inappropriately. The individual may exhibit an inability to think with customary speed or clarity, marked by a lack of focus of attention and disorientation.

7. Anxiety - A state of panic or fright (e.g. may have trembling hands, dry mouth and sweaty palms; or may be frozen with fear).

8. Incoherence - A state that is exhibited when speech or thinking is essentially incomprehensible to others because words or phrases are joined together without a logical or meaningful connection.

9. Extreme Paranoia - Can be exhibited when an individual believes that they are being harassed, persecuted or unfairly treated.

10. Schizophrenia - A mental disorder characterized by "positive" and "negative" symptoms. Positive symptoms include delusions, hallucinations and disordered thinking (apparent from a person's fragmented, disconnected and sometimes nonsensical speech). Negative symptoms include social withdrawal, extreme apathy, diminished motivation and blunted emotional expression.

11. Dementia - A problem in the brain that makes it hard for a person to remember, learn and communicate; eventually it becomes difficult for a person to take care of themselves. This disorder can also affect a person's mood and personality. This is an effect of someone suffering from Alzheimer's and other age-related issues. Many of these symptoms represent internal, emotional states that are not readily observable from outward appearance, but are noticeable in conversation with the individual.

I. In addition to the aforementioned, some of the behaviors outlined below may also be a sign of mental illness. However, these behaviors can also be associated with cultural and personality differences or very stressful situations. The presence of these behaviors should not be treated as conclusive proof of mental illness. **[41.2.7a]**

1. Severe changes in behavioral patterns and attitudes;
2. Unusual or bizarre mannerisms;
3. Hostility toward or distrust of others;
4. Withdrawn behavior and refusal to speak;
5. Lack of cooperation;
6. Tendency to argue;
7. One-sided conversation; or
8. Confused or nonsensical verbal communication.

J. Officers should keep in mind that not all unusual behavior is an indicator of mental illness.

II. GUIDELINES FOR EFFECTIVE INTERACTIONS

A. Officers may come into contact with individuals with mental illnesses through a myriad of situations or circumstances (e.g. victims, witnesses or suspects). If a person exhibits symptoms of mental illness, expresses that they have a mental illness or requests accommodation for a mental illness, officers will need to modify routine practices and procedures, take more time or show sensitivity to extend the services or protections that would be extended to someone else in a similar circumstance.

B. Officers shall attempt to establish a credible relationship with the individual while maintaining the safety and security of all persons involved throughout the encounter. To assist in establishing this relationship, the following procedures should be observed:

1. Remain calm and avoid overreacting;
2. Be helpful, professional and non-judgmental;
3. Indicate a willingness to understand and help;
4. Speak simply and briefly, and move slowly;
5. Remove distractions and disruptive people;
6. Announce actions before initiating them, except where it may jeopardize personal safety or the safety of the person or others;
7. Maintain distance;
8. Try not to contradict what the subject is saying;
9. Request backup if it appears that they are dealing with a consumer who may be detained.
[41.2.7c]

III. EVALUATION CONSIDERATIONS

A. To determine the mental status of an individual, officers may take into account everything they personally observe, all physical evidence and all things learned from witnesses or other persons supplying background information. As a practical matter, this type of investigation may be compared to the gathering of probable cause during the investigation of a crime. In this situation, however, the officer is weighing all the information gathered in an attempt to determine if the person is possibly a "mentally ill individual" and poses a "substantial likelihood of serious harm" to themselves or others.
[41.2.7a]

IV. CRITERIA

A. Officers receiving a call for assistance on, or in any way becoming aware of, a situation involving a "mentally ill individual" will make such investigation as necessary to determine:

1. If the person in question is exhibiting articulable signs of mental illness. If that person poses a "substantial likelihood of serious harm" to themselves or others (based on the definition provided in TCA § 33-6-501). *Officers are not qualified or required to make a mental or medical diagnosis of the individual. Officers are merely required to make a practical, common-sense decision, whether given all the facts and circumstances reasonably available to the officer, there is a reasonable basis for believing that the individual in question is a "mentally ill individual" and exhibits an immediate substantial likelihood that serious harm will occur unless the person is placed under involuntary treatment consistent with TCA §§ 33-6-401.*

B. After an investigation, the officer and their supervisor shall determine if the situation necessitates custodial or non-custodial action as follows:

1. Non-custodial Action - If, after careful evaluation of the situation, with assistance from supervisory personnel and mental health professionals, the officer(s) determines that the individual in question is not a "mentally ill individual" or that the individual does not pose a "substantial likelihood of serious harm" to themselves or others, and where no criminal offenses have occurred, the officer(s) shall take no action, other than the offering of community resource information and completing the required department report. The officer(s) shall advise any inquiring persons that the individual in question does not fit the criteria for emergency calls requiring an officer to take custodial action regarding a mentally ill individual. The call shall be reviewed by the officer's supervisor.

2. Custodial Action - If a determination is made that the individual in question is a "mentally ill individual" and that the individual poses an immediate "substantial likelihood of serious harm," the officer(s) is authorized by TCA § 33-6-402, to take that person into custody. The officer would then abide by the procedures listed in this policy and transport them to Stonecrest Medical Center for further examination by a mental health professional. No civil order or warrant is necessary. The officer(s) should be prepared to relate the facts and circumstances known to them to the examining medical professional in order to assist them in making an evaluation. *In every instance of detainment and transport, the officer will complete an Incident Report (under **36-6-404 Certificate of Need for Emergency Treatment**) and articulate the facts surrounding the incident and the reasoning for detainment as authorized in TCA § 33-6-401.*

V. GENERAL GUIDELINES

A. Officers shall do the following when determining if an individual is mentally ill and requires custodial assistance:

1. Interview and observe the individual and make observations regarding mental status.

2. Interview witnesses, family members and / or friends who may have information relevant to the situation.

3. Request assistance from CIT-trained officers, if any are available at the time of the interaction.

4. Notify and consult with an on-duty supervisor before transport. If the individual is in obvious need of medical attention (other than for mental illness) and an ambulance has not been dispatched, the officer shall notify an ambulance according to current departmental policy.

B. The responding officer is primarily responsible for transporting the individual from the point of contact to Stonecrest Medical Center and transferring further care to hospital staff.

C. When an individual is transported to Stonecrest Medical Center by an officer, the patient is to be released to the MCRT or hospital staff. The officer may be required to remain and assist medical staff based on the consumer's behavior. Individuals transported during the mental health evaluation process may be restrained at the officer's discretion, as dictated by officer / consumer safety concerns. **[41.2.7b]**

D. Requests from a treatment facility to provide transportation to another treatment facility shall be directed to the Rutherford County Sheriff's Department unless otherwise directed by the Chief or their designee.

E. TCA § 33-6-407 states that the examining physician shall complete a Certificate of Need showing the factual foundation for the conclusions that the individual is mentally ill and poses an immediate substantial likelihood of serious harm to themselves or others, to include the Emergency Detention for Immediate Examination Form (Part 1). The transporting officer(s) has a right and duty to inspect these documents To insure that the documents show the factual foundation for detaining the individual for evaluation and are otherwise properly completed.

F. If the individual has outstanding criminal warrants and requires a mental health evaluation, the officer shall, if possible, refrain from serving the warrants and notify their supervisor. The warrants should be served after the individual has been released by mental health professionals. Notification of the warrants

shall be attached to the individual's documentation that goes to the treatment facility. The notification sheet should instruct employees at the treatment facility to contact the Department before releasing the individual.

G. If ambulance personnel transports an individual who has attempted suicide to a hospital, the officer shall investigate the incident and complete a report. Unless directed by a Department supervisor, the officer is not required to remain at the hospital once the investigation and report are complete.

H. If, due to exigent circumstances, the individual cannot be transported to Stonecrest Medical Center, the MCRT may respond to a specific location. A department Supervisor shall cooperate with the MCRT when determining if any special response is required. **[41.2.7b]**

VI. SPECIFIC GUIDELINES [41.2.7c]

A. After complying with the provisions listed above, officers shall adhere to the following:

1. Adult Provisions: If the individual requires medical clearance due to intoxication:

   a. The MCRT will be contacted by Stonecrest Medical Center personnel when the consumer is medically cleared. The MCRT will then respond for a follow-up assessment, and a disposition will be determined at that time. **[41.2.7b]**

   b. If a Certificate of Need is signed after the follow-up evaluation, per TCA §§ 33-6-901 and 33-6-406, the Rutherford County Sheriff's Department shall transport the individual and accompanying documents to the designated facility.

2. Juvenile Provisions

   a. If a Certificate of Need is issued, per TCA § 33-6-901, the Rutherford County Sheriffs Department will transport the juvenile and papers to the designated facility.

3. Non-committal situations

   a. If the assessing mental health professional determines that an emergency admission is not required, and refuses to sign the Certificate of Need, if no criminal offense has been committed, the officer(s) shall release the individual. The officer shall offer to transport them back to the site where the individual was taken into custody; or, if possible, the officer shall transport the individual to an alternate site within reason (e.g. homeless shelter, consenting relative's house, etc.) as suggested by

the mental health professional. Where appropriate, the officer(s) shall make an effort to notify any concerned friends or family members of the release.

VII. ASSISTANCE TO MENTAL HEALTH FACILITY PERSONNEL

A. On the rare occasion when Department transports to a mental health facility, the transporting officer(s) may be requested by mental health facility security personnel to assist in escorting the individual to a secure or "lock-up" area. Where necessary, the officers(s) will provide such assistance but will not take control of the situation unless it is apparent that security personnel are unable to retain control. In no event will an officer be required to disarm themselves and check their weapon.

VIII. CONFLICTS OR UNUSUAL SITUATIONS

A. Should any situation arise that is not specifically covered by this order or should any conflict in procedures arise, either at the requesting medical facility or at a mental health facility, the transporting officer(s) will contact appropriate supervisory personnel immediately.

IX. TRAINING [41.2.8d, e]

A. The Department will provide entry level training and annual refresher training to all affected personnel. Such personnel include, but are not limited to, officers, detectives, supervisors and civilian staff who may come into contact with mentally ill people in the performance of their duties.

X. REVIEW

A. The Chief or their designee, with assistance from the Community Services Coordinator, shall conduct an annual review of this General Order and make any and all necessary revisions.

Smyrna Police Department

APPEARANCE, UNIFORMS AND EQUIPMENT

Policy Number: 3-7

CALEA 41.3.5, 22.1.6

Authority: Chief of Police

Amends/Supersedes: 3-7 Appearance, Uniforms and Equipment

11/13/2024 **Date of Revision: 06/10/2025**

PURPOSE

The purpose of this policy is to establish clear and concise standards governing the maintenance of a professional image by all members of the Smyrna Police Department.

POLICY

It is the policy of the department that all employees present themselves in such a manner as to command respect and instill public confidence. All employees should maintain a neat, clean and well-groomed professional appearance free from strong or unusual body odors. Uniforms and equipment shall be properly worn and maintained at all times.

Supervisors are tasked with ensuring that every officer complies with the standards outlined in this policy and with immediately correcting any discrepancies.

I. PROCEDURE

A. Clothing Allowance

1. The department makes available to each uniformed officer a clothing allowance to maintain their uniforms. This allowance may be used to purchase uniform shirts and trousers, as well as uniform shoes or boots. All other required equipment items are purchased by the department.

2. Employees assigned to the Criminal Investigation Division are provided a clothing allowance each year. This allowance is to be utilized to purchase appropriate clothing for the employee's particular duty assignment and to ensure proper attire for court appearances.

3. Male police officers authorized to wear civilian clothing on duty shall purchase with their clothing allowance, color-coordinated slacks, shirts, neckties, suits, dress belts, tactical pants, knit shirts with name and department insignia embroidered or shoes. Purchasing with their clothing allowance casual attire, such as denim jeans, work pants or tennis shoes is prohibited.

4. Female officers permitted to wear civilian clothing shall purchase with their clothing allowance the equivalent style attire, such as a dress, pantsuit, suit, pants, dress belts or blouse. Purchasing with their clothing allowance casual attire, such as denim jeans, work pants or tennis shoes is prohibited.

5. Exceptions will be made while assigned to Narcotics. The division commander is authorized to prescribe appropriate attire for the Narcotics Division.

6. Alterations deemed necessary by the division commander may be made to the duty uniform at no expense to the officer, with prior approval.

7. Employees at the rank of Captain or above do not have a department issued clothing allowance, but are expected to maintain a professional appearance. Duty uniforms will be furnished by the Town.

II. Uniforms/Equipment [22.1.6]

A. All uniforms and equipment are to be kept clean, in good condition and must fit properly.

B. Officers are to wear the authorized and appropriate uniform, Class A or B, for the work being performed, whether in a patrol function, court appearance, participation in a promotion board or formal ceremony.

1. Dress Uniform **(Class A)**

The following items constitute a Dress Uniform:

a. Eight Pointed Hat w/ Hat Badge

b. Long Sleeve Polyester Uniform Shirt, sleeves buttoned at full Length.

(1) Tie, Dark Navy
(2) Department Shoulder Patch on each sleeve.
(3) Collar Insignia Silver "SPD" or appropriate rank designation (Lieutenant and above) Silver colored initial insignia “SPD" will be utilized by all uniformed officers below the rank of Sergeant. Gold colored insignias will be used for the rank of Sergeant and above. Collar Insignia is to be worn with the bottom corners of the insignia touching the stitched seams of the collar an equal distance from the point of the collar.
(4) Chevrons, if applicable, for current responsibility as a Field Training Officer or the rank of Sergeant.
(5) Service Stripes (hash marks) - Service stripes, indicators for length of service, may be worn on long sleeved shirts and jackets. They are to be machine stitched onto the uniform. The button of the service stripe shall be sewn one and one- half inches above the cuff seam. The stripes are to be worn on the left sleeve only. Each single service stripe hash mark denotes five (5) years of service in law enforcement, and is applicable to Sworn, and Professional Staff. Members are authorized to wear service strips at the completion of the fifth year of service.
(6) Nameplate - worn above Right breast pocket, bottom of n nameplate centered on, horizontal to and touching the top of the pocket.
(7) Medals and pins that have been authorized by the Chief of Police may be worn on the Class A or B uniform. Examples of approved items are; Medal of Valor, Life Saving, Military Service/Veteran, FBI National Academy, Northwestern Staff and Command, SWAT, Traffic Officer, Crisis Intervention Team/CIT, Department approved medals are to be centered on and one quarter inch above the nameplate. Subsequent medals are stacked, evenly spaced.
(8) Badge- Department issued metal badge is to be worn above the Left breast pocket.

c. Polyester uniform pants, hemmed so as to rest on the top of the foot with a slight break in the crease. Cargo pants are not permitted.

d. Duty Belt w/ Minimum to be worn as part of the “Class A” Dress Uniform

(1) Inner Belt
(2) Duty holster w/issued handgun
(3) Ammo Pouch w/magazines

(4) Handcuff case w/ handcuffs
(5) Radio holder w/ radio
(6) Appropriate keepers (if necessary)

e. Ballistic Vest (Concealed, under uniform shirt) **[41.3.5]**

f. Utility Knives- See Class B Uniform.

g. Black Leather Boots (capable of being polished to a shine).
Under shirts (black or white only). A complete “Class A” Dress Uniform is the appropriate and expected uniform for participation in promotional boards, funerals or when directed by supervisory personnel.

2. Duty uniform **(Class B)**

The Duty Uniform consists of many of the same basic items as the “Class A” uniform, however, is more flexible and utilitarian while maintaining a professional appearance.

a. Dark Navy Blue short or long sleeve shirt.
Officers may determine which shirt is appropriate for the season, and weather conditions. If the Officer chooses to wear a long sleeve shirt, sleeves must be worn and buttoned at full length at all times. Items to be worn on the Duty Uniform Shirt;

(1) Department Shoulder Patch on each sleeve.
(2) Badge shall be worn on the left chest in the provided location. Velcro badge is required on the load bearing vest.
(3) Silver colored initial insignia “SPD" will be utilized by all uniformed officers below the rank of Sergeant. Gold colored insignias will be used for the rank of Sergeant and above. Collar Insignia is to be worn with the bottom corners of the insignia touching the stitched seams of the collar an equal distance from the point of the collar. If the load bearing vest is utilized, collar insignias are not required.
(4) Sleeve Rank Chevrons shall be utilized by supervisors as well as those officers who are assigned Field Training Officer responsibilities.
(5) Name Plate shall be worn centered on the pleat above the right pocket flap. The bottom of the plate should rest evenly on the top of the pocket. Name tape is required on the load bearing vest.

(6) Medals and pins that have been authorized by the Chief of Police may be worn on the Class A or B uniform. Examples of approved items are; Medal of Valor, Life Saving, Military Service/Veteran, FBI National Academy, Northwestern Staff and Command, SWAT, Traffic Officer, Crisis Intervention Team/CIT, Crisis Negotiators and FBI LEEDA Trilogy. Department approved medals are to be centered on and one quarter inch above the nameplate. Subsequent medals are stacked, evenly spaced.

b. Dark Navy Blue Trousers. Hemmed so as to rest on the top of the foot with a slight break in the crease.

c. Uniform Boots /Shoes that have been approved by the department must be Black in color and kept clean and maintained so as to present a professional appearance.

d. Headgear / Hat(s) For special events, as part of an inspection or as directed by a supervisor, officers may be directed to wear the department issued eight point hat, navy blue with hat badge. As part of the Class B uniform only the The department issued “baseball” style cap is only authorized to be worn with the Class B uniform. Stocking Caps and similar cold weather headgear may also be worn with the Class B Uniform when believed necessary by the officer. This cold weather headgear if not the department issued, must be Navy Blue or Black. No logos other than SPD shall be worn on stocking caps.

e. Duty Belt - Items authorized to be carried on a Duty belt and or Load Bearing

(1) Inner belt (Used to hold up trousers);
(2) Outer belt w/keepers (Holds equipment);
(3) Holster;
(4) Handgun;
(5) Radio w/holder;
(6) Flashlight;
(7) Handcuffs w/case
(8) OC Spray w/holder; and
(9) Impact weapon w/holder.

f. Ballistic Vest. A ballistic vest, to include either the outer load bearing vest, which is designed to and can be used to carry several equipment items that would normally be carried on a duty belt, external vest cover

that looks like a uniform shirt, or the conventional concealed inner vest will be worn when in uniform. Badge, name plate, “Police” placard, and blood type are the only patches allowed to be worn on the Load Bearing Vest. **[41.3.5]**

g. Under shirts (black or white only).

h. Utility Knives- The utility knife is intended solely for the purpose of carrying out the general duties and designated special assignments of police operations. Its use as a defensive or offensive weapon is authorized in *exigent circumstances only.*

(1) Folding Blades or Automatic Knives- The blade of any folding blade or automatic knife shall not exceed 4.5 inches. They shall be carried in a manner that is secure and inconspicuous to the public. Clipped to or in a pocket, clipped to the waistband, or inside the pants or vest are examples of acceptable carry techniques. Any variances to this description must be approved by the Chief of Police.

(2) Fixed Blade Knives- The blade of any fixed blade knife shall not exceed 4.5 inches. Fixed blade knives shall be carried in a sheath and in a manner that is secure and inconspicuous to the public. Secured in the waistband, inside the vest or in the boot (covered by pants) are examples of acceptable carry techniques. Any variances to this description must be approved by the Chief of Police.

(3) The utility knife is not intended for use as a weapon and officers are discouraged from using it in this capacity. However, it may be used in defensive capacities under exigent circumstances. Under such circumstances, it shall be deemed a use of deadly force and is governed by this department's use of force policy.

i. No items shall be worn, as part of a duty uniform, that has not been approved by the Chief of Police or their designee. This shall include either department issued items and or personal equipment or apparel.

3. Prescribed Civilian Clothing (Sworn)

a. Male police officers authorized to wear civilian clothing on duty will wear color-coordinated slacks, shirts and shoes. Casual attire, such as denim jeans, work pants or tennis shoes are permitted when work conditions are favorable and permitted by the Division Commander.

b. Female police officers permitted to wear civilian clothing will wear the equivalent style attire, such as a dress, pantsuit, suit, pants and blouse. Casual attire, such as denim jeans, work pants, or tennis shoes are permitted when work conditions are favorable and permitted by the Division Commander.

c. Narcotics division officers are permitted to wear tee shirts, shorts, denim jeans, sporting jerseys, cowboy boots, tennis shoes, etc., due to the nature of the assignment. Vulgar language or clothing that is in poor taste is not permitted. The division commander is authorized to prescribe what is in poor taste or vulgar.

4. Prescribed Civilian Clothing (Non-Sworn)

a. Civilian employees shall follow the dress code as outlined in the Town Employee Handbook

b. The immediate supervisor of the civilian employee will have the discretion to identify clothing as not within the “Business Casual” expectation and take appropriate corrective action.

5. Honor Guard Ceremonial Uniform

a. Employees assigned Honor Guard duties are required, upon short notice, to respond in their Ceremonial Uniform and perform or participate in ceremonies as directed and authorized by the Chief. Whenever utilized individually or as a member of the full Honor Guard officers shall wear the full and complete Honor Guard Uniform.

III. Personal Appearance

A. Hair

1. All officers are required to maintain a neat, clean and well-groomed hair style. No extreme styles, cuts, colors, or carvings are allowed. Hair style and length shall not interfere with the proper wearing of the uniform hat.

2. Male officers shall keep hair cut so that it does not hang below their uniform shirt collar, over the top of the ears or eyebrows.

3. Female officers who wear a hair style that extends below the bottom of the uniform collar must keep their hair pulled up. Female officers may use hair-holding devices including, but not limited to barrettes, pins, clips, bands and scrunches; however, they must ensure the devices are plain in design and must be either blue, black or blend with their hair color. Officers who use such devices must make them as inconspicuous as possible. The use of such hair-holding devices should not interfere with the proper wearing of the uniform hat.

4. Male and female officers who are authorized to wear civilian clothing must maintain a neat and clean hairstyle to be determined by the division commander.

5. All officers should keep in mind that long hair can be easily grabbed, and should make every effort to keep their hair cut short or pulled up to avoid the accidental or deliberate pulling of the hair.

6. Hair color shall be natural looking with no extreme or dramatic changes from the officer's natural appearance, colors and tones.

B. Facial Hair

1. Male officers are permitted to wear a neat, well-groomed and trimmed mustache, beard or goatee. Beards and goatees shall not extend more than one-half (1/2) of an inch in length from the face and shall follow the line of the jawbone, shall not proceed into the neck area, and the perimeter lines of the beard shall be neatly trimmed and defined. Additionally, all facial hair must be trimmed above the cheek line.

2. Facial hair shall be maintained at a length and pattern so as to maintain a neat and professional appearance.

3. Officers who are authorized to wear civilian clothing must maintain neat and clean facial hair to be determined by the division commander.

4. Officers who are unable to grow their facial hair into a full, neat and professional looking beard or goatee must be clean shaven so as to present a neat and professional appearance.

5. The Chief, or his or her designee, shall have the sole discretion to determine what does and does not maintain a neat and professional appearance.

C. Jewelry

1. The wearing of jewelry should be kept to a minimum in order to maintain a professional appearance and to help avoid possible injury to the officer.

2. Piercings - Employees who in the normal course of their duties are in the public view shall not be allowed to have piercings on the face, (i.e. eyebrows, nose, chin, lips or the tongue while on duty.)

3. Female officers are discouraged from wearing earrings while in uniform. However, if they chose to do so, they may wear one pair of matching “studs” or “button type” earrings (1 in each ear) that do not exceed ¼ inch in diameter. Hoop or dangling earrings are prohibited. Exceptions based on medical needs may be approved by the Chief on a case by case basis. Earrings may not be worn by male officers.

4. A maximum of two rings may be worn by any officers while in uniform.

5. Officers need to be aware that a necklace can become a choke hazard if caught or grabbed.

6. Officers who choose to wear a necklace must ensure that it is not visible while in uniform. Under no circumstances will an officer be allowed to wear a choker style necklace.

D. Finger nails

1. Finger nails shall be kept clean and neatly trimmed so as to not interfere with the performance of duties, detract from a professional image, or present a safety hazard. Non-eccentric nail polish, to include colorless nail polish may be worn.

E. Tattoos or Altered Body Parts

1. Employees shall present a professional appearance. Any tattoos or brands visible on the head, face, neck or scalp are prohibited. Any tattoos not on the head, face, neck or scalp that may be visible while wearing the uniform must not be offensive or objectionable in nature and must not depict nudity, racism, violence or vulgarity through words or symbols. Any tattoo that could be perceived as offensive or objectionable to the public, or is determined to be inappropriate by the Chief must be completely covered.

2. Visible physical alterations of the body that are not consistent with generally acceptable business standards of appearance are prohibited. (i.e. tongue splitting, wearing of ear gauges, etc) The Chief, or his or her designee, shall have the sole discretion to determine what is a generally acceptable appearance.

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Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 2.
Department: Public Works
Date: August 28, 2025

Subject:
Approval of the terms of, and authorization for the Mayor to execute, a contract with Sessions Paving Company for the Sam Ridley Parkway (SR-266) Intersection at Old Nashville Highway.

Fiscal Impact:
Total Construction cost - $3,988,046.80
CMAQ 80-20 Grant for Construction Phase $1,929,636.00

Contract Type:
Original Contract

Contract Term (if applicable):
On or Before December 31, 2026.

Background:
As part of the Sam Ridley Parkway corridor improvements, this phase of the project will provide traffic congestion relief and correct drainage issues at the intersection.

Summary:
This project will add double left turn lanes, two through lanes, and a right turn lane on all 4-legs of the intersection. The drain issue on the North East corner will also be rectified.

Recommended Council Action:
Staff recommends approval of this contract.

Attachments:
1. Sessions Bid Book
2. PIN 127985.00 Fully Executed Amendment 2

#3

DO NOT UNBIND

PROPOSAL CONTRACT

FOR THE CONSTRUCTION OF

Contract No. 127985

PIN:	127985.00
County:	Rutherford
Federal Project No.:	CM-266(30)
State Project No.:	75LPLM-F3-083
Local Agency Reference No.:	N/A
Description Of Project:	Sam Ridley Parkway (SR-266) Intersection at Old Nashville Highway L.M. 1.5 in Smyrna
Project Length:	0.309 Miles
Completion Time:	On or Before December 31, 2026
DBE Goal:	7%

By: Sessions Paving Company

City, St.: Nashville, Tennessee

Surety: Berkley Insurance Company

TDOT Version: 1/14/25

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The above Supplemental Specifications, revised as noted, are incorporated by reference for bidding purposes and will be printed with the Contract after awards. These Supplemental Specifications may be obtained from the Department at Suite 700, James K. Polk Bldg., Nashville, Tennessee or viewed on the Department's website at http://www.tn.gov/tdot/section/tdot-construction-division.

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Other Technical Special Provisions.....

ATTENTION

It shall be the bidders' responsibility to confirm that the Proposal Contract contains all the documents indicated on the Table of Contents.

Should any omissions occur, the appropriate documents may be obtained from the Construction Division upon request.

THE TOWN OF SMYRNA

INSTRUCTIONS TO BIDDERS

BIDS TO BE RECEIVED

7/17/2025

Sealed bids for the construction of the following projects will be received by the TOWN OF SMYRNA, **315 South Lowry Street, Smyrna, TN 37167** until 10:00 **AM 7/17/2025** and opened publicly at 315 South Lowry Street, Smyrna, TN 37167, **10:00 AM 7/17/2025**. The reading of the bids will begin at **10:01 AM**.

The proposed construction shall be performed in accordance with the most current version of the Standard Specifications for Road and Bridge Construction of the Tennessee Department of Transportation , and the Standard Roadway and Structures Drawings of the Tennessee Department of Transportation which are incorporated herein by reference and made a part hereof. In addition, only the Special Provisions contained within the applicable Proposal Contract will be considered binding. Any reference to any Special Provision not contained within the applicable Proposal Contract shall be disregarded. All questions related to the Proposal Contract, Plans, Specifications or Special Provisions shall be directed to the **Town of Smyrna Public Works (615-459-9766)**. Information received from other offices of the TOWN OF SMYRNA strictly advisory.

IMPORTANT NOTICE TO BIDDERS:

Prospective bidders should read the following instructions carefully before submitting their bids. Special attention is called to the regulations of the TOWN OF SMYRNA that total bids, rather than unit prices, will be read. Proposals shall be rejected as being irregular if they fail to contain a unit price for each item listed. Extensions of the various items must be sub-totaled, carried forward, and shown as a grand total following the last proposal item. All entries must be in ink.

After a bidder has deposited a proposal with the TOWN OF SMYRNA, he can withdraw it only on written request in accordance with Subsection 102.07 of the Tennessee Department of Transportation Standard Specifications.

Totals read at the opening of the bids are not guaranteed to be correct and no final award of the contract will be made until bids and extensions have been checked and re-checked.

On all projects which are financed in whole or in part by funds received through Federal agencies and/or the Tennessee Department of Transportation, the awarding of contracts by the TOWN OF SMYRNA will be subject to approval by the Tennessee Department of Transportation. The TOWN OF SMYRNA reserves the right to reject any bid proposal which is not acceptable to the parties as listed, although such bid proposal would otherwise qualify as the lowest and best bid under the Tennessee Department of Transportation Standard Specifications.

The TOWN OF SMYRNA reserves the right to reject any or all Proposals, to waive technicalities or to advertise for new Proposals, if in the judgment of the awarding authority and subject to TDOT concurrence, the best interest of the TOWN OF SMYRNA will be promoted thereby.

The TOWN OF SMYRNA reserves the right to cancel the award of any Contract, at any time prior to execution of said Contract by all parties without any liability against the TOWN OF SMYRNA.

The awarding of the contract or rejection of all proposals will be made within 60 days after the formal opening of the proposals. Upon award, a detailed letter of instructions will be forwarded along with appropriate documents to the low bidder.

The TOWN OF SMYRNA hereby notifies all bidders, that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the basis of age, race, color, religion, national origin, sex or disability in consideration for an award.

The TOWN OF SMYRNA is an equal opportunity affirmative action employer, drug-free, with policies of nondiscrimination on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service.

PREQUALIFICATION OF BIDDERS:

Each prospective bidder and subcontractor will be required to file a document entitled "Prequalification Questionnaire." The foregoing shall be filed on a form provided by the Tennessee Department of Transportation. The form must be filled out completely, and the truth and accuracy of the information provided must be certified by a sworn affidavit signed by an officer, partner, owner or other authorized representative of the applicant who has authority to sign contracts or other legal documents on behalf of the applicant. A prospective bidder must be prequalified by and in good standing with the Tennessee Department of Transportation prior to the issuance of a proposal form. A prospective subcontractor must be prequalified by and in good standing with the Tennessee Department of Transportation prior to being approved as a subcontractor. Each prospective bidder or subcontractor shall notify the Tennessee Department of Transportation if there is any subsequent change in the name, organization or contact information provided.

Prospective bidders' "Prequalification Questionnaire" shall be filed with the Tennessee Department of Transportation at least fourteen (14) days prior to the date of opening bids on any letting in which the applicant intends to submit a bid to the TOWN OF SMYRNA, or at least fourteen (14) days prior to the date on which the applicant requests approval as a subcontractor under a contract awarded by the TOWN OF SMYRNA. Bidders intending to submit proposals consistently shall complete and submit the prequalification application annually; however, this document may be changed during such period upon submission of additional favorable reports or upon receipt by the Tennessee Department of Transportation of substantiated evidence of unsatisfactory performance. The Tennessee Department of Transportation reserves the right to request additional information and documentation to clarify and/or verify any information submitted in an applicant's prequalification application.

The prequalification form can be found at the web address
http://www.tn.gov/tdot/section/tdot-construction-division

A proposal to be used for non-bidding purposes may be issued to any interested party regardless of prequalification. This proposal Contract will be marked "Void for Bidding". A contractor that has purchased a proposal contract that was marked "void for bidding" can buy another book once they are fully prequalified before the bid date.

LICENSING REQUIREMENTS

According to the types of funds used, contractor bidding requirements differ. When using any Federal funds, proposals shall be completed as described below:

Proposals shall be submitted by a bidder licensed with the Tennessee Department of Commerce and Insurance (TDCI), Board for Licensing Contractors (BLC) within twenty-one (21) days of the bid opening, in accordance with Subsection 102.11 of the Tennessee Department of Transportation Standard Specifications.

Prior to recommending award of a contract, the Local Government will confirm that the lowest responsible bidder is licensed with the BLC. Because TDOT work classifications and the BLC licensing classifications slightly differ, the Local Government will verify only that the apparent low bidder is licensed in the general classification (e.g., Heavy Construction (HC), Highway, Railroad, Airport Construction (HRA), Specialty (S), Municipal and Utility Construction (MU), or Electrical Contracting (CE)) and not the specific subcategories of these classifications for the type of work involved in the project. This is in recognition that the prime contractor is required to complete 30% of the specific project work and may subcontract the remainder of the work.

Title 48 of Tennessee Code requires all contractors and subcontractors that are domestic or foreign Corporations, Limited Liability Companies, Limited Partnerships, or Limited Liability Partnerships to be in good standing with the Secretary of State (i.e., have a valid Certificate of Existence/Authorization). This includes being duly incorporated, authorized to transact business, and/or in compliance with other requirements as detailed by the Secretary of State.

Bidders that are domestic or foreign corporations, limited liability companies, limited partnerships, or limited liability partnerships, must be in good standing with the Secretary of State (i.e., have a valid Certificate of Existence/Authorization) on or before twenty-one (21) days after proposals are opened.

PROPOSAL BOND

Each proposal must be accompanied by a bidder's bond, or Cashier's Check, or Certified Check made payable to the TOWN OF SMYRNA in an amount equaling not less than five percent (5%) of the amount bid. In the case of optional items in the proposals, the amount of the bidder's bond or check must be in an amount equaling not less than five percent (5%) of the total amount of the bid based on the high option.

If the bidder's bond is offered as guaranty, the bond must be on the form furnished by the TOWN OF SMYRNA and made by a surety company, qualified and authorized to transact business in the State of Tennessee and must be acceptable to the TOWN OF SMYRNA.

If a check is offered as guaranty, the check of the successful bidder will be cashable at the discretion of the TOWN OF SMYRNA, pending the satisfactory execution and acceptance of the contract and the contract bond.

ISSUANCE OF BIDDING DOCUMENTS

This TOWN OF SMYRNA and the Tennessee Department of Transportation are on a cash basis for sales of Plans, Proposal Contracts, Standard Specifications, Standard Drawings, Standard Drawing Books and Tabulations of Bids. Requests for documents must be accompanied by cash, check, money order, or they may be mailed to the buyer C.O.D.

A charge of **$200.00** plus **0.00%** sales tax, for in-state delivery, will be made for each Proposal Contract. This charge is applicable regardless of whether the Proposal is to be used for bidding or non-bidding purposes. Proposals will be obtainable until the time set for opening bids. The charge for Plans and/or Cross-sections will be as specified in the Notice to Contractors and this charge will be applicable before the letting and for three months after the letting. Plans ordered after the three month period will be furnished at **$15.00** per sheet. Individual Plan sheets and individual Standard Drawings will be furnished at **$15.00** per sheet. Tabulations of bids will be furnished at **$15.00** per sheet. Tennessee Department of Transportation Standard Drawing Books will be furnished by the Tennessee Department of Transportation at **$100.00** per book plus **9.25%** sales tax, for in-state delivery. The most recent version of the Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction will be furnished by the Tennessee Department of Transportation at **$12.00** per book plus **9.25%** sales tax, for in-state delivery. There will be a minimum charge of $2.00 on any purchase. All documents will be furnished without refund and transmitted at your risk.

When two or more contractors wish to bid together in a joint venture, each contractor will be required to make a written request for such a proposal to the TOWN OF SMYRNA. This request shall be signed by an authorized signatory of each firm.

Requests for joint venture proposals may be made in person or by telephone. However, the proposal for said joint venture will not be issued until the request in writing, as set forth above, is received by the TOWN OF SMYRNA.

MANDATORY SUBMITTAL OF SUBCONTRACTOR BID QUOTES (BIDDERS LIST)

All bidders for each project must provide a list of all subcontractors who provide a quote to perform work. The list shall be provided on the TDOT form "Certification Regarding Subcontractor Bid Quotes" (Bidders List) and include the type of work in which quotes were submitted. All bidders shall submit this form before the close of business (4:30 PM, Local Time) three (3) business days after the date on which bids are required to be submitted (e.g., if bids are required to be submitted on a Friday, then the completed from is due by 4:30 PM on the following Wednesday). Failure to complete and submit this form with the time period required may result in the proposal being deemed non-responsive and forfeiture of bid bond for the bidder. Any bidder that fails to submit the required bidders list may have their prequalification status changed and ability to bid as prime contractor rescinded.

REJECTION OF PROPOSALS

Proposals will be rejected as irregular if prior to the formal opening of the Proposal all of the following documents have not been signed: (1) the bidder shall sign by written signature the Proposal form, (2) the bidder shall sign by written signature the Proposal Certification form, (3) the bidder shall sign by written signature the Proposal Bond form or the Proposal Guarantee, whichever is applicable, (4) the Agent or Attorney-in-Fact representing a Surety Company shall sign by written signature the Proposal Bond, if applicable. In addition, Proposals will be rejected if any of the above signatures are a reproduced copy, such as, but not limited to a photostatic copy or a facsimile transmission. An original, dated and valid Power of Attorney for the Attorney-in-Fact must accompany the Proposal and the Contract. The accompanying Power of Attorney must be dated, and the date must be the exact same date as the date on the Proposal Bond. The Proposal and the Proposal Bond, including the attached Power of Attorney, shall be valid and binding for 60 days subsequent to the date of opening bids.

Proposals shall be completed on the forms as issued. Proposals will be rejected as being irregular if they are not prepared on the prescribed forms; if they show any omissions, alterations of form, additions, or conditions not called for, unauthorized alternate bids, or irregularities of any kind; or if they fail to contain a unit price for each item listed. Proposals may be rejected if any of the unit prices contained therein are mathematically unbalanced, either excessive or below the Engineer's Estimate.

Written alterations to unit prices and extensions of the various items in the bid item sheets of the Proposal or, for computer assisted bids (CAB), in the CAB program generated set of bid item sheets will not be cause for rejection of the Proposal, provided each alteration is made in ink and is initialed by a duly authorized official of the company. In case of conflict between altered unit prices or extensions thereof, the unit price in numerals will govern.

The Plans and Specifications are as much a part of the proposal form as if they were bound therein. All of the documents contained therein are part of the proposal. Proposals shall not be taken apart. Proposals taken apart may be subject to rejection. Photostatic or facsimile copies of Proposal sheets may not be attached to the Proposal. Proposals containing forms not issued by the TOWN OF SMYRNA may be subject to rejection.

Proposals will be rejected as irregular if the bidder fails to acknowledge all addenda.

Proposals will be rejected as irregular when submitted by a bidder who is not prequalified and in good standing on the date of letting in accordance with Subsection 102.01 of the Tennessee Department of Transportation Standard Specifications and Chapter 1680-5-3, Prequalification of Contractors, of the Rules of the Tennessee Department of Transportation.

Proposals will be rejected as irregular when submitted by a bidder who is not licensed according to the requirements as detailed above.

Reasonable grounds for believing that there has been collusion among the Bidders will cause a rejection of all Proposals in which the Bidders involved are interested.

ADDENDA

Addenda to the Proposal will be acknowledged by all bidders. Failure to acknowledge receipt of Addendum Letters is grounds for rejection.

RETAINAGE

Effective for all contracts, the TOWN OF SMYRNA will not hold retainage. In addition, the Contractor will not be able to hold retainage from the subcontractor.

SUBCONTRACTS

Your special attention is called to Section 105 - Control of Work, and Section 108 - Prosecution and Progress of the Tennessee Department of Transportation Standard Specifications, concerning duties of the contractor and subletting of contracts.

CHANGED CONDITIONS

Your special attention is called to Section 104.02 of the Tennessee Department of Transportation Standard Specifications, concerning changed conditions on this contract.

The following information applies to Federal-Aid construction projects:

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

STATE OF TENNESSEE
Rev: October 10, 2016 January 1, 2021

SPECIAL PROVISION

REGARDING

EMPLOYING AND CONTRACTING WITH ILLEGAL IMMIGRANTS

The State shall endeavor to do business only with those contractors and subcontractors that are in compliance with the Federal Immigration and Nationality Act. This policy shall apply to all State Contractors including subcontractors. This policy statement is issued to establish implementation guidance to procuring state agencies and contractors reflecting the requirements of *Tennessee Code Annotated* §12-3-309 regarding the employment of illegal immigrants in the performance of state contracts.

1. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the "Attestation form" provided by the Department, semi-annually during the period of this Contract.

2. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract.

3. The Contractor shall maintain records for its employees used in the performance of this Contract. Said records shall include a completed federal Department of Homeland Security Form I-9, *Employment Eligibility Verification*, for each employee and shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated* § 12-3-309 for acts or omissions occurring after January 1, 2007. This law requires the Chief Procurement Officer, Department of General Services, to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a

contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.

For the Purposes of this policy, "illegal immigrant" shall be defined as a non-citizen who has entered the United State of America without federal government permission or stayed in this country beyond the period allowed by a federal government-issued visa authorizing the non-citizen to enter the country for specific purposes and a particular time period.

STATE OF TENNESSEE

(Rev. 6-20-11) January 1, 2021

SPECIAL PROVISION

REGARDING

BUY AMERICA REQUIREMENTS

All manufacturing processes for iron and steel products, and coatings applied thereon, used in this project shall occur in the United States except that if the proposal has bid items for furnishing domestic and foreign iron and steel, the bidder will have the option of (1) submitting a bid for furnishing domestic iron and steel, or (2) submitting a bid for furnishing domestic iron and steel and a bid for furnishing foreign iron and steel. If option (2) is chosen, the bid will be tabulated on the basis of (a) the total bid price using the bid price for furnishing domestic iron and steel and, (b) the total bid price using the bid price for furnishing foreign iron and steel.

For the total bid based on furnishing foreign iron and steel to be considered for award, the lowest total bid based on furnishing domestic iron and steel must exceed the lowest total bid based on furnishing foreign iron and steel by more than 25 percent. The 25 percent differential applies to the total bid for the entire project, not just the bid prices for the steel or iron products.

Iron and steel products are defined as products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed from iron and steel made in the United States. Iron products are included, however, pig iron and processed, pelletized, and reduced iron ore may be purchased outside the United States.

Manufacturing begins with initial melting and continues through the coating stage. Any process which modifies chemical content, physical size or shape, or the final finish is considered a manufacturing process. Coatings include epoxy, galvanizing, painting or any other surface protection that enhances the value and/or durability of a material.

The contractor shall provide a certification to the Engineer with each shipment of iron and steel products to the project site that the manufacturing processes for the iron and steel products occurred in the United States. No steel shall be placed until the contractor ensures the requirements of this Special Provision are met.

The above requirements do not prevent a minimal use of foreign materials, if the cost of such materials used does not exceed 0.1 percent of the total contract cost or $2,500.00, whichever is greater. If steel not meeting the requirements of this Special Provision is used, the contractor shall provide a written statement to the Department prior to its use indicating where the steel will be incorporated in the work,

the value of the steel, the percentage of the contract amount, and the appropriate invoices shall be submitted as documentation.

The contractor shall be responsible for all cost associated with any steel that is permanently incorporated into the project that does not meet the requirements of this Special Provision without prior written approval from the Department, up to and including removal and replacement.

STATE OF TENNESSEE

September 10, 2020 January 1, 2021

SPECIAL PROVISION

REGARDING

PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO

SURVEILLANCE SERVICES OR EQUIPMENT

Installation of telecommunication and video surveillance equipment, services or systems shall contain no components from providers as listed in Title 2 Code of Federal Regulations (CFR) Part 200.216.

The prohibition on certain telecommunication and video surveillance services or equipment regulation in Title 2 CFR 200.216 shall apply to this contract. Take all necessary and reasonable steps in accordance with Title 2 CFR 200.216 to ensure that no prohibited telecommunication and video surveillance services or equipment are included in any of the work in this contract. As defined in Title 2 CFR 200.471, the regulation provides clarity that the telecommunications and video surveillance costs associated with Title 2 CFR 200.216 are unallowable for services and equipment from the providers.

It is prohibited from installing equipment, services, or systems that use covered telecommunications equipment or services from providers described in section 889 of the National Defense Authorization Act for Fiscal Year 2019 (NDAA 2019).

As described in section 889 of the NDAA 2019, "covered telecommunications equipment or services" means:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- Telecommunications or video surveillance services provided by such entities or using such equipment; or
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. The term "covered foreign country" means the People's Republic of China.

Any prohibited equipment installed must be removed and replaced at the contactor's expense with acceptable equipment.

STATE OF TENNESSEE

December 12, 2022
(Rev. 9-12-23)
(Rev. 11-21-23)

January 1, 2021

SPECIAL PROVISION

REGARDING

BUILD AMERICA, BUY AMERICA ACT REQUIREMENTS

The Build America, Buy America Act (BABA) Public Law No. 117-58 SEC. 70914 that all of the iron, steel, manufactured products, and construction materials used are subject to Build America, Buy America requirements and are produced in the United States.

Effective 10/23/2023, the Office of Management and Budget (OMB) revised guidance in the Code of Federal Regulations (CFR) title 2 and add a new part 184 – Buy America Preferences For Infrastructure Projects and revised 200.322.

A. Iron and steel: FHWA existing requirements SP106A Regarding Buy America.

B. Manufactured products: FHWA Buy America Final Rule 11/25/1983, 48 FR 53099; Waiver for Manufactured Products.

C. Construction materials includes an article, material, or supply that is or consists of only one of the materials listed except as provided in 2).

1) Construction materials:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Fiber optic cable (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; and
- Drywall.

2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

Construction materials incorporated into the project must meet one of the following construction material standards to be considered "**produced in the United States**".

1) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
5) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
6) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
7) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
8) Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Provide certifications to the Engineer for the construction materials that they meet the Build America Buy America Act requirements. Assure all submittals required for Buy America are submitted to the Engineer prior to the products and or materials being incorporated in the project.

Effective August 16, 2023, with the US Department of Transportation (DOT) Office of the Secretary Docket No.: DOT-OST-2022-0124:
Waiver of Buy America Requirements for De Minimis Costs and Small Grants, decision, certain waivers to the requirements stated herein are allowed.

The BABA's domestic preferences for iron and steel, manufactured products, and construction materials used in projects funded under DOT administered financial assistance programs will not apply under a single financial assistance award for the following situations:

1) The total value of the noncompliant products is no more than the lesser of $1,000,000 or 5% of total applicable costs for the project; where the "total value of the non-compliant products" does not include the value of those products subject to a separate Buy America waiver. "Total applicable project costs" are defined as the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement, including materials that are within the scope of an existing waiver and the de minimis cost portion of the waiver does not apply to iron and steel subject to the requirements of 23 U.S.C. 313/ 23 CFR 635.410 (b)(4), or

2) The total amount of Federal financial assistance applied to the project, through awards or subawards, is below $500,000 but this does not apply to iron, steel, and manufactured goods subject to the requirements of 49 U.S.C. 22905(a).

The waiver does not apply to products that are the subject of two separate product-specific Buy America waivers from the Department:

1) For awards administered by FHWA that are subject to 23 U.S.C. 313, the waiver does not apply to electric vehicle chargers, as defined in the notice at 88 FR 10619.

2) For awards that are subject to 49 U.S.C. 5323(j), the waiver does not apply to mass-produced, unmodified non-ADA accessible vans and minivans with seating capacity for at least six adults not including the driver, as those terms are used in the notice at 87 FR 64534.

DOT Waiver of Buy America Requirements for De Minimis Costs requirements:

Provide certifications, documents, and calculations to the Engineer for all of the noncompliant products anticipated to be used in the project before being incorporated.

The contractor shall be responsible for all cost associated with products that are permanently incorporated into the project that does not meet the requirements of this Special Provision without prior written approval from the Department, up to and including removal and replacement.

STATE **OF** **TENNESSEE**

January 17, 2023 January 1, 2021

SPECIAL PROVISION

REGARDING

CERTIFIED PAYROLLS – LOCAL PROGRAMS

As specified by Minimum Wage Scales for Federal-Aid and State Funded Construction contract provisions and Special Provision 1273, submit certified payrolls for Contractor and subcontractor workforce to the Engineer weekly for each week in which any work is performed. Once Work begins, if in any week the Contractor or subcontractor does not perform Work, submit the following statement to the Engineer: "No work performed by (contractor name) for the week ending _____."

Assume all responsibility for ensuring all payrolls and all subcontractor payrolls are submitted and certified electronically for each week in which any contract work is performed. If all payrolls are not received in this timeframe, the progress payment shall be withheld until all necessary payrolls have been received.

There will be no direct payment for recording and reporting of this information. All cost associated with this provision shall be considered incidental.

S T A T E **O F** **T E N N E S S E E**

(Rev. 2-8-21)
(Rev. 12-9-24)

January 1, 2021

SPECIAL PROVISION

REGARDING

WATER QUALITY AND STORM WATER PERMITS

Description

This work consists of the conditions that apply to all construction activities on the project pursuant to the following:

1. Section 404 of the Federal Clean Water Act (33 U.S.C. §1344), and all implementing regulations, including without limitation regulations of the U.S. Army Corps of Engineers governing permits for discharges of dredged or fill material into waters of the United States in 33 CFR Part 323; and
2. Section 408 authorized under Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C.§408), and all implementing regulations, including without limitation regulations of the U.S. Army Corps of Engineers governing changes to USACE Civil Works projects; and
3. The Tennessee Water Quality Control Act (T.C.A. §69-3-101, et seq.) and all implementing regulations, including without limitation the Rules of the Tennessee Department of Environment and Conservation governing NPDES permits in Chapter 400-40-10, and Aquatic Resource Alteration permits in Chapter 400-40-7; and
4. Section 26a of the TVA Act of 1933 as amended (49 Stat. 1079, 16 U. S. C. sec. 831y1.) and all implementing regulations, including without limitation the regulations of the Tennessee Valley Authority governing construction in the Tennessee River System in 18 C.F.R., Part 1304; and
5. The Tennessee Wildlife Resources Agency Reelfoot Lake Watershed Management permit program (T.C.A. section 70-5-1,), and all implementing regulations, including without limitation regulations authorizing any activity, practice, or project which has or is likely to have the effect of diverting surface or subsurface water from the Lake or have the effect of draining or otherwise removing water from Reelfoot Lake; and
6. Coast Guard Bridge Permit (USCG) (Section 9 of the Rivers and Harbors Appropriation Act of 1899) and all implementing regulations, including but not without limitation for projects which impact streams deemed navigable by the U.S. Coast Guard.

Responsibility

Assume all responsibilities of the permittee as indicated in the permit that relates to protection of the "waters of the United States" and/or "waters of the State of Tennessee."

Obtain any additional permits required by the Contractor for off-site waste and/or borrow areas and associated off project work areas.

Sign the Notice of Intent (NOI) form, provided by the Department, indicating acceptance of the stipulations contained in the permit. Submit the signed NOI to the TDOT HQ Construction Division by email within 10 calendar days after submittal of the contract proposal or the Department may at its discretion cancel the award with the Contractor forfeiting the bid bond.

Implement the provisions of the Water Quality (including, but not limited to, TDEC ARAP, USACE 404, TVA Section 26a, Coast Guard, TWRA) and Storm Water [including, but not limited to, National Pollution Discharge Elimination System (NPDES), Statewide Stormwater Management Plan (SSWMP)] Permits and requirements that pertain to construction activities.

Review of the permit provisions, including NPDES Permit provisions the site specific SWPPP, the contract plans, Standard Specifications and contract Special Provisions and find the permit requirements and erosion prevention and sediment control (EPSC) procedures to be reasonable, workable, and binding.

The Contractor shall not be released from the project site responsibilities under the NPDES permit provisions until the Notice of Termination (NOT) is submitted to TDEC by the TDOT Regional Operations Engineer. The NOT is a certification that the construction project is permanently stabilized, and all construction related discharges have ceased. This means that the use of EPSC measures to alleviate concerns of surface erosion and transport of sediment to surface water conveyances or to waters of the state is no longer necessary. Furthermore, it means that permanent controls, hard surfaces and/or vegetation, used on the project are deemed adequate to prevent erosion and sediment transport and no other potential sources of construction-related pollution are on the project.

The Contractor shall not be released from any warranty provided for EPSC plantings, including sod and trees. If the entire project is complete as outlined in **105.15** of the Standard Specifications, the tree plantings shall still be required to meet the requirements of **802** Standard Specifications.

NPDES Permit Required Action

Accompany the TDOT EPSC inspector or TDOT consultant on all EPSC inspections of the entire construction project including permitted locations and potentially impacted streams and attend all QA/QC Project Assessments.

EPSC Inspections shall be conducted as required in the most current TN Construction General Permit. EPSC inspections shall be performed on the schedule established in the TN Construction General Permit until the site is permanently stabilized to determine if the permit requirements are being met. Where sites or portion(s) of the construction project have been temporarily stabilized,

the inspections only have to be conducted once per month until construction activity resumes. Written notification of the intent to change the inspection frequency and the justification for such request must be submitted to the TDOT Field Office and the TDEC Central Office before proceeding.

A representative who holds a current TDEC "*Fundamentals of Erosion Prevention and Sediment Control Level I*" certification shall accompany the TDOT EPSC inspector on all required EPSC inspections. The project supervisor(s) shall also hold a current TDEC "*Fundamentals of Erosion Prevention and Sediment Control Level I*" certification. Proof of required personnel training for the individual(s) shall be provided to the TDOT Field Office prior to beginning of construction.

The TDOT EPSC inspector shall document all deficiencies on the required current TDOT EPSC Inspection Report form. Sign the TDOT EPSC Inspection Report form and any supporting documentation indicating that there is agreement with the report, recommendations and repair schedule as stated in the documentation.

Make necessary maintenance and repairs relative to deficiencies in these permit conditions or requirements within 24 hours after an inspection identifies the maintenance or repair need, and/or as directed by the Department, unless conditions make a particular activity impracticable. Any such conditions that make immediate repairs impracticable shall be documented on the inspection report and provided to the TDOT Field Office and be accompanied by an expected repair schedule based on forecasted weather conditions.

Review the site specific SWPPP that will be made available prior to or at the pre-construction conference for any additional EPSC requirements. Sign and submit two copies of the SWPPP signature page provided by the Department in the site specific SWPPP. Submit for review and approval any changes/revisions to the SWPPP to prevent erosion and sediment transport at any time after contract execution. Rejection of any submittals by the Department does not relieve the liability for appropriate Best Management Practices (BMPs).

If at any time during this contract, the requirements for the Water Quality Permits and/or the Storm Water Permits for Construction Related Activities are changed/revised/updated, the Contractor shall be notified in writing by the Department of such requirements. Comply with the new requirements within 30 days of the Department notification.

If at any time that sedimentation is occurring or has occurred in streams impacted by the project, immediately notify the TDOT Field Office to evaluate the EPSC measures employed. A determination of the cause for sedimentation will be made by the Department. Immediately repair or replace defective EPSC measures and install, as applicable, additional or other EPSC measures with the goal of eliminating future sedimentation. Once a remediation plan is provided by the Department, within 24 hours after notification, begin the remediation as required. Based on the cause of sedimentation, the Department will determine if the cost of remediation will be performed at the Contractor's expense.

Failure to Comply

In the event a Notice of Noncompliance, Notice of Violation, Notice of Deficiency, or Order is issued by any State or Federal Agency on this project, any required corrective action and all fines will be the sole responsibility of the Contractor as outlined in **107.01** of the Standard Specifications.

Failure to comply or take immediate corrective actions required within 24 hours, unless documented conditions make a particular maintenance or repair activity impracticable immediately, shall be reason for the Department to suspend all other work on the Project, except EPSC and traffic control. The Department will apply non-refundable deductions of monies from the Contract per calendar day from monies due to the Contractor for any EPSC work on the Project. This deduction can be made for each location, as determined by the Department, for each calendar day that the deficiency is allowed to remain and charged as item description *"Failure to Comply with Permit Deduction"*. A deduction shall be made from monies due the Contractor, not as a penalty, but as liquidated damages, as indicated in **108.09** of the Standard Specifications.

If the necessary corrections/adjustments are not done in a timely manner as required, the Department will implement the provisions of **209.07** and **109.08** of the Standard Specifications that provides for the Department making repairs and recovering the costs thereof from the Contractor.

The Department will not participate in any payment or reimbursement for fines and will not authorize time extensions due to delays in project progress for work stoppage, to remedy the violations stated within the NOV, as stated in **105.01** of the Standard Specifications.

Spill Prevention, Control, and Countermeasure

To help prevent the discharge of oil into navigable waters, the U.S. Environmental Protection Agency (EPA) developed the Spill Prevention, Control, and Countermeasure (SPCC) Program. The SPCC Program is under the authority of Section 311 (j)(1)(C) of the Federal Water Pollution Control Act (Clean Water Act) in 1974. The rule may be found at Title 40, Code of Federal Regulations (CFR), Part 112. Additional information regarding the preparation and requirements of a SPCC Plan can be found at: Overview of the Spill Prevention, Control, and Countermeasure (SPCC) Regulation | US EPA

If applicable based upon the total aggregate capacity of aboveground oil storage, develop a site specific SPCC Plan per EPA requirements. This plan shall be provided to the TDOT Field Office as part of the required submittals during the project Pre-Construction Meeting or at which time the conditions on the project site meet the applicable criteria. If applicable, obtain any other necessary local, state, and federal permits as applicable. The SPCC Plan and/or permits shall be kept on-site.

Comply with all aspects of the site specific SPCC Plan including but not limited to performing any required inspections as directed by the SPCC Plan as well as implementing material and spill management practices per the project's SWPPP. In the event, where a release containing a hazardous substance in an amount equal to, or in excess of a reportable quantity established under either 40 CFR 117 or 40 CFR 302 occurs during a 24-hour period, immediately notify the TDOT Field Office.

(Rev. 6-20-22)
(Rev. 9-7-22)

January 1, 2021

SPECIAL PROVISION

REGARDING

EQUAL EMPLOYMENT OPPORTUNITY

Electronic Code of Federal Regulations (e-CFR):
23 CFR 230 Chapter 1 Subchapter C Appendix A to Subpart A

Specific Equal Employment Opportunity Responsibilities

General

a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b) The contractor will work with the Tennessee Department of Transportation and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c) The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of $10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors). The contractor will include these requirements in every subcontract of $10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

Equal Employment Opportunity Policy

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability and to promote the full realization of equal employment opportunity through a positive continuing program:

> It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability. Such action shall include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

Equal Employment Opportunity Officer

The contractor will designate and make known to the Tennessee Department of Transportation contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

Dissemination of Policy

a) All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

   1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

   2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

   3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees, and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

Recruitment

a) When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b) The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended).

c) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

Personnel Actions

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability. The following procedures shall be followed:

a) The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b) The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c) The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d) The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

Training and Promotion

a) The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b) Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Special Provision Regarding Training Program Requirements is provided under this contract, this subparagraph will be superseded as indicated therein.

c) The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d) The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

Unions

If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a) The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b) The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c) The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the Tennessee Department of Transportation and shall set forth what efforts have been made to obtain such information.

d) In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees). In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the Tennessee Department of Transportation.

Subcontracting

a) The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from the Tennessee Department of Transportation.

b) The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

Records and Reports

a) The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

1) The number of minority and non-minority group members and women employed in each work classification on the project.

2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women. (Applicable only to contractors who rely in whole or in part on unions as a source for their work force),

3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

b) All such records must be retained for a period of 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the of the Tennessee Department of Transportation and the Federal Highway Administration.

c) The contractors will submit an annual report to the Tennessee Department of Transportation each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision," the contractor will be required to furnish Form FHWA 1409.

d) The contractor and subcontractors will be required to complete other reports as instructed by the Engineer.

e) Current estimates may be withheld by the Engineer when reports are not received within the above specified time limits.

STATE OF TENNESSEE

(Rev. 6-20-22)
(Rev. 9-7-22)

January 1, 2021

SPECIAL PROVISION

REGARDING

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY

CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

Electronic Code of Federal Regulations (e-CFR):
41 CFR 60-4.3 Equal Opportunity Clauses

1) As used in these specifications:

   a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

   c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   d) "Minority" includes:

      I. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      II. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese Culture or origin, regardless of race);

      III. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      IV. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation, and which is set forth in the solicitations from which this contract resulted.

3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a though p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specification, Executive Order 11246, or the regulations promulgated pursuant thereto.

6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

   a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction

project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organization's responses.

c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources complied under 7.b) above.

f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screenings procedures, and tests to be used in the selection process.

j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriation training, etc., such opportunities.

m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of

the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women, generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12) The Contractor shall carry out such sanctions and penalties for violations of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

STATE OF TENNESSEE

(Rev. 6-20-22) January 1, 2021

SPECIAL PROVISION

REGARDING

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION

TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

Electronic Code of Federal Regulations (e-CFR):
41 CFR 60-4.2 -- Solicitations

1) The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

County	Goals for Female Participation in each Trade
All Counties	6.9

County	Goals for Minority Participation for each Trade
Lincoln	11.2
Hamilton, Marion, Sequatchie	12.5
Bledsoe, Bradley, Grundy, McMinn, Meigs, Monroe, Polk, Rhea	8.6
Carter, Hawkins, Sullivan, Unicoi, Washington	2.6
Greene, Hancock, Johnson	3.2
Anderson, Blount, Knox, Union	6.6
Campbell, Claiborne, Cocke, Cumberland, Fentress, Grainger, Hamblen, Jefferson, Loudon, Morgan, Roane, Scott, Sevier	4.5

County	Goals for Minority Participation for each Trade
Montgomery	18.2
Davidson, Cheatham, Dickson, Robertson, Sumner, Williamson, Wilson, Rutherford	15.8
Bedford, Cannon, Clay, Coffee, Dekalb, Franklin, Giles, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Macon, Marshall, Maury, Moore, Overton, Perry, Pickett, Putnam, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, White	12.0
Shelby, Tipton	32.3
Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy, Madison, Obion, Weakley	26.5

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted). If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in CFR Part 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from Project to Project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3) The Contractor shall provide written notification to the Director of Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation.

U.S. Department of Labor – Regional Office
Office of Federal Contract Compliance Program
61 Forsyth Street, Room 7B75
Atlanta, GA 30303

The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

STATE OF TENNESSEE

(Rev. 8-20-18) January 1, 2021
(Rev. 9-7-22)

SPECIAL PROVISION

REGARDING

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION – LOCAL PROGRAMS

The disadvantaged business enterprise (DBE) requirements of 49 CFR Part 26 apply to this contract. Accordingly, Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum appropriate opportunity to participate in the performance of this contract or in the performance of subcontracts to this contract. In this latter regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the award of subcontracts.

The Contractor shall submit to the Civil Rights Division Small Business Development Program (CRD-SBDP) copies of any subcontract agreements with DBEs upon execution. The Contractor shall identify all DBE subcontractors at the Preconstruction Conference and indicate the approximate date for each DBE subcontractor's appearance on the project. Before terminating and/or substituting a DBE subcontractor, the Contractor must give notice in writing to the DBE subcontractor, with a copy to TDOT's CRD-SBDP, of its intent to terminate and/or substitute including the reason for the request.

The Contractor shall provide notification to the Project Supervisor at least 24 hours prior to each DBE beginning work. The project supervisor or Inspector must complete a "Commercially Useful Function Checklist" to document the first date of work, work items, equipment, and forces of each DBE. The Contractor shall take full responsibility for the performance of a commercially useful function (CUF) by all DBE subcontractors, manufacturers, and materials suppliers who work on or provide materials for the project.

The Contractor shall provide a monthly payment certification to the Department entitled "Prompt Payment Certification Form." The Department shall provide the Contractor with the Prompt Payment Certification Form. An officer of the Contractor shall provide an electronic signature to the Prompt Payment Certification Form and return in Excel format via email to DBE.Runningtally@tn.gov and to the Project Supervisor concurrently. The Prompt Payment Certification Form shall be submitted monthly beginning no later than sixty (60) days after payment of the first estimate. Payments must abide by the conditions set in T.C.A. § 12-4-707.

Prior to receiving final payment, the Contractor shall provide to the project supervisor and CRD-SBDP certification of the dollars paid to each DBE firm, using Form CC3, "Certification of DBE Accomplishment." The certification shall be dated and signed by a responsible officer of the Contractor and by a responsible officer of the DBE. Falsification of this certification may

result in formal enforcement actions, including civil actions for false claims, suspension and debarment proceedings, or other administrative actions affecting bidder qualifications.

The Contractor and all subcontractors shall retain, for a period of not less than three (3) years after final acceptance of a project, copies of canceled checks or other documentation that substantiates payments to DBE firms. These records shall be available at reasonable times and places for inspection by authorized representatives of the Department and various Federal Agencies.

The Contractor is advised that failure to carry out the requirements as set forth above shall constitute a breach of contract, and after notification by the Department, may result in termination of the contract or other remedy as the Department deems appropriate, which may include, but is not limited to:

1) Withholding monthly progress payments:

2) Assessing sanctions;

3) Liquidated damages; and/or

4) Disqualifying the contractor from future bidding as non-responsible.

The Title VI and nondiscrimination provisions of USDOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

STATE OF TENNESSEE

(Rev. 6-20-22)
(Rev. 9-7-22)
(Rev.3-1-23)

January 1, 2021

SPECIAL PROVISION

REGARDING

DBE CONTRACT GOAL

Electronic Code of Federal Regulations (e-CFR):
49 CFR 26

All contractors shall pursue affirmative action requirements to encourage and increase participation of firms certified as a Disadvantaged Business Enterprise (DBE) as set forth in this special provision and in accordance with 49 CFR Part 26. The bidder shall arrange for the percentage of the work specified on the cover of the Proposal Contract to be performed by Tennessee Uniform Certification Program (TNUCP) Disadvantaged Business Enterprises (DBEs) or otherwise clearly demonstrate adequate good faith efforts as described herein. All payments must follow the conditions set by the most current T.C.A. § 12-4-707.

The Contractor shall take full responsibility for ensuring the performance of a "commercially useful function" (CUF), as defined in 49 CFR Part 26, by all DBE subcontractors, manufacturers, and materials suppliers who work on the project or provide materials for the project.

A. Disadvantaged Business Enterprise Policy

The Contractor shall abide by the following provision and include in all subcontract agreements the following provision, which is designed to promote full participation of DBEs as suppliers and subcontractors through a continuous, positive result-oriented program on contracts let by the Department:

> *The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. Department of Transportation- assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate, which may include, but is not limited to:*
>
> 1) *Withholding monthly progress payments;*
> 2) *Assessing sanctions;*
> 3) *Liquidated damages; and/or*
> 4) *Disqualifying the contractor from future bidding as non-responsible.*
>
> *The Title VI and nondiscrimination provisions of USDOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.*

B. Counting DBE Participation toward Meeting Goals

The Contractor shall count DBE participation toward goals in accordance with 49 CFR Part-26. If the DBE performs a CUF on the contract including those functions as a subcontractor, expenditures to a DBE contractor count toward DBE goals. A DBE performs a CUF when it is responsible for execution of the specified work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material itself. The work performed by the DBE firm shall be necessary and useful to the completion of the contract, and consistent with normal highway construction industry practices in Tennessee. Work performed by a DBE firm in a particular transaction may be counted toward the goal only if the Department determines that it involves a CUF. The determination is verified by the "Commercially Useful Function Checklist" and the requirements of 49 CFR Part 26.

Note: In accordance with 49 CFR 26.55(c), to determine whether a DBE is performing a CUF, the Department must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Department must examine similar transactions, particularly those in which DBEs do not participate.

When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. The Department may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

The bidder may count the following DBE expenditures involving a CUF towards the DBE goal:

1. Projects where the DBE is the Prime Contractor

The entire portion(s) of the contract to be completed by certified DBE firm's own forces will be counted toward meeting the goal. This will also include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE. Items of the contract subcontracted to non-DBE firms will not be counted toward the goal.

Note: If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department must presume that it is not performing a commercially useful function.

2. Portions of a Bid from a Joint Venture

When a DBE performs as a participant in a joint venture, only the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will count toward DBE goals. A bid from a joint venture between a DBE and a non-DBE Contractor shall include an explanation of DBE commitments on Form 8-5, which must be approved by the Civil Rights Division - Small Business Development Program (CRD-SBDP) and Local Programs Division prior to the letting. Only the DBE's portion will be counted toward the goal. Joint venture agreements have to be approved separately from the bid documents, prior to the awarding of the contract.

3. DBE Subcontractors

The DBE subcontractor shall assume actual and contractual responsibility for provision of materials and supplies, subcontracted work, or other commercially useful functions of the items of work subcontracted to them. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE goal only if the DBE's subcontractor is also a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goal. Cost of materials purchased from, or the cost of equipment leased from the non-DBE Contractor will not count toward the project DBE commitment. Prior written approval must be obtained from the CRD- SBDP for any DBE use of the Contractor's personnel or equipment.

4. DBE Manufacturers

The Contractor may count toward the DBE goal 100% of its expenditures for materials and supplies required under a contract and obtained from a DBE manufacturer only if the DBE operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

5. DBE Regular Dealers (Material Suppliers)

The Contractor may count toward the DBE goal 60% of its expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business where such products are bought, kept in stock, and regularly sold to the public if the firm owns and operates the distribution equipment for the products. Any supplementing of the regular dealer's own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis. Any lease containing the terms of the agreement shall be made available to and must be approved in writing by CRD-SBDP.

6. Other DBE Suppliers

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals; provided, the Department finds the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves shall not count toward DBE goals.

7. Transportation or Hauling of Materials

The Contractor may count towards the DBE goal hauling in either DBE-owned trucks or in trucks leased to or by DBE firms. The verification of truck drivers employed by DBE firms will continue to be by submission of payrolls independent from any Davis-Bacon regulations. Use the following factors in determining whether a DBE trucking company is performing a CUF:

a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services that the lessee DBE provides on the contract.

e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non- DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If the DBE chooses this approach, it must obtain written consent from the Department [CRD- SBDP].

f. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the value of these hauling services.

g. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. Leases cannot be Department contract-specific, must be long term, and must be approved by CRD-SBDP. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

h. Prior to hauling, the Contractor and DBE shall provide the District Supervisor a complete list of trucks that will be used on the project for DBE goal participation. The Department will provide a form that shall be used by the Contractor and the DBE to identify the trucks. A revised list will be required any time the trucks used changes. The Contractor and DBE must be able to adequately document the actual amount of hauling eligible for DBE goal participation.

8. Contracted Labor / Temporary Employment Agencies

The Department will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract; provided, however, the Department must find the fee to be reasonable and not excessive as compared to the fees customarily allowed for similar services.

C. Contract Award Procedures

The established DBE goal will be shown on the proposal as a percent of the total amount bid. If the total proposed DBE work submitted with the bid is less than the percentage participation goal set by the Department, the bidder shall, within three (3) business days from the bid openings, either propose sufficient additional DBE participation to meet the goal or clearly demonstrate by documentation that good faith efforts were made to meet the goal.

1. Bidder's Responsibility

It is the bidder's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The bidder shall ascertain that the proposed DBE subcontractor has suitable experience and equipment to perform a commercially useful function for work that is common industry practice in the Tennessee highway construction industry.

The Contractor shall develop and maintain records of negotiations with DBEs to reach agreeable prices, quotations, and work schedules, including but not limited to a record of dates when the Contractor first contacted each DBE.

2. DBE's Responsibility

Before bidding and subsequently entering into a contract (as a contractor or subcontractor), the DBE should consider the scope and size of the project, as well as whether it is certified to receive credit for the type of work performed. As with any contract, this is a legally binding document and should be performed to the best of one's ability. However, should a DBE ever have to withdraw from a contract, it shall provide the CRD-SBDP and Contractor with written documentation. A DBE should only withdraw when there is no other option, as non-completion of its duties may result in temporary disqualification of a prequalified bidder or subcontractor by suspending the privilege of bidding on Department contracts or becoming an approved subcontractor, as outlined in Chapter 1680-05-03 of the Rules of the Department.

3. Proposals with Established Project DBE Goals

For proposals with established project goals, the bidder will be required to complete Form 8-5: DBE Award Information. The bidder shall list the following information on each Form 8-5 that is submitted:

a. The names and addresses of all DBE firms being used or being considered for use under the contract as part of the bidder's DBE commitment.
b. The work classification(s) for each DBE on the contract.
c. The "Amount to DBE" which has been committed to each DBE firm for use on the contract.
d. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the Contractor's commitment.
f. All other requested information that is on Form 8-5.

Submit the quote from the DBE and the completed DBE Form 8-5 within three (3) business days after the Letting. Failure to provide the quote and the completed form or documentation clearly evidencing a good faith effort, as detailed in Section 4 below, within three (3) business days after the Letting may cause the bid to be rejected as irregular. Only certified DBE firms may be used. Contractor may access certification information by viewing the TNUCP DBE Directory website.

When DBE goal projects are involved and the Contractor subcontracts to a non- DBE, and the non-DBE subcontractor in turn subcontracts to a DBE as a second-tier subcontractor, the Contractor must affirm in writing his/her knowledge and approval of such an arrangement. Recognition of a second-tier arrangement with a DBE subcontractor for goal work must be forwarded to the CRD-SBDP Director for verification, in writing, prior to any work being performed by the DBE which is intended to be counted toward the goal.

4. Bidder Selection and Good Faith Efforts

a. Bidders shall submit proposals that meet the DBE goal or shall submit documentation clearly evidencing that they made a good faith effort to meet the DBE goal. Contractors who meet or exceed the contract goal will be assumed to have made good faith efforts to utilize DBE firms. DBE firms who bid as Prime Contractors will be considered to have met the goal.

b. In making a fair and reasonable judgment as to whether the bidder has made adequate good faith efforts, the Department shall consider quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The following list of factors is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. In any event, the Department may consider whether the bidder:

1) Selected portions of the work likely to attract DBE participation. The total dollar value of the portions selected should meet or exceed the contract DBE goal. If it is necessary, the bidder should break down subcontracts into economically feasible units in order to facilitate participation.

2) Provided notice to a reasonable number of specific DBEs, including those not regularly used by the bidder, that their participation in the contract is being solicited in sufficient time to allow them to participate effectively.

3) Provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract.

4) Advertised in trade association publications or minority-focused media concerning participation opportunities.

5) Effectively used the services of available minority community organizations, minority contractors' groups, local, state, or federal minority business assistance offices, or other organizations that provide assistance in the recruitment and placement of DBEs.

6) Negotiated in good faith with interested DBEs, including not rejecting DBEs as unqualified lacking sound reasons based on a thorough investigation of their capabilities.

7) Made efforts to assist interested DBEs in obtaining bonding or insurance required by the bidder.

8) Submitted all quotations received from DBEs, and for those quotations not accepted, an explanation of why the DBE was not accepted including price comparisons. Receipt of a lower quotation from a non-DBE will not in itself excuse a bidder's failure to meet the contract goal.

9) Has adequate records of its contacts and negotiations with DBEs.

c. If the Contractor has not met the DBE goal or submitted documentation clearly evidencing good faith efforts within three (3) business days after the bid opening, the Contractor's bid will be considered non-responsive and may be cause for the forfeiture of the Proposal Guaranty which shall become the property of the Department, not as penalty, but as liquidated damages. The Department then may consider the next lowest responsive bid for award.

As soon as practical after contract award, the Contractor shall submit copies of all binding subcontracts and purchase orders with DBEs to the respective District Supervisor and to CRD-SBDP.

No progress estimate shall be processed until copies of all binding subcontracts and purchase orders with DBEs have been received.

5. Joint Checking Allowance for DBE

A DBE must receive pre-approval by the Department before using a joint check. Joint check requests shall be submitted by the DBE to CRD-SBDP prior to the subcontract agreement.

The following are some general conditions that must be met regarding joint check use:

a. The second party (typically the Contractor) acts solely as a guarantor.
b. The DBE must release the check to the supplier.
c. The use of joint checks must be a commonly recognized business practice in the industry.
d. The DBE remains responsible for all other elements of 49 CFR Part 26.55(c)(1).
e. The DBE is not required to use a specific supplier nor the Contractor's negotiated unit price.
f. The DBE shall submit receipt/copy of cancelled checks to CRD- SBDP.

D. Construction Requirements

1. Preconstruction Conference

The Contractor shall identify all DBE subcontractors and indicate the approximate dates for their appearance on the project. The Department will review the contract information to verify the actual work to be performed by the DBE subcontractors and will review any lease agreements allowed as part of the DBE commitment. Information submitted shall match Form 8-5.

2. Process for Removal of a DBE

At no time shall a DBE be terminated or substituted without prior written consent from CRD-SBDP. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. The Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the Contractor obtains the CRD-SBDP's written consent as provided herein. Absent such written consent, the Contractor shall not be entitled to any payment for work or material unless it is by the listed DBE. The CRD-SBDP may provide such written consent only if it agrees that the Contractor has good cause to terminate the DBE firm, as further described below.

Before terminating and/or substituting a DBE subcontractor on a project that includes SP1247 in the Contract Proposal, the Contractor must give notice in writing to the DBE subcontractor, with a copy to the CRD-SBDP, of its intent to request to terminate and/or substitute including the reason for the request.

The Contractor must then give the DBE five (5) days to respond to the Contractor's notice. The DBE shall then advise the CRD-SBDP and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the CRD-SBDP should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the CRO-SBDP may provide a response period shorter than five (5) days.

If approval is granted for removal, CRD-SBDP will submit a letter to the Contractor and the DBE. Good faith efforts shall then be directed at finding another DBE subcontractor to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established.

The good faith efforts shall be documented by the Contractor. If requested by the CRD-SBDP, the Contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the Contractor, and the CRD-SBDP shall provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

The Contractor has the responsibility to comply with 49 CFR Part 26.53(f) and all applicable policies and regulations.

Reasons for termination and/or substitution of a DBE subcontractor must meet the reasons for good cause as outlined in the current 49 CFR Part 26.53(f), which include, but are not limited to, circumstances in which the listed DBE subcontractor:

a. Fails or refuses to execute a written contract.

b. Fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor.

c. Fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.

d. Becomes bankrupt, insolvent, or exhibits credit unworthiness.

e. Becomes ineligible to work on public works projects because of suspension and debarment proceedings pursuant with 2 CFR Parts 180 and 1200 or applicable state law.

f. Is not a responsible subcontractor, as determined by the Department.

g. Voluntarily withdraws from the project and provides written notice to the Contractor of its withdrawal.

h. Is ineligible to receive DBE credit for the type of work required.

i. Is unable to complete its work on the contract as a result of death or disability of an owner; and/or

j. For other documented good cause, the Department may elect to compel the termination of the DBE subcontractor; provided that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE was engaged, or so that the Contractor can substitute another DBE or non-DBE subcontractor after contract award.

3. Brokering of work by DBEs is not allowed and is a material breach of contract. A DBE firm involved in brokering of work may result in removal or suspension of DBE certification and/or formal enforcement actions, including civil actions for false claims, suspension and debarment proceedings, or other administrative actions affecting bidder qualifications. Any firm involved in brokering of work that engages in willful falsification distortion, or misrepresentation with respect to any facts related to the project shall be referred to the U. S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U.S. Code, Section 641. Contractor shall place this provision in all subcontracts with DBEs.

4. The Contractor shall provide notification to the Project Supervisor at least 24 hours prior to each DBE beginning work. A Department Project Supervisor/Inspector must complete a Commercially Useful Function (CUF) Checklist to document the first date of work, work items, equipment, and forces of each DBE.

5. The Contractor shall provide a monthly payment certification to the Department entitled "Prompt Payment Certification Form." The Department shall provide the Contractor with a computer generated Prompt Payment Certification Form: LP Form 8-29. An officer of the Contractor shall provide electronic signature to the Prompt Payment Certification Form and return via email to DBE.Runningtally@tn.gov.

   Prompt Payment data shall be submitted monthly beginning no later than sixty (60) days after payment of the first estimate.

6. The Department will hold estimate payment if previously listed information is not submitted. Reasons for non- payment to a DBE could include the following:

   a. Whether the DBE is performing satisfactorily.

   b. Whether the Contractor has reason to believe the DBE is not performing a commercially useful function, and if so, why, and what steps the Contractor is taking to rectify the situation.

In the event the Contractor reports questions in relation to prompt payment regarding whether a DBE is independent and performing a commercially useful function and takes appropriate steps promptly to address the issue, then the Department will take this effort into account when considering Contractor compliance measures as described below. Payments must abide by the conditions set in TCA 12-4-707.

E. Post Construction Requirements

Prior to receiving final payment, the Contractor shall provide to the Project Engineer and CRD-SBDP certification of the dollars paid to each DBE firm, using Form 8-35; CC3. The certification shall be dated and signed by a responsible officer of the contractor and by a responsible officer of the DBE. Falsification of this certification may result in removal or suspension of DBE certification and/or formal enforcement actions, including civil actions for false claims, suspension and debarment proceedings, or other administrative actions affecting bidder qualifications. The final estimate will not be paid to the Contractor until proper certifications including CC-3 have been made.

F. Required Records

The Contractor and all subcontractors shall retain, for a period of not less than three (3) years after final acceptance of a project, copies of canceled checks or other documentation that substantiates payments to DBE firms. These records shall be available at reasonable times and places for inspection by authorized representatives of the Department and various Federal Agencies. Copies shall be provided to the Department if requested.

G. Contractor Compliance

If the Contractor fails to comply with Special Provision 1247 and/or 49 CFR Part 26, including failure to obtain goal where a good faith effort was not accepted, the Department shall take one or a combination of the following steps:

1. Withhold from the Contractor the monetary value of the unattained goal percentage plus an additional 10% for engineering costs, not as penalty but as liquidated damages.

2. Suspend the Contractor from participation in Department bid lettings pursuant to rules promulgated by the Department.

3. For repeated failures to comply, debar the Contractor pursuant to rules promulgated by the Department.

4. Invoke other remedies available by law and/or in the contract.

5. Invoke any other lawful remedy agreed upon by the Commissioner and the Contractor in writing.

DO NOT UNBIND

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Non-segregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
XI. Certification Regarding Use of Contract Funds for Lobbying
XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (*see* 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than $10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH–1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.,* the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH–347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* $31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of $150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. **Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

* * * * *

3. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

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XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal 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 Federal 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. 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 31 U.S.C. 1352. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

(Rev. 01/03/25)

STATE OF TENNESSEE

TENNESSEE DEPARTMENT OF TRANSPORTATION

2025 MINIMUM WAGE SCALES FOR FEDERAL AID HIGHWAY CONSTRUCTION

"General Decision Number: TN20250147 01/03/2025

Superseded General Decision Number: TN20240147

State: Tennessee

Construction Type: Highway

Counties: Tennessee Statewide.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at http://www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2025

SUTN2016-001 07/13/2016

	Rates	Fringes
BRICKLAYER	$ 14.26 **	
CARPENTER	$ 17.52 **	
CEMENT MASON/CONCRETE FINISHER	$ 15.55 **	
ELECTRICIAN	$ 24.08	
IRONWORKER		
Reinforcing	$ 16.29 **	
Structural	$ 16.89 **	
LABORER		
Common/Unskilled	$ 13.11 **	
Skilled		
Air Tool Operator, Asphalt Raker, Chain Saw Operator, Concrete Mixer (less than 1 yd), Concrete Rubber, Edger, Fence Erector, Form Setter (steel), Guard Rail Erector, Mechanic's Tender (tire changer or oiler), Mortar Mixer, Nozzleman or Gun Operator (gunite), Pipelayer, Sign Erector	$ 15.27 **	
PAINTER (INCLUDES SANDBLASTER)	$ 26.36	
POWER EQUIPMENT OPERATOR:		

GROUP 1
Backhoe/Hydraulic Excavator (3/4 yd & over), Crane (less than 20 Tons), End Loader (3 yd & over), Motor Patrol (finish),Piledriver, Dragline.....$ 19.14
GROUP 1A
Drill Operator (Caisson)...$ 25.26
Farm Tractor Operator (Power Broom).....$ 13.50 **
GROUP 2
Backhoe/Hydraulic Excavator (less than 3/4 yd), Bulldozer or Push Dozer, End Loader (less than 3 yd), Motor Patrol (rough), Tractor (crawler/ utility), Truck Driver (Heavy Duty, Off Road) Scraper, Shovel, or Trenching Machine.....$ 17.08 **
GROUP 3
Asphalt Paver, Concrete Finishing Machine, Concrete Paver, Scale, Spreader (self-propelled), Concrete Grinder, Asphalt Milling Machine, Boring Machine (horizontal).....$ 17.75
GROUP 4
Bobcat, Central Mining Plant, Concrete Pump, Concrete Saw, Curb Machine (automatic or manual), Dozer or Loader (stockpile), Drill (piling), Mulcher or Seeder, Rock Drill (truck mounted), Roller (asphalt), Roller (compaction self-propelled), Soil Stabilization Machine, Tractor (boom and hoist), Bituminous Distributor Machine, pump, Track Drill, Striping Machine....$ 16.48 **
Heavy Duty Mechanic.....$ 20.33
Light Duty Mechanic.....$ 19.53

Sweeping Machine (Vacuum)

Operator.....$ 15.56 **
GROUP 5
Crane (over 20 Tons).....$ 20.44

TRUCK DRIVER
2 axles.....$ 15.36 **
3-4 axles.....$ 14.86 **
5 or more axles.....$ 16.27 **

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($17.75) or 13658 ($13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at
https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications

and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union

prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be

directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION"

S T A T E **O F** **T E N N E S S E E**

(Rev. 7-28-21) January 1, 2021

SPECIAL PROVISION

REGARDING

HIGHWAY SIGNS, LUMINAIRES, AND TRAFFIC SIGNALS

Scope

These design requirements shall apply to **713**-Highway Signing, **714**-Roadway and Structure Lighting, and **730**-Traffic Signals of the current Standard Specifications.

Description

The design of the supports for overhead sign bridges and butterfly configurations, high mast lighting, luminaires, CCTV camera poles, and traffic signal strain poles and mast arm structures shall be in accordance with the American Association of Highway and Transportation Officials (AASHTO) LRFD Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, 1st edition, with addenda.

General Conditions

All overhead sign bridges and butterfly sign structures, traffic signal strain poles and mast arm structures and high mast light poles 90-feet or greater in height, shall be designed using the Fatigue Category 1 provisions found in the subject specifications except that, design for galloping-induced fatigue and truck-induced gust fatigue, are excluded. Fatigue designs are not required for luminaire poles less than 55-feet in height, span-wire poles, or roadside sign poles.

In lieu of designing for galloping-induced fatigue in mast arm pole assemblies, a 60-inch by 16-inch by 0.125 gauge aluminum or galvanized steel panel shall be installed horizontally near the end of the mast arm with the long axis of the panel collinear with the long axis of the mast. The panel shall be mounted at such a height as to provide a least a 6-inch clearance from the top of the signal assembly or sign blank located on the mast arm within the length of the anti-galloping panel. The panel and attachment hardware shall be shown on the shop drawings, and is considered an item included in the price bid for the mast arm assembly.

Additionally, all mast arm connections to the support pole shall be accomplished using a wrap-around ring stiffener assembly.

The design coordination instructions are as follows:

a. The Basic Wind Speed shall be 120 mph for Extreme 1 Limit State.
b. The Design Life shall be 50 years resulting in a 1,700 year Recurrence Interval.

PROPOSAL

TO THE TOWN OF SMYRNA, TENNESSEE

By submitting this Proposal, the undersigned bidder represents that it has carefully examined the site of the work described herein, has become familiar with local conditions and the character and extent of the work; has carefully examined the Plans, the *Standard Specifications for Road and Bridge Construction* (January 1, 2021) adopted by the State of Tennessee, Department of Transportation, with subsequent revisions which are acknowledged to be a part of this Proposal, the Special Provisions, the Proposal Form, the Form of Contract, and the Form of Contract Payment and Performance Bond; and thoroughly understands their stipulations, requirements, and provisions.

The undersigned bidder has determined the quality and quantity of materials required; has investigated the location and determined the sources of supply of the materials required; has investigated labor conditions; and, has arranged for the continuous prosecution of the work herein described.

By submitting this Proposal, the undersigned bidder agrees to provide all necessary equipment, tools, labor, incidentals, and other means of construction, to do all the work, and furnish all the materials of the specified requirements which are necessary to complete the work in accordance with the Plans, and the Specifications, and agrees to accept as payment in full the unit prices for the various items described in the Specifications that are set forth in this Proposal. The bidder understands that the quantities of work specified are approximate only and are subject to increase or decrease and that any such increase or decrease will not affect the unit prices set forth in this Proposal. Compensation for "extra work" which may be required by the TOWN OF SMYRNA in connection with the construction and completion of the work but which was not reflected in the Plans and Specifications at the time of bidding, will be made in the following manner: work for which there is a unit price set forth in this Proposal will be compensated at that unit price; work for which there is no unit price set forth in this Proposal will be compensated in accordance with the applicable Tennessee Department of Transportation Standard Specifications.

By submitting this Proposal, the parties hereto, in the performance of this Contract, shall not act as 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 an employer/employee 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.

By submitting this Proposal, the undersigned bidder, if awarded the contract, agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

By submitting this Proposal, the undersigned bidder, if awarded the contract, shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax or provide confirmation from the Department of Revenue that the bidder is not required to register for the Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

DO NOT UNBIND

By submitting this Proposal, the undersigned bidder hereby agrees to be bound by the award of the Contract and, if awarded the Contract on this Proposal, to execute the required Contract and the required Contract Payment and Performance Bond within ten (10) days after receipt of notice of the award. The undersigned bidder submits herewith the required Proposal guaranty in an amount of not less than five percent (5%) of the total amount of the Proposal offered and agrees and consents that the Proposal guaranty shall immediately be at the disposal of the TOWN OF SMYRNA, not as a penalty, but as an agreed liquidated damage if the required Contract and Contract Payment and Performance Bond are not executed within ten days from receipt of the notice of award.

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State per the Iran Divestment Act, T.C.A. §§ 12-12-101 – 113, and the current list may be found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage at the following link: http://tn.gov/assets/entities/generalservices/cpo/attachments/List_of_persons_pursuant_to_Tenn._Code_Ann._12-12-106._Iran_Divestment_Act-July.pdf.

DO NOT UNBIND

THIS PROPOSAL SUBMITTED BY:

Sessions Paving Company
Bidder (1)

By: Robert N. Hutcheson

Robert N. Hutcheson President
Printed Name and Title

P. O. Box 90266 (6535 Robertson Avenue)
Address

Nashville, TN 37209
City/State/Zip

Bidder (1) being a Corporation (Type of business entity) composed of officers, partners, or owners as follows:

Robert N. Hutcheson President Name/Title	Name/Title
Davis W. Duncan Vice-Pres. Name/Title	Name/Title
Scott T. Price Sec.-Treas. Name/Title	Name/Title

Bidder (2)*

By:

Printed Name and Title

Address

City/State/Zip

Bidder (2) being a (Type of business entity) composed of officers, partners, or owners as follows:

Name/Title	Name/Title
Name/Title	Name/Title
Name/Title	Name/Title

Sam Ridley Parkway (SR-266) Intersection at Old Nashville Highway L.M. 1.5 in Smyrna					
BID FORM					
ITEM NO.	**DESCRIPTION**	**UNIT**	**QUANTITY**	**UNIT COST**	**TOTAL PRICE**
105-01	CONSTRUCTION STAKES, LINES AND GRADES	LS	1	50,000.00	50,000.00
201-01	CLEARING AND GRUBBING	LS	1	30,000.00	30,000.00
202-01	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	11,000.00	11,000.00
202-02.21	REMOVAL OF PIPE (18 INCH)	L.F.	379	33.00	12,507.00
202-02.22	REMOVAL OF PIPE (24 INCH)	L.F.	360	33.00	11,880.00
202-03	REMOVAL OF RIGID PAVEMENT, SIDEWALK, ETC.	S.Y.	169	22.00	3718.00
202-08.10	REMOVAL OF CURB (EXTRUDED CURB)	L.F.	42	22.00	924.00
202-08.15	REMOVAL OF CURB AND GUTTER (OLD NASHVILLE HIGHWAY)	L.F.	953	10.00	9530.00
203-01	ROAD & DRAINAGE EXCAVATION (UNCLASSIFIED)	C.Y.	5508	55.00	302,940.00
203-06	WATER	M.G.	97	25.00	2425.00
203-07	FURNISHING AND SPREADING TOPSOIL	C.Y.	1074	44.00	47,256.00
209-03.20	FILTER SOCK (8 INCH)	L.F.	50	15.00	750.00
209-05	SEDIMENT REMOVAL	C.Y.	68	25.00	1700.00
209-08.03	TEMPORARY SILT FENCE (WITHOUT BACKING)	L.F.	2535	13.00	32,955.00
209-08.07	ROCK CHECK DAM	EACH	10	550.00	5500.00
209-08.08	ENHANCED ROCK CHECK DAM	EACH	2	825.00	1650.00
209-09.43	CURB INLET PROTECTION (TYPE 4)	EACH	21	440.00	9240.00
209-20.03	POLYETHYLENE SHEETING (6 MIL. MINIMUM)	S.Y.	500	11.00	5500.00
209-40.30	CATCH BASIN PROTECTION (TYPE A)	EACH	12	500.00	6000.00
209-40.33	CATCH BASIN PROTECTION (TYPE D)	EACH	12	550.00	6600.00
209-40.41	CATCH BASIN FILTER ASSEMBLY(TYPE 1)	EACH	1	825.00	825.00
209-40.42	CATCH BASIN FILTER ASSEMBLY(TYPE 2)	EACH	10	1100.00	11,000.00
209-40.43	CATCH BASIN FILTER ASSEMBLY(TYPE 3)	EACH	3	1375.00	4125.00

209-40.44	CATCH BASIN FILTER ASSEMBLY(TYPE 4)	EACH	1	825.00	825.00
209-40.47	CATCH BASIN FILTER ASSEMBLY(TYPE 7)	EACH	4	1100.00	4400.00
303-01	MINERAL AGGREGATE, TYPE A BASE, GRADING D	TON	6156	55.00	338,580.00
307-01.21	ASP. CONC. MIX(PG70-22) (BPMB-HM) GR. A-S	TON	378	182.00	68,796.00
307-02.01	ASPHALT CONCRETE MIX (PG70-22) (BPMB-HM) GRADING A	TON	1913	182.00	348,166.00
307-02.08	ASPHALT CONCRETE MIX (PG70-22) (BPMB-HM) GRADING B-M2	TON	1285	185.00	237,725.00
402-01	BITUMINOUS MATERIAL FOR PRIME COAT (PC)	TON	13	1200.00	15,600.00
402-02	AGGREGATE FOR COVER MATERIAL (PC)	TON	46	75.00	3450.00
403-01	BITUMINOUS MATERIAL FOR TACK COAT (TC)	TON	16	1200.00	19,200.00
407-20.05	SAW CUTTING ASPHALT PAVEMENT	L.F.	4011	13.00	52,143.00
411-02.10	ACS MIX (PG70-22) GRADING D	TON	1734	210.00	364,140.00
411-12.01	SCORING SHOULDERS (CONTINUOUS) (16 IN WIDTH)	L.M.	0.2	55,000.00	11,000.00
415-01.01	COLD PLANING BITUMINOUS PAVEMENT	TON	1506	46.00	69,276.00
607-03.02	18" CONCRETE PIPE CULVERT (CLASS III)	L.F.	481	190.00	91,390.00
607-05.02	24" CONCRETE PIPE CULVERT (CLASS III)	L.F.	573	250.00	143,250.00
611-01.02	MANHOLES, > 4' - 8' DEPTH	EACH	3	11,500.00	34,500.00
611-07.01	CLASS A CONCRETE (PIPE ENDWALLS)	C.Y.	2	2200.00	4400.00
611-07.02	STEEL BAR REINFORCEMENT (PIPE ENDWALLS)	LB.	70	6.00	420.00
611-07.57	24IN ENDWALL (CROSS DRAIN) 3:1	EACH	1	5000.00	5000.00
611-09.02	REWORK CATCHBASIN	EACH	1	1625.00	1625.00
611-12.02	CATCH BASINS, TYPE 12, > 4' - 8' DEPTH	EACH	1	6600.00	6600.00
611-25.02	CATCH BASINS, TYPE 25, > 4' - 8' DEPTH	EACH	8	6600.00	52,800.00
611-26.02	CATCH BASINS, TYPE 26, > 4' - 8' DEPTH	EACH	4	7150.00	28,600.00
611-42.01	CATCH BASINS, TYPE 42, 0' - 4' DEPTH	EACH	3	6000.00	18,000.00
701-01.01	CONCRETE SIDEWALK (4")	S.F.	155	30.00	4650.00

702-03	CONCRETE COMBINED CURB & GUTTER	C.Y.	121	585.00	70,785.00
709-05.05	MACHINED RIP-RAP (CLASS A-3)	TON	151	85.00	12,835.00
710-02	AGGREGATE UNDERDRAINS (WITH PIPE)	L.F.	1545	16.00	24,720.00
710-05	LATERAL UNDERDRAIN	L.F.	104	15.70	1632.00
710-06.15	LATERAL UNDERDRAIN ENDWALL (6:1)	EACH	5	2800.00	14,000.00
712-01	TRAFFIC CONTROL	LS	1	100,000.00	100,000.00
712-02.02	INTERCONNECTED PORTABLE BARRIER RAIL	L.F.	5157	55.00	283,635.00
712-02.60	TEMPORARY WORK ZONE CRASH CUSHION (MASH TL-3)	EACH	4	10,000.00	40,000.00
712-04.01	FLEXIBLE DRUMS (CHANNELIZING)	EACH	215	50.00	10,750.00
712-04.50	BARRIER RAIL DELINEATOR	EACH	258	15.00	3870.00
712-05.03	WARNING LIGHTS (TYPE C)	EACH	55	20.00	1100.00
712-06	SIGNS (CONSTRUCTION)	S.F.	1284	8.00	10,272.00
712-07.03	TEMPORARY BARRICADES (TYPE III)	L.F.	70	20.00	1400.00
712-08.03	ARROW BOARD (TYPE C)	EACH	5	2000.00	10,000.00
712-09.02	REMOVABLE PAVEMENT MARKING (8" BARRIER LINE)	L.F.	2567	5.00	12,835.00
713-11.01	"U" SECTION STEEL POSTS	LB.	34	8.00	272.00
713-13.03	FLAT SHEET ALUMINUM SIGNS (0.100" THICK)	S.F.	9	20.00	180.00
713-15	REMOVAL OF SIGNS, POSTS AND FOOTINGS	LS	1	1000.00	1000.00
713-15.02	REMOVAL & RELOCATION OF SIGN & SUPPORT	EACH	1	125.00	125.00
713-16.01	CHANGEABLE MESSAGE SIGN UNIT	EACH	2	10,650.00	21,300.00
713-16.50	SIGN (STREET NAME SIGN - REMOVE & RELOCATION)	EACH	4	RNH 600.00	2400.00 RNH
716-01.21	SNOWPLOWABLE RAISED PAVEMENT MARKERS (BI-DIR)(1 COLOR)	EACH	80	50.00	4000.00
716-01.23	SNOWPLOWABLE RAISED PAVEMENT MARKERS (BI-DIR)(2 COLOR)	EACH	221	50.00	11,050.00
716-01.30	REMOVAL OF SNOWPLOWABLE REFLECTIVE MARKER	EACH	174	16.00	2784.00
716-02.04	PLASTIC PAVEMENT MARKING (CHANNELIZATION STRIPING)	S.Y.	165	40.00	6600.00

716-02.05	PLASTIC PAVEMENT MARKING (STOP LINE)	L.F.	266	25.00	6650.00
716-02.06	PLASTIC PAVEMENT MARKING (TURN LANE ARROW)	EACH	39	250.00	9750.00
716-02.08	PLASTIC PAVEMENT MARKING (8" DOTTED LINE)	L.F.	622	4.00	2488.00
716-02.12	PLASTIC PAVEMENT MARKING (8" LINE)	L.M.	1.2	10,000.00	12,000.00
716-03.01	PLASTIC WORD PAVEMENT MARKING (ONLY)	EACH	6	450.00	2700.00
716-04.04	PLASTIC PAVEMENT MARKING (TRANSVERSE SHOULDER)	L.F.	68	15.00	1020.00
716-05.04	PAINTED PAVEMENT MARKINGS (CHANNELIZATION STRIPING)	S.Y.	72	20.00	1440.00
716-05.20	PAINTED PAVEMENT MARKING (6" LINE)	L.M.	0.2	5000.00	1000.00
716-05.49	PAINTED PAVEMENT MARKINGS (8" LINE)	L.M.	2.9	6000.00	17,400.00
716-08.02	REMOVAL OF PAVEMENT MARKING (8" BARRIER LINE)	L.F.	13700	1.75	23,975.00
716-08.04	REMOVAL OF PAVEMENT MARKING (CHANNELIZATION STRIPING)	S.Y.	81	12.00	972.00
716-08.20	REMOVAL OF PAVEMENT MARKING (LINE)	L.M.	0.2	7000.00	1400.00
716-12.02	ENHANCED FLATLINE THERMO PVMT MRKNG (6" LINE)	L.M.	2.6	8500.00	22,100.00
717-01	MOBILIZATION	LS	1	RWA ~~75,000.00~~	RWA ~~75000.00~~
730-01.01	REMOVE & RELOCATE EXISTING TRAFFIC SIGNAL EQUIPMENT	EACH	1	1500.00	1500.00
730-01.02	REMOVAL OF SIGNAL EQUIPMENT	EACH	1	3500.00	3500.00
730-02.03	SIGNAL HEAD ASSEMBLY (130 A3 WITH BACKPLATE)	EACH	8	1700.00	13,600.00
730-02.09	SIGNAL HEAD ASSEMBLY (130 WITH BACKPLATE)	EACH	7	1600.00	11,200.00
730-02.17	SIGNAL HEAD ASSEMBLY (150 A2H WITH BACKPLATE)	EACH	2	2100.00	4200.00
730-03.21	INSTALL PULL BOX (TYPE B)	EACH	5	1100.00	5500.00
730-05.01	ELECTRICAL SERVICE CONNECTION	EACH	1	7500.00	7500.00
730-08.02	SIGNAL CABLE - 5 CONDUCTOR	L.F.	1170	2.50	2925.00
730-08.03	SIGNAL CABLE - 7 CONDUCTOR	L.F.	1600	2.75	4400.00
730-12.23	CONDUIT 2" DIAMETER (DIRECTIONAL BORE)	L.F.	920	78.00	71,760.00
730-12.26	CONDUIT 2" DIAMETER (PVC SCHEDULE 80)	L.F.	270	25.00	6750.00

730-13.13	VEHICLE DETECTOR (RADAR-ADVANCE)	EACH	3	12,640.00	37,920.00
730-13.15	VEHICLE DETECTOR (TWO 360-DEGREE CAMERA)	EACH	1	76,200.00	76,200.00
730-15.32	CABINET(EIGHT PHASE BASE MOUNTED)	EACH	1	25,260.00	25,260.00
730-25.13	CANTILEVER SIGNAL SUPPORT (1 ARM @ 65')	EACH	1	42,000.00	42,000.00
730-25.15	CANTILEVER SIGNAL SUPPORT (1 ARM @ 75')	EACH	1	48,000.00	48,000.00
730-25.16	CANTILEVER SIGNAL SUPPORT (1 ARM @ 80')	EACH	1	59,500.00	59,500.00
730-25.17	CANTILEVER SIGNAL SUPPORT (1 ARM @ 85')	EACH	2	60,000.00	120,000.00
730-25.18	CANTILEVER SIGNAL SUPPORT (1 ARM @ 90')	EACH	1	61,000.00	61,000.00
801-01.07	TEMPORARY SEEDING (WITH MULCH)	UNIT	170	35.00	5950.00
801-02.08	TEMPORARY SEEDING (WITHOUT MULCH)	UNIT	5	110.00	550.00
801-03	WATER (SEEDING & SODDING)	M.G.	100	110.00	1100.00
803-01	SODDING (NEW SOD)	S.Y.	6444	RNH 7.50	48,330.00 RNH
805-12.01	EROSION CONTROL BLANKET (TYPE I)	S.Y.	500	3.00	1500.00

GRAND TOTAL BID = $3,988,046.80

GRAND TOTAL AMOUNT IN WORDS Three Million Nine Hundred Eighty Eight Thousand Forty Six and 80/100 Dollars

ACKNOWLEDGE EACH RECEIPT OF ADDENDUM BY INITIALING

ADDENUM 1 - RNH

ADDENUM 2 - _____

ADDENUM 3 - _____

Sessions Paving Company
by Robert N. Hutcheson
President

DO NOT UNBIND

PROPOSAL CERTIFICATION

The undersigned, being first duly sworn, certifies on behalf of the bidder that it has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Proposal or Contract. This is an official document that is required or authorized by law to be made under oath and is presented in an official proceeding. A person who makes a false statement in this certification is subject to the penalties of perjury.

The undersigned further certifies that said bidder is not under the control of any person, firm, partnership, or corporation, which has or exercises any control of any other person, firm, partnership, or corporation, which is submitting a bid on this Contract.

Seessions Paving Company
Bidder (1)

Sworn to and subscribed before me this 17th day of July, 2025

By: Robert N. Hutcheson

Robert N. Hutcheson President
Printed Name and Title

Jean M. Starkey
Notary Public

My commission expires January 22, 2029

(Seal)

JEAN M. STARKEY
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON

_____
Bidder (2)

Sworn to and subscribed before me this _____ day of _____, _____

By: _____

_____
Printed Name and Title

_____
Notary Public

My commission expires _____

(Seal)

#3

DO NOT UNBIND

PROPOSAL CONTRACT

FOR THE CONSTRUCTION OF

Contract No. 127985

PIN:	127985.00
County:	Rutherford
Federal Project No.:	CM-266(30)
State Project No.:	75LPLM-F3-083
Local Agency Reference No.:	N/A
Description Of Project:	Sam Ridley Parkway (SR-266) Intersection at Old Nashville Highway L.M. 1.5 in Smyrna
Project Length:	0.309 Miles
Completion Time:	On or Before December 31, 2026
DBE Goal:	7%

By: Sessions Paving Company

City, St.: Nashville, Tennessee

Surety: Berkley Insurance Company

TDOT Version: 1/14/25

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The above Supplemental Specifications, revised as noted, are incorporated by reference for bidding purposes and will be printed with the Contract after awards. These Supplemental Specifications may be obtained from the Department at Suite 700, James K. Polk Bldg., Nashville, Tennessee or viewed on the Department's website at http://www.tn.gov/tdot/section/tdot-construction-division.

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Other Technical Special Provisions.....

ATTENTION

It shall be the bidders' responsibility to confirm that the Proposal Contract contains all the documents indicated on the Table of Contents.

Should any omissions occur, the appropriate documents may be obtained from the Construction Division upon request.

THE TOWN OF SMYRNA

INSTRUCTIONS TO BIDDERS

BIDS TO BE RECEIVED

7/17/2025

Sealed bids for the construction of the following projects will be received by the TOWN OF SMYRNA, **315 South Lowry Street, Smyrna, TN 37167** until 10:00 **AM 7/17/2025** and opened publicly at 315 South Lowry Street, Smyrna, TN 37167**, 10:00 AM 7/17/2025**. The reading of the bids will begin at **10:01 AM**.

The proposed construction shall be performed in accordance with the most current version of the Standard Specifications for Road and Bridge Construction of the Tennessee Department of Transportation , and the Standard Roadway and Structures Drawings of the Tennessee Department of Transportation which are incorporated herein by reference and made a part hereof. In addition, only the Special Provisions contained within the applicable Proposal Contract will be considered binding. Any reference to any Special Provision not contained within the applicable Proposal Contract shall be disregarded. All questions related to the Proposal Contract, Plans, Specifications or Special Provisions shall be directed to the **Town of Smyrna Public Works (615-459-9766)**. Information received from other offices of the TOWN OF SMYRNA strictly advisory.

IMPORTANT NOTICE TO BIDDERS:

Prospective bidders should read the following instructions carefully before submitting their bids. Special attention is called to the regulations of the TOWN OF SMYRNA that total bids, rather than unit prices, will be read. Proposals shall be rejected as being irregular if they fail to contain a unit price for each item listed. Extensions of the various items must be sub-totaled, carried forward, and shown as a grand total following the last proposal item. All entries must be in ink.

After a bidder has deposited a proposal with the TOWN OF SMYRNA, he can withdraw it only on written request in accordance with Subsection 102.07 of the Tennessee Department of Transportation Standard Specifications.

Totals read at the opening of the bids are not guaranteed to be correct and no final award of the contract will be made until bids and extensions have been checked and re-checked.

On all projects which are financed in whole or in part by funds received through Federal agencies and/or the Tennessee Department of Transportation, the awarding of contracts by the TOWN OF SMYRNA will be subject to approval by the Tennessee Department of Transportation. The TOWN OF SMYRNA reserves the right to reject any bid proposal which is not acceptable to the parties as listed, although such bid proposal would otherwise qualify as the lowest and best bid under the Tennessee Department of Transportation Standard Specifications.

The TOWN OF SMYRNA reserves the right to reject any or all Proposals, to waive technicalities or to advertise for new Proposals, if in the judgment of the awarding authority and subject to TDOT concurrence, the best interest of the TOWN OF SMYRNA will be promoted thereby.

The TOWN OF SMYRNA reserves the right to cancel the award of any Contract, at any time prior to execution of said Contract by all parties without any liability against the TOWN OF SMYRNA.

The awarding of the contract or rejection of all proposals will be made within 60 days after the formal opening of the proposals. Upon award, a detailed letter of instructions will be forwarded along with appropriate documents to the low bidder.

The TOWN OF SMYRNA hereby notifies all bidders, that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the basis of age, race, color, religion, national origin, sex or disability in consideration for an award.

The TOWN OF SMYRNA is an equal opportunity affirmative action employer, drug-free, with policies of nondiscrimination on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service.

PREQUALIFICATION OF BIDDERS:

Each prospective bidder and subcontractor will be required to file a document entitled "Prequalification Questionnaire." The foregoing shall be filed on a form provided by the Tennessee Department of Transportation. The form must be filled out completely, and the truth and accuracy of the information provided must be certified by a sworn affidavit signed by an officer, partner, owner or other authorized representative of the applicant who has authority to sign contracts or other legal documents on behalf of the applicant. A prospective bidder must be prequalified by and in good standing with the Tennessee Department of Transportation prior to the issuance of a proposal form. A prospective subcontractor must be prequalified by and in good standing with the Tennessee Department of Transportation prior to being approved as a subcontractor. Each prospective bidder or subcontractor shall notify the Tennessee Department of Transportation if there is any subsequent change in the name, organization or contact information provided.

Prospective bidders' "Prequalification Questionnaire" shall be filed with the Tennessee Department of Transportation at least fourteen (14) days prior to the date of opening bids on any letting in which the applicant intends to submit a bid to the TOWN OF SMYRNA, or at least fourteen (14) days prior to the date on which the applicant requests approval as a subcontractor under a contract awarded by the TOWN OF SMYRNA. Bidders intending to submit proposals consistently shall complete and submit the prequalification application annually; however, this document may be changed during such period upon submission of additional favorable reports or upon receipt by the Tennessee Department of Transportation of substantiated evidence of unsatisfactory performance. The Tennessee Department of Transportation reserves the right to request additional information and documentation to clarify and/or verify any information submitted in an applicant's prequalification application.

The prequalification form can be found at the web address
http://www.tn.gov/tdot/section/tdot-construction-division

A proposal to be used for non-bidding purposes may be issued to any interested party regardless of prequalification. This proposal Contract will be marked "Void for Bidding". A contractor that has purchased a proposal contract that was marked "void for bidding" can buy another book once they are fully prequalified before the bid date.

LICENSING REQUIREMENTS

According to the types of funds used, contractor bidding requirements differ. When using any Federal funds, proposals shall be completed as described below:

Proposals shall be submitted by a bidder licensed with the Tennessee Department of Commerce and Insurance (TDCI), Board for Licensing Contractors (BLC) within twenty-one (21) days of the bid opening, in accordance with Subsection 102.11 of the Tennessee Department of Transportation Standard Specifications.

Prior to recommending award of a contract, the Local Government will confirm that the lowest responsible bidder is licensed with the BLC. Because TDOT work classifications and the BLC licensing classifications slightly differ, the Local Government will verify only that the apparent low bidder is licensed in the general classification (e.g., Heavy Construction (HC), Highway, Railroad, Airport Construction (HRA), Specialty (S), Municipal and Utility Construction (MU), or Electrical Contracting (CE)) and not the specific subcategories of these classifications for the type of work involved in the project. This is in recognition that the prime contractor is required to complete 30% of the specific project work and may subcontract the remainder of the work.

Title 48 of Tennessee Code requires all contractors and subcontractors that are domestic or foreign Corporations, Limited Liability Companies, Limited Partnerships, or Limited Liability Partnerships to be in good standing with the Secretary of State (i.e., have a valid Certificate of Existence/Authorization). This includes being duly incorporated, authorized to transact business, and/or in compliance with other requirements as detailed by the Secretary of State.

Bidders that are domestic or foreign corporations, limited liability companies, limited partnerships, or limited liability partnerships, must be in good standing with the Secretary of State (i.e., have a valid Certificate of Existence/Authorization) on or before twenty-one (21) days after proposals are opened.

PROPOSAL BOND

Each proposal must be accompanied by a bidder's bond, or Cashier's Check, or Certified Check made payable to the TOWN OF SMYRNA in an amount equaling not less than five percent (5%) of the amount bid. In the case of optional items in the proposals, the amount of the bidder's bond or check must be in an amount equaling not less than five percent (5%) of the total amount of the bid based on the high option.

If the bidder's bond is offered as guaranty, the bond must be on the form furnished by the TOWN OF SMYRNA and made by a surety company, qualified and authorized to transact business in the State of Tennessee and must be acceptable to the TOWN OF SMYRNA.

If a check is offered as guaranty, the check of the successful bidder will be cashable at the discretion of the TOWN OF SMYRNA, pending the satisfactory execution and acceptance of the contract and the contract bond.

ISSUANCE OF BIDDING DOCUMENTS

This TOWN OF SMYRNA and the Tennessee Department of Transportation are on a cash basis for sales of Plans, Proposal Contracts, Standard Specifications, Standard Drawings, Standard Drawing Books and Tabulations of Bids. Requests for documents must be accompanied by cash, check, money order, or they may be mailed to the buyer C.O.D.

A charge of **$200.00** plus **0.00%** sales tax, for in-state delivery, will be made for each Proposal Contract. This charge is applicable regardless of whether the Proposal is to be used for bidding or non-bidding purposes. Proposals will be obtainable until the time set for opening bids. The charge for Plans and/or Cross-sections will be as specified in the Notice to Contractors and this charge will be applicable before the letting and for three months after the letting. Plans ordered after the three month period will be furnished at **$15.00** per sheet. Individual Plan sheets and individual Standard Drawings will be furnished at **$15.00** per sheet. Tabulations of bids will be furnished at **$15.00** per sheet. Tennessee Department of Transportation Standard Drawing Books will be furnished by the Tennessee Department of Transportation at **$100.00** per book plus **9.25%** sales tax, for in-state delivery. The most recent version of the Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction will be furnished by the Tennessee Department of Transportation at **$12.00** per book plus **9.25%** sales tax, for in-state delivery. There will be a minimum charge of $2.00 on any purchase. All documents will be furnished without refund and transmitted at your risk.

When two or more contractors wish to bid together in a joint venture, each contractor will be required to make a written request for such a proposal to the TOWN OF SMYRNA. This request shall be signed by an authorized signatory of each firm.

Requests for joint venture proposals may be made in person or by telephone. However, the proposal for said joint venture will not be issued until the request in writing, as set forth above, is received by the TOWN OF SMYRNA.

MANDATORY SUBMITTAL OF SUBCONTRACTOR BID QUOTES (BIDDERS LIST)

All bidders for each project must provide a list of all subcontractors who provide a quote to perform work. The list shall be provided on the TDOT form "Certification Regarding Subcontractor Bid Quotes" (Bidders List) and include the type of work in which quotes were submitted. All bidders shall submit this form before the close of business (4:30 PM, Local Time) three (3) business days after the date on which bids are required to be submitted (e.g., if bids are required to be submitted on a Friday, then the completed from is due by 4:30 PM on the following Wednesday). Failure to complete and submit this form with the time period required may result in the proposal being deemed non-responsive and forfeiture of bid bond for the bidder. Any bidder that fails to submit the required bidders list may have their prequalification status changed and ability to bid as prime contractor rescinded.

REJECTION OF PROPOSALS

Proposals will be rejected as irregular if prior to the formal opening of the Proposal all of the following documents have not been signed: (1) the bidder shall sign by written signature the Proposal form, (2) the bidder shall sign by written signature the Proposal Certification form, (3) the bidder shall sign by written signature the Proposal Bond form or the Proposal Guarantee, whichever is applicable, (4) the Agent or Attorney-in-Fact representing a Surety Company shall sign by written signature the Proposal Bond, if applicable. In addition, Proposals will be rejected if any of the above signatures are a reproduced copy, such as, but not limited to a photostatic copy or a facsimile transmission. An original, dated and valid Power of Attorney for the Attorney-in-Fact must accompany the Proposal and the Contract. The accompanying Power of Attorney must be dated, and the date must be the exact same date as the date on the Proposal Bond. The Proposal and the Proposal Bond, including the attached Power of Attorney, shall be valid and binding for 60 days subsequent to the date of opening bids.

Proposals shall be completed on the forms as issued. Proposals will be rejected as being irregular if they are not prepared on the prescribed forms; if they show any omissions, alterations of form, additions, or conditions not called for, unauthorized alternate bids, or irregularities of any kind; or if they fail to contain a unit price for each item listed. Proposals may be rejected if any of the unit prices contained therein are mathematically unbalanced, either excessive or below the Engineer's Estimate.

Written alterations to unit prices and extensions of the various items in the bid item sheets of the Proposal or, for computer assisted bids (CAB), in the CAB program generated set of bid item sheets will not be cause for rejection of the Proposal, provided each alteration is made in ink and is initialed by a duly authorized official of the company. In case of conflict between altered unit prices or extensions thereof, the unit price in numerals will govern.

The Plans and Specifications are as much a part of the proposal form as if they were bound therein. All of the documents contained therein are part of the proposal. Proposals shall not be taken apart. Proposals taken apart may be subject to rejection. Photostatic or facsimile copies of Proposal sheets may not be attached to the Proposal. Proposals containing forms not issued by the TOWN OF SMYRNA may be subject to rejection.

Proposals will be rejected as irregular if the bidder fails to acknowledge all addenda.

Proposals will be rejected as irregular when submitted by a bidder who is not prequalified and in good standing on the date of letting in accordance with Subsection 102.01 of the Tennessee Department of Transportation Standard Specifications and Chapter 1680-5-3, Prequalification of Contractors, of the Rules of the Tennessee Department of Transportation.

Proposals will be rejected as irregular when submitted by a bidder who is not licensed according to the requirements as detailed above.

Reasonable grounds for believing that there has been collusion among the Bidders will cause a rejection of all Proposals in which the Bidders involved are interested.

ADDENDA

Addenda to the Proposal will be acknowledged by all bidders. Failure to acknowledge receipt of Addendum Letters is grounds for rejection.

RETAINAGE

Effective for all contracts, the TOWN OF SMYRNA will not hold retainage. In addition, the Contractor will not be able to hold retainage from the subcontractor.

SUBCONTRACTS

Your special attention is called to Section 105 - Control of Work, and Section 108 - Prosecution and Progress of the Tennessee Department of Transportation Standard Specifications, concerning duties of the contractor and subletting of contracts.

CHANGED CONDITIONS

Your special attention is called to Section 104.02 of the Tennessee Department of Transportation Standard Specifications, concerning changed conditions on this contract.

The following information applies to Federal-Aid construction projects:

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

STATE OF TENNESSEE
Rev: October 10, 2016 January 1, 2021

SPECIAL PROVISION

REGARDING

EMPLOYING AND CONTRACTING WITH ILLEGAL IMMIGRANTS

The State shall endeavor to do business only with those contractors and subcontractors that are in compliance with the Federal Immigration and Nationality Act. This policy shall apply to all State Contractors including subcontractors. This policy statement is issued to establish implementation guidance to procuring state agencies and contractors reflecting the requirements of *Tennessee Code Annotated* §12-3-309 regarding the employment of illegal immigrants in the performance of state contracts.

1. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the "Attestation form" provided by the Department, semi-annually during the period of this Contract.

2. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract.

3. The Contractor shall maintain records for its employees used in the performance of this Contract. Said records shall include a completed federal Department of Homeland Security Form I-9, *Employment Eligibility Verification*, for each employee and shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated* § 12-3-309 for acts or omissions occurring after January 1, 2007. This law requires the Chief Procurement Officer, Department of General Services, to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a

contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.

For the Purposes of this policy, "illegal immigrant" shall be defined as a non-citizen who has entered the United State of America without federal government permission or stayed in this country beyond the period allowed by a federal government-issued visa authorizing the non-citizen to enter the country for specific purposes and a particular time period.

STATE OF TENNESSEE

(Rev. 6-20-11) January 1, 2021

SPECIAL PROVISION

REGARDING

BUY AMERICA REQUIREMENTS

All manufacturing processes for iron and steel products, and coatings applied thereon, used in this project shall occur in the United States except that if the proposal has bid items for furnishing domestic and foreign iron and steel, the bidder will have the option of (1) submitting a bid for furnishing domestic iron and steel, or (2) submitting a bid for furnishing domestic iron and steel and a bid for furnishing foreign iron and steel. If option (2) is chosen, the bid will be tabulated on the basis of (a) the total bid price using the bid price for furnishing domestic iron and steel and, (b) the total bid price using the bid price for furnishing foreign iron and steel.

For the total bid based on furnishing foreign iron and steel to be considered for award, the lowest total bid based on furnishing domestic iron and steel must exceed the lowest total bid based on furnishing foreign iron and steel by more than 25 percent. The 25 percent differential applies to the total bid for the entire project, not just the bid prices for the steel or iron products.

Iron and steel products are defined as products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed from iron and steel made in the United States. Iron products are included, however, pig iron and processed, pelletized, and reduced iron ore may be purchased outside the United States.

Manufacturing begins with initial melting and continues through the coating stage. Any process which modifies chemical content, physical size or shape, or the final finish is considered a manufacturing process. Coatings include epoxy, galvanizing, painting or any other surface protection that enhances the value and/or durability of a material.

The contractor shall provide a certification to the Engineer with each shipment of iron and steel products to the project site that the manufacturing processes for the iron and steel products occurred in the United States. No steel shall be placed until the contractor ensures the requirements of this Special Provision are met.

The above requirements do not prevent a minimal use of foreign materials, if the cost of such materials used does not exceed 0.1 percent of the total contract cost or $2,500.00, whichever is greater. If steel not meeting the requirements of this Special Provision is used, the contractor shall provide a written statement to the Department prior to its use indicating where the steel will be incorporated in the work,

the value of the steel, the percentage of the contract amount, and the appropriate invoices shall be submitted as documentation.

The contractor shall be responsible for all cost associated with any steel that is permanently incorporated into the project that does not meet the requirements of this Special Provision without prior written approval from the Department, up to and including removal and replacement.

STATE OF TENNESSEE

September 10, 2020 January 1, 2021

SPECIAL PROVISION

REGARDING

PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO

SURVEILLANCE SERVICES OR EQUIPMENT

Installation of telecommunication and video surveillance equipment, services or systems shall contain no components from providers as listed in Title 2 Code of Federal Regulations (CFR) Part 200.216.

The prohibition on certain telecommunication and video surveillance services or equipment regulation in Title 2 CFR 200.216 shall apply to this contract. Take all necessary and reasonable steps in accordance with Title 2 CFR 200.216 to ensure that no prohibited telecommunication and video surveillance services or equipment are included in any of the work in this contract. As defined in Title 2 CFR 200.471, the regulation provides clarity that the telecommunications and video surveillance costs associated with Title 2 CFR 200.216 are unallowable for services and equipment from the providers.

It is prohibited from installing equipment, services, or systems that use covered telecommunications equipment or services from providers described in section 889 of the National Defense Authorization Act for Fiscal Year 2019 (NDAA 2019).

As described in section 889 of the NDAA 2019, "covered telecommunications equipment or services" means:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- Telecommunications or video surveillance services provided by such entities or using such equipment; or
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. The term "covered foreign country" means the People's Republic of China.

Any prohibited equipment installed must be removed and replaced at the contactor's expense with acceptable equipment.

STATE OF TENNESSEE

December 12, 2022
(Rev. 9-12-23)
(Rev. 11-21-23)

January 1, 2021

SPECIAL PROVISION

REGARDING

BUILD AMERICA, BUY AMERICA ACT REQUIREMENTS

The Build America, Buy America Act (BABA) Public Law No. 117-58 SEC. 70914 that all of the iron, steel, manufactured products, and construction materials used are subject to Build America, Buy America requirements and are produced in the United States.

Effective 10/23/2023, the Office of Management and Budget (OMB) revised guidance in the Code of Federal Regulations (CFR) title 2 and add a new part 184 – Buy America Preferences For Infrastructure Projects and revised 200.322.

A. Iron and steel: FHWA existing requirements SP106A Regarding Buy America.

B. Manufactured products: FHWA Buy America Final Rule 11/25/1983, 48 FR 53099; Waiver for Manufactured Products.

C. Construction materials includes an article, material, or supply that is or consists of only one of the materials listed except as provided in 2).

1) Construction materials:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Fiber optic cable (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; and
- Drywall.

2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

Construction materials incorporated into the project must meet one of the following construction material standards to be considered "**produced in the United States**".

1) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
5) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
6) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
7) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
8) Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Provide certifications to the Engineer for the construction materials that they meet the Build America Buy America Act requirements. Assure all submittals required for Buy America are submitted to the Engineer prior to the products and or materials being incorporated in the project.

Effective August 16, 2023, with the US Department of Transportation (DOT) Office of the Secretary Docket No.: DOT-OST-2022-0124:
Waiver of Buy America Requirements for De Minimis Costs and Small Grants, decision, certain waivers to the requirements stated herein are allowed.

The BABA's domestic preferences for iron and steel, manufactured products, and construction materials used in projects funded under DOT administered financial assistance programs will not apply under a single financial assistance award for the following situations:

1) The total value of the noncompliant products is no more than the lesser of $1,000,000 or 5% of total applicable costs for the project; where the "total value of the non-compliant products" does not include the value of those products subject to a separate Buy America waiver. "Total applicable project costs" are defined as the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement, including materials that are within the scope of an existing waiver and the de minimis cost portion of the waiver does not apply to iron and steel subject to the requirements of 23 U.S.C. 313/ 23 CFR 635.410 (b)(4), or

2) The total amount of Federal financial assistance applied to the project, through awards or subawards, is below $500,000 but this does not apply to iron, steel, and manufactured goods subject to the requirements of 49 U.S.C. 22905(a).

The waiver does not apply to products that are the subject of two separate product-specific Buy America waivers from the Department:

1) For awards administered by FHWA that are subject to 23 U.S.C. 313, the waiver does not apply to electric vehicle chargers, as defined in the notice at 88 FR 10619.

2) For awards that are subject to 49 U.S.C. 5323(j), the waiver does not apply to mass-produced, unmodified non-ADA accessible vans and minivans with seating capacity for at least six adults not including the driver, as those terms are used in the notice at 87 FR 64534.

DOT Waiver of Buy America Requirements for De Minimis Costs requirements:

Provide certifications, documents, and calculations to the Engineer for all of the noncompliant products anticipated to be used in the project before being incorporated.

The contractor shall be responsible for all cost associated with products that are permanently incorporated into the project that does not meet the requirements of this Special Provision without prior written approval from the Department, up to and including removal and replacement.

STATE **OF** **TENNESSEE**

January 17, 2023 January 1, 2021

SPECIAL PROVISION

REGARDING

CERTIFIED PAYROLLS – LOCAL PROGRAMS

As specified by Minimum Wage Scales for Federal-Aid and State Funded Construction contract provisions and Special Provision 1273, submit certified payrolls for Contractor and subcontractor workforce to the Engineer weekly for each week in which any work is performed. Once Work begins, if in any week the Contractor or subcontractor does not perform Work, submit the following statement to the Engineer: "No work performed by (contractor name) for the week ending _____."

Assume all responsibility for ensuring all payrolls and all subcontractor payrolls are submitted and certified electronically for each week in which any contract work is performed. If all payrolls are not received in this timeframe, the progress payment shall be withheld until all necessary payrolls have been received.

There will be no direct payment for recording and reporting of this information. All cost associated with this provision shall be considered incidental.

STATE OF TENNESSEE

(Rev. 2-8-21)
(Rev. 12-9-24)

January 1, 2021

SPECIAL PROVISION

REGARDING

WATER QUALITY AND STORM WATER PERMITS

Description

This work consists of the conditions that apply to all construction activities on the project pursuant to the following:

1. Section 404 of the Federal Clean Water Act (33 U.S.C. §1344), and all implementing regulations, including without limitation regulations of the U.S. Army Corps of Engineers governing permits for discharges of dredged or fill material into waters of the United States in 33 CFR Part 323; and
2. Section 408 authorized under Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C.§408), and all implementing regulations, including without limitation regulations of the U.S. Army Corps of Engineers governing changes to USACE Civil Works projects; and
3. The Tennessee Water Quality Control Act (T.C.A. §69-3-101, et seq.) and all implementing regulations, including without limitation the Rules of the Tennessee Department of Environment and Conservation governing NPDES permits in Chapter 400-40-10, and Aquatic Resource Alteration permits in Chapter 400-40-7; and
4. Section 26a of the TVA Act of 1933 as amended (49 Stat. 1079, 16 U. S. C. sec. 831y1.) and all implementing regulations, including without limitation the regulations of the Tennessee Valley Authority governing construction in the Tennessee River System in 18 C.F.R., Part 1304; and
5. The Tennessee Wildlife Resources Agency Reelfoot Lake Watershed Management permit program (T.C.A. section 70-5-1,), and all implementing regulations, including without limitation regulations authorizing any activity, practice, or project which has or is likely to have the effect of diverting surface or subsurface water from the Lake or have the effect of draining or otherwise removing water from Reelfoot Lake; and
6. Coast Guard Bridge Permit (USCG) (Section 9 of the Rivers and Harbors Appropriation Act of 1899) and all implementing regulations, including but not without limitation for projects which impact streams deemed navigable by the U.S. Coast Guard.

Responsibility

Assume all responsibilities of the permittee as indicated in the permit that relates to protection of the "waters of the United States" and/or "waters of the State of Tennessee."

Obtain any additional permits required by the Contractor for off-site waste and/or borrow areas and associated off project work areas.

Sign the Notice of Intent (NOI) form, provided by the Department, indicating acceptance of the stipulations contained in the permit. Submit the signed NOI to the TDOT HQ Construction Division by email within 10 calendar days after submittal of the contract proposal or the Department may at its discretion cancel the award with the Contractor forfeiting the bid bond.

Implement the provisions of the Water Quality (including, but not limited to, TDEC ARAP, USACE 404, TVA Section 26a, Coast Guard, TWRA) and Storm Water [including, but not limited to, National Pollution Discharge Elimination System (NPDES), Statewide Stormwater Management Plan (SSWMP)] Permits and requirements that pertain to construction activities.

Review of the permit provisions, including NPDES Permit provisions the site specific SWPPP, the contract plans, Standard Specifications and contract Special Provisions and find the permit requirements and erosion prevention and sediment control (EPSC) procedures to be reasonable, workable, and binding.

The Contractor shall not be released from the project site responsibilities under the NPDES permit provisions until the Notice of Termination (NOT) is submitted to TDEC by the TDOT Regional Operations Engineer. The NOT is a certification that the construction project is permanently stabilized, and all construction related discharges have ceased. This means that the use of EPSC measures to alleviate concerns of surface erosion and transport of sediment to surface water conveyances or to waters of the state is no longer necessary. Furthermore, it means that permanent controls, hard surfaces and/or vegetation, used on the project are deemed adequate to prevent erosion and sediment transport and no other potential sources of construction-related pollution are on the project.

The Contractor shall not be released from any warranty provided for EPSC plantings, including sod and trees. If the entire project is complete as outlined in **105.15** of the Standard Specifications, the tree plantings shall still be required to meet the requirements of **802** Standard Specifications.

NPDES Permit Required Action

Accompany the TDOT EPSC inspector or TDOT consultant on all EPSC inspections of the entire construction project including permitted locations and potentially impacted streams and attend all QA/QC Project Assessments.

EPSC Inspections shall be conducted as required in the most current TN Construction General Permit. EPSC inspections shall be performed on the schedule established in the TN Construction General Permit until the site is permanently stabilized to determine if the permit requirements are being met. Where sites or portion(s) of the construction project have been temporarily stabilized,

the inspections only have to be conducted once per month until construction activity resumes. Written notification of the intent to change the inspection frequency and the justification for such request must be submitted to the TDOT Field Office and the TDEC Central Office before proceeding.

A representative who holds a current TDEC "*Fundamentals of Erosion Prevention and Sediment Control Level I*" certification shall accompany the TDOT EPSC inspector on all required EPSC inspections. The project supervisor(s) shall also hold a current TDEC "*Fundamentals of Erosion Prevention and Sediment Control Level I*" certification. Proof of required personnel training for the individual(s) shall be provided to the TDOT Field Office prior to beginning of construction.

The TDOT EPSC inspector shall document all deficiencies on the required current TDOT EPSC Inspection Report form. Sign the TDOT EPSC Inspection Report form and any supporting documentation indicating that there is agreement with the report, recommendations and repair schedule as stated in the documentation.

Make necessary maintenance and repairs relative to deficiencies in these permit conditions or requirements within 24 hours after an inspection identifies the maintenance or repair need, and/or as directed by the Department, unless conditions make a particular activity impracticable. Any such conditions that make immediate repairs impracticable shall be documented on the inspection report and provided to the TDOT Field Office and be accompanied by an expected repair schedule based on forecasted weather conditions.

Review the site specific SWPPP that will be made available prior to or at the pre-construction conference for any additional EPSC requirements. Sign and submit two copies of the SWPPP signature page provided by the Department in the site specific SWPPP. Submit for review and approval any changes/revisions to the SWPPP to prevent erosion and sediment transport at any time after contract execution. Rejection of any submittals by the Department does not relieve the liability for appropriate Best Management Practices (BMPs).

If at any time during this contract, the requirements for the Water Quality Permits and/or the Storm Water Permits for Construction Related Activities are changed/revised/updated, the Contractor shall be notified in writing by the Department of such requirements. Comply with the new requirements within 30 days of the Department notification.

If at any time that sedimentation is occurring or has occurred in streams impacted by the project, immediately notify the TDOT Field Office to evaluate the EPSC measures employed. A determination of the cause for sedimentation will be made by the Department. Immediately repair or replace defective EPSC measures and install, as applicable, additional or other EPSC measures with the goal of eliminating future sedimentation. Once a remediation plan is provided by the Department, within 24 hours after notification, begin the remediation as required. Based on the cause of sedimentation, the Department will determine if the cost of remediation will be performed at the Contractor's expense.

Failure to Comply

In the event a Notice of Noncompliance, Notice of Violation, Notice of Deficiency, or Order is issued by any State or Federal Agency on this project, any required corrective action and all fines will be the sole responsibility of the Contractor as outlined in **107.01** of the Standard Specifications.

Failure to comply or take immediate corrective actions required within 24 hours, unless documented conditions make a particular maintenance or repair activity impracticable immediately, shall be reason for the Department to suspend all other work on the Project, except EPSC and traffic control. The Department will apply non-refundable deductions of monies from the Contract per calendar day from monies due to the Contractor for any EPSC work on the Project. This deduction can be made for each location, as determined by the Department, for each calendar day that the deficiency is allowed to remain and charged as item description *"Failure to Comply with Permit Deduction"*. A deduction shall be made from monies due the Contractor, not as a penalty, but as liquidated damages, as indicated in **108.09** of the Standard Specifications.

If the necessary corrections/adjustments are not done in a timely manner as required, the Department will implement the provisions of **209.07** and **109.08** of the Standard Specifications that provides for the Department making repairs and recovering the costs thereof from the Contractor.

The Department will not participate in any payment or reimbursement for fines and will not authorize time extensions due to delays in project progress for work stoppage, to remedy the violations stated within the NOV, as stated in **105.01** of the Standard Specifications.

Spill Prevention, Control, and Countermeasure

To help prevent the discharge of oil into navigable waters, the U.S. Environmental Protection Agency (EPA) developed the Spill Prevention, Control, and Countermeasure (SPCC) Program. The SPCC Program is under the authority of Section 311 (j)(1)(C) of the Federal Water Pollution Control Act (Clean Water Act) in 1974. The rule may be found at Title 40, Code of Federal Regulations (CFR), Part 112. Additional information regarding the preparation and requirements of a SPCC Plan can be found at: Overview of the Spill Prevention, Control, and Countermeasure (SPCC) Regulation | US EPA

If applicable based upon the total aggregate capacity of aboveground oil storage, develop a site specific SPCC Plan per EPA requirements. This plan shall be provided to the TDOT Field Office as part of the required submittals during the project Pre-Construction Meeting or at which time the conditions on the project site meet the applicable criteria. If applicable, obtain any other necessary local, state, and federal permits as applicable. The SPCC Plan and/or permits shall be kept on-site.

Comply with all aspects of the site specific SPCC Plan including but not limited to performing any required inspections as directed by the SPCC Plan as well as implementing material and spill management practices per the project's SWPPP. In the event, where a release containing a hazardous substance in an amount equal to, or in excess of a reportable quantity established under either 40 CFR 117 or 40 CFR 302 occurs during a 24-hour period, immediately notify the TDOT Field Office.

STATE OF TENNESSEE

(Rev. 6-20-22)
(Rev. 9-7-22)

January 1, 2021

SPECIAL PROVISION

REGARDING

EQUAL EMPLOYMENT OPPORTUNITY

Electronic Code of Federal Regulations (e-CFR):
23 CFR 230 Chapter 1 Subchapter C Appendix A to Subpart A

Specific Equal Employment Opportunity Responsibilities

General

a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b) The contractor will work with the Tennessee Department of Transportation and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c) The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of $10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors). The contractor will include these requirements in every subcontract of $10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

Equal Employment Opportunity Policy

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability and to promote the full realization of equal employment opportunity through a positive continuing program:

> It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability. Such action shall include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

Equal Employment Opportunity Officer

The contractor will designate and make known to the Tennessee Department of Transportation contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

Dissemination of Policy

a) All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

   1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

   2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

   3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees, and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

Recruitment

a) When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b) The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended).

c) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

Personnel Actions

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability. The following procedures shall be followed:

a) The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b) The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c) The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d) The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

Training and Promotion

a) The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b) Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Special Provision Regarding Training Program Requirements is provided under this contract, this subparagraph will be superseded as indicated therein.

c) The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d) The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

Unions

If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a) The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b) The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c) The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the Tennessee Department of Transportation and shall set forth what efforts have been made to obtain such information.

d) In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees). In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the Tennessee Department of Transportation.

Subcontracting

a) The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from the Tennessee Department of Transportation.

b) The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

Records and Reports

a) The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

   1) The number of minority and non-minority group members and women employed in each work classification on the project.

   2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women. (Applicable only to contractors who rely in whole or in part on unions as a source for their work force),

   3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

   4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

b) All such records must be retained for a period of 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the of the Tennessee Department of Transportation and the Federal Highway Administration.

c) The contractors will submit an annual report to the Tennessee Department of Transportation each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision," the contractor will be required to furnish Form FHWA 1409.

d) The contractor and subcontractors will be required to complete other reports as instructed by the Engineer.

e) Current estimates may be withheld by the Engineer when reports are not received within the above specified time limits.

STATE OF TENNESSEE

(Rev. 6-20-22)
(Rev. 9-7-22)

January 1, 2021

SPECIAL PROVISION

REGARDING

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY

CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

Electronic Code of Federal Regulations (e-CFR):
41 CFR 60-4.3 Equal Opportunity Clauses

1) As used in these specifications:

   a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

   c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   d) "Minority" includes:

      I. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      II. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese Culture or origin, regardless of race);

      III. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      IV. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation, and which is set forth in the solicitations from which this contract resulted.

3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a though p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specification, Executive Order 11246, or the regulations promulgated pursuant thereto.

6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

   a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction

project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organization's responses.

c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources complied under 7.b) above.

f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screenings procedures, and tests to be used in the selection process.

j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriation training, etc., such opportunities.

m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of

the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women, generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12) The Contractor shall carry out such sanctions and penalties for violations of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

STATE OF TENNESSEE

(Rev. 6-20-22) January 1, 2021

SPECIAL PROVISION

REGARDING

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION

TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

Electronic Code of Federal Regulations (e-CFR):
41 CFR 60-4.2 -- Solicitations

1) The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

County	Goals for Female Participation in each Trade
All Counties	6.9

County	Goals for Minority Participation for each Trade
Lincoln	11.2
Hamilton, Marion, Sequatchie	12.5
Bledsoe, Bradley, Grundy, McMinn, Meigs, Monroe, Polk, Rhea	8.6
Carter, Hawkins, Sullivan, Unicoi, Washington	2.6
Greene, Hancock, Johnson	3.2
Anderson, Blount, Knox, Union	6.6
Campbell, Claiborne, Cocke, Cumberland, Fentress, Grainger, Hamblen, Jefferson, Loudon, Morgan, Roane, Scott, Sevier	4.5

County	Goals for Minority Participation for each Trade
Montgomery	18.2
Davidson, Cheatham, Dickson, Robertson, Sumner, Williamson, Wilson, Rutherford	15.8
Bedford, Cannon, Clay, Coffee, Dekalb, Franklin, Giles, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Macon, Marshall, Maury, Moore, Overton, Perry, Pickett, Putnam, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, White	12.0
Shelby, Tipton	32.3
Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy, Madison, Obion, Weakley	26.5

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted). If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in CFR Part 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from Project to Project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3) The Contractor shall provide written notification to the Director of Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation.

U.S. Department of Labor – Regional Office
Office of Federal Contract Compliance Program
61 Forsyth Street, Room 7B75
Atlanta, GA 30303

The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

STATE OF TENNESSEE

(Rev. 8-20-18) January 1, 2021
(Rev. 9-7-22)

SPECIAL PROVISION

REGARDING

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION – LOCAL PROGRAMS

The disadvantaged business enterprise (DBE) requirements of 49 CFR Part 26 apply to this contract. Accordingly, Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum appropriate opportunity to participate in the performance of this contract or in the performance of subcontracts to this contract. In this latter regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the award of subcontracts.

The Contractor shall submit to the Civil Rights Division Small Business Development Program (CRD-SBDP) copies of any subcontract agreements with DBEs upon execution. The Contractor shall identify all DBE subcontractors at the Preconstruction Conference and indicate the approximate date for each DBE subcontractor's appearance on the project. Before terminating and/or substituting a DBE subcontractor, the Contractor must give notice in writing to the DBE subcontractor, with a copy to TDOT's CRD-SBDP, of its intent to terminate and/or substitute including the reason for the request.

The Contractor shall provide notification to the Project Supervisor at least 24 hours prior to each DBE beginning work. The project supervisor or Inspector must complete a "Commercially Useful Function Checklist" to document the first date of work, work items, equipment, and forces of each DBE. The Contractor shall take full responsibility for the performance of a commercially useful function (CUF) by all DBE subcontractors, manufacturers, and materials suppliers who work on or provide materials for the project.

The Contractor shall provide a monthly payment certification to the Department entitled "Prompt Payment Certification Form." The Department shall provide the Contractor with the Prompt Payment Certification Form. An officer of the Contractor shall provide an electronic signature to the Prompt Payment Certification Form and return in Excel format via email to DBE.Runningtally@tn.gov and to the Project Supervisor concurrently. The Prompt Payment Certification Form shall be submitted monthly beginning no later than sixty (60) days after payment of the first estimate. Payments must abide by the conditions set in T.C.A. § 12-4-707.

Prior to receiving final payment, the Contractor shall provide to the project supervisor and CRD-SBDP certification of the dollars paid to each DBE firm, using Form CC3, "Certification of DBE Accomplishment." The certification shall be dated and signed by a responsible officer of the Contractor and by a responsible officer of the DBE. Falsification of this certification may

result in formal enforcement actions, including civil actions for false claims, suspension and debarment proceedings, or other administrative actions affecting bidder qualifications.

The Contractor and all subcontractors shall retain, for a period of not less than three (3) years after final acceptance of a project, copies of canceled checks or other documentation that substantiates payments to DBE firms. These records shall be available at reasonable times and places for inspection by authorized representatives of the Department and various Federal Agencies.

The Contractor is advised that failure to carry out the requirements as set forth above shall constitute a breach of contract, and after notification by the Department, may result in termination of the contract or other remedy as the Department deems appropriate, which may include, but is not limited to:

1) Withholding monthly progress payments:

2) Assessing sanctions;

3) Liquidated damages; and/or

4) Disqualifying the contractor from future bidding as non-responsible.

The Title VI and nondiscrimination provisions of USDOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

STATE OF TENNESSEE

(Rev. 6-20-22)
(Rev. 9-7-22)
(Rev.3-1-23)

January 1, 2021

SPECIAL PROVISION

REGARDING

DBE CONTRACT GOAL

Electronic Code of Federal Regulations (e-CFR):
49 CFR 26

All contractors shall pursue affirmative action requirements to encourage and increase participation of firms certified as a Disadvantaged Business Enterprise (DBE) as set forth in this special provision and in accordance with 49 CFR Part 26. The bidder shall arrange for the percentage of the work specified on the cover of the Proposal Contract to be performed by Tennessee Uniform Certification Program (TNUCP) Disadvantaged Business Enterprises (DBEs) or otherwise clearly demonstrate adequate good faith efforts as described herein. All payments must follow the conditions set by the most current T.C.A. § 12-4-707.

The Contractor shall take full responsibility for ensuring the performance of a "commercially useful function" (CUF), as defined in 49 CFR Part 26, by all DBE subcontractors, manufacturers, and materials suppliers who work on the project or provide materials for the project.

A. Disadvantaged Business Enterprise Policy

The Contractor shall abide by the following provision and include in all subcontract agreements the following provision, which is designed to promote full participation of DBEs as suppliers and subcontractors through a continuous, positive result-oriented program on contracts let by the Department:

> *The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. Department of Transportation- assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate, which may include, but is not limited to:*
>
> 1) *Withholding monthly progress payments;*
> 2) *Assessing sanctions;*
> 3) *Liquidated damages; and/or*
> 4) *Disqualifying the contractor from future bidding as non-responsible.*
>
> *The Title VI and nondiscrimination provisions of USDOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.*

B. Counting DBE Participation toward Meeting Goals

The Contractor shall count DBE participation toward goals in accordance with 49 CFR Part-26. If the DBE performs a CUF on the contract including those functions as a subcontractor, expenditures to a DBE contractor count toward DBE goals. A DBE performs a CUF when it is responsible for execution of the specified work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material itself. The work performed by the DBE firm shall be necessary and useful to the completion of the contract, and consistent with normal highway construction industry practices in Tennessee. Work performed by a DBE firm in a particular transaction may be counted toward the goal only if the Department determines that it involves a CUF. The determination is verified by the "Commercially Useful Function Checklist" and the requirements of 49 CFR Part 26.

Note: In accordance with 49 CFR 26.55(c), to determine whether a DBE is performing a CUF, the Department must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Department must examine similar transactions, particularly those in which DBEs do not participate.

When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. The Department may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

The bidder may count the following DBE expenditures involving a CUF towards the DBE goal:

1. Projects where the DBE is the Prime Contractor

The entire portion(s) of the contract to be completed by certified DBE firm's own forces will be counted toward meeting the goal. This will also include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE. Items of the contract subcontracted to non-DBE firms will not be counted toward the goal.

Note: If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department must presume that it is not performing a commercially useful function.

2. Portions of a Bid from a Joint Venture

When a DBE performs as a participant in a joint venture, only the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will count toward DBE goals. A bid from a joint venture between a DBE and a non-DBE Contractor shall include an explanation of DBE commitments on Form 8-5, which must be approved by the Civil Rights Division - Small Business Development Program (CRD-SBDP) and Local Programs Division prior to the letting. Only the DBE's portion will be counted toward the goal. Joint venture agreements have to be approved separately from the bid documents, prior to the awarding of the contract.

3. DBE Subcontractors

The DBE subcontractor shall assume actual and contractual responsibility for provision of materials and supplies, subcontracted work, or other commercially useful functions of the items of work subcontracted to them. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE goal only if the DBE's subcontractor is also a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goal. Cost of materials purchased from, or the cost of equipment leased from the non-DBE Contractor will not count toward the project DBE commitment. Prior written approval must be obtained from the CRD- SBDP for any DBE use of the Contractor's personnel or equipment.

4. DBE Manufacturers

The Contractor may count toward the DBE goal 100% of its expenditures for materials and supplies required under a contract and obtained from a DBE manufacturer only if the DBE operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

5. DBE Regular Dealers (Material Suppliers)

The Contractor may count toward the DBE goal 60% of its expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business where such products are bought, kept in stock, and regularly sold to the public if the firm owns and operates the distribution equipment for the products. Any supplementing of the regular dealer's own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis. Any lease containing the terms of the agreement shall be made available to and must be approved in writing by CRD-SBDP.

6. Other DBE Suppliers

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals; provided, the Department finds the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves shall not count toward DBE goals.

7. Transportation or Hauling of Materials

The Contractor may count towards the DBE goal hauling in either DBE-owned trucks or in trucks leased to or by DBE firms. The verification of truck drivers employed by DBE firms will continue to be by submission of payrolls independent from any Davis-Bacon regulations. Use the following factors in determining whether a DBE trucking company is performing a CUF:

a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services that the lessee DBE provides on the contract.

e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non- DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If the DBE chooses this approach, it must obtain written consent from the Department [CRD- SBDP].

f. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the value of these hauling services.

g. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. Leases cannot be Department contract-specific, must be long term, and must be approved by CRD-SBDP. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

h. Prior to hauling, the Contractor and DBE shall provide the District Supervisor a complete list of trucks that will be used on the project for DBE goal participation. The Department will provide a form that shall be used by the Contractor and the DBE to identify the trucks. A revised list will be required any time the trucks used changes. The Contractor and DBE must be able to adequately document the actual amount of hauling eligible for DBE goal participation.

8. Contracted Labor / Temporary Employment Agencies

The Department will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract; provided, however, the Department must find the fee to be reasonable and not excessive as compared to the fees customarily allowed for similar services.

C. Contract Award Procedures

The established DBE goal will be shown on the proposal as a percent of the total amount bid. If the total proposed DBE work submitted with the bid is less than the percentage participation goal set by the Department, the bidder shall, within three (3) business days from the bid openings, either propose sufficient additional DBE participation to meet the goal or clearly demonstrate by documentation that good faith efforts were made to meet the goal.

1. Bidder's Responsibility

It is the bidder's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The bidder shall ascertain that the proposed DBE subcontractor has suitable experience and equipment to perform a commercially useful function for work that is common industry practice in the Tennessee highway construction industry.

The Contractor shall develop and maintain records of negotiations with DBEs to reach agreeable prices, quotations, and work schedules, including but not limited to a record of dates when the Contractor first contacted each DBE.

2. DBE's Responsibility

Before bidding and subsequently entering into a contract (as a contractor or subcontractor), the DBE should consider the scope and size of the project, as well as whether it is certified to receive credit for the type of work performed. As with any contract, this is a legally binding document and should be performed to the best of one's ability. However, should a DBE ever have to withdraw from a contract, it shall provide the CRD-SBDP and Contractor with written documentation. A DBE should only withdraw when there is no other option, as non-completion of its duties may result in temporary disqualification of a prequalified bidder or subcontractor by suspending the privilege of bidding on Department contracts or becoming an approved subcontractor, as outlined in Chapter 1680-05-03 of the Rules of the Department.

3. Proposals with Established Project DBE Goals

For proposals with established project goals, the bidder will be required to complete Form 8-5: DBE Award Information. The bidder shall list the following information on each Form 8-5 that is submitted:

a. The names and addresses of all DBE firms being used or being considered for use under the contract as part of the bidder's DBE commitment.
b. The work classification(s) for each DBE on the contract.
c. The "Amount to DBE" which has been committed to each DBE firm for use on the contract.
d. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the Contractor's commitment.
f. All other requested information that is on Form 8-5.

Submit the quote from the DBE and the completed DBE Form 8-5 within three (3) business days after the Letting. Failure to provide the quote and the completed form or documentation clearly evidencing a good faith effort, as detailed in Section 4 below, within three (3) business days after the Letting may cause the bid to be rejected as irregular. Only certified DBE firms may be used. Contractor may access certification information by viewing the TNUCP DBE Directory website.

When DBE goal projects are involved and the Contractor subcontracts to a non- DBE, and the non-DBE subcontractor in turn subcontracts to a DBE as a second-tier subcontractor, the Contractor must affirm in writing his/her knowledge and approval of such an arrangement. Recognition of a second-tier arrangement with a DBE subcontractor for goal work must be forwarded to the CRD-SBDP Director for verification, in writing, prior to any work being performed by the DBE which is intended to be counted toward the goal.

4. Bidder Selection and Good Faith Efforts

a. Bidders shall submit proposals that meet the DBE goal or shall submit documentation clearly evidencing that they made a good faith effort to meet the DBE goal. Contractors who meet or exceed the contract goal will be assumed to have made good faith efforts to utilize DBE firms. DBE firms who bid as Prime Contractors will be considered to have met the goal.

b. In making a fair and reasonable judgment as to whether the bidder has made adequate good faith efforts, the Department shall consider quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The following list of factors is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. In any event, the Department may consider whether the bidder:

1) Selected portions of the work likely to attract DBE participation. The total dollar value of the portions selected should meet or exceed the contract DBE goal. If it is necessary, the bidder should break down subcontracts into economically feasible units in order to facilitate participation.

2) Provided notice to a reasonable number of specific DBEs, including those not regularly used by the bidder, that their participation in the contract is being solicited in sufficient time to allow them to participate effectively.

3) Provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract.

4) Advertised in trade association publications or minority-focused media concerning participation opportunities.

5) Effectively used the services of available minority community organizations, minority contractors' groups, local, state, or federal minority business assistance offices, or other organizations that provide assistance in the recruitment and placement of DBEs.

6) Negotiated in good faith with interested DBEs, including not rejecting DBEs as unqualified lacking sound reasons based on a thorough investigation of their capabilities.

7) Made efforts to assist interested DBEs in obtaining bonding or insurance required by the bidder.

8) Submitted all quotations received from DBEs, and for those quotations not accepted, an explanation of why the DBE was not accepted including price comparisons. Receipt of a lower quotation from a non-DBE will not in itself excuse a bidder's failure to meet the contract goal.

9) Has adequate records of its contacts and negotiations with DBEs.

c. If the Contractor has not met the DBE goal or submitted documentation clearly evidencing good faith efforts within three (3) business days after the bid opening, the Contractor's bid will be considered non-responsive and may be cause for the forfeiture of the Proposal Guaranty which shall become the property of the Department, not as penalty, but as liquidated damages. The Department then may consider the next lowest responsive bid for award.

As soon as practical after contract award, the Contractor shall submit copies of all binding subcontracts and purchase orders with DBEs to the respective District Supervisor and to CRD-SBDP.

No progress estimate shall be processed until copies of all binding subcontracts and purchase orders with DBEs have been received.

5. Joint Checking Allowance for DBE

A DBE must receive pre-approval by the Department before using a joint check. Joint check requests shall be submitted by the DBE to CRD-SBDP prior to the subcontract agreement.

The following are some general conditions that must be met regarding joint check use:

a. The second party (typically the Contractor) acts solely as a guarantor.
b. The DBE must release the check to the supplier.
c. The use of joint checks must be a commonly recognized business practice in the industry.
d. The DBE remains responsible for all other elements of 49 CFR Part 26.55(c)(1).
e. The DBE is not required to use a specific supplier nor the Contractor's negotiated unit price.
f. The DBE shall submit receipt/copy of cancelled checks to CRD- SBDP.

D. Construction Requirements

1. Preconstruction Conference

The Contractor shall identify all DBE subcontractors and indicate the approximate dates for their appearance on the project. The Department will review the contract information to verify the actual work to be performed by the DBE subcontractors and will review any lease agreements allowed as part of the DBE commitment. Information submitted shall match Form 8-5.

2. Process for Removal of a DBE

At no time shall a DBE be terminated or substituted without prior written consent from CRD-SBDP. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. The Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the Contractor obtains the CRD-SBDP's written consent as provided herein. Absent such written consent, the Contractor shall not be entitled to any payment for work or material unless it is by the listed DBE. The CRD-SBDP may provide such written consent only if it agrees that the Contractor has good cause to terminate the DBE firm, as further described below.

Before terminating and/or substituting a DBE subcontractor on a project that includes SP1247 in the Contract Proposal, the Contractor must give notice in writing to the DBE subcontractor, with a copy to the CRD-SBDP, of its intent to request to terminate and/or substitute including the reason for the request.

The Contractor must then give the DBE five (5) days to respond to the Contractor's notice. The DBE shall then advise the CRD-SBDP and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the CRD-SBDP should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the CRO-SBDP may provide a response period shorter than five (5) days.

If approval is granted for removal, CRD-SBDP will submit a letter to the Contractor and the DBE. Good faith efforts shall then be directed at finding another DBE subcontractor to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established.

The good faith efforts shall be documented by the Contractor. If requested by the CRD-SBDP, the Contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the Contractor, and the CRD-SBDP shall provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

The Contractor has the responsibility to comply with 49 CFR Part 26.53(f) and all applicable policies and regulations.

Reasons for termination and/or substitution of a DBE subcontractor must meet the reasons for good cause as outlined in the current 49 CFR Part 26.53(f), which include, but are not limited to, circumstances in which the listed DBE subcontractor:

a. Fails or refuses to execute a written contract.

b. Fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor.

c. Fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.

d. Becomes bankrupt, insolvent, or exhibits credit unworthiness.

e. Becomes ineligible to work on public works projects because of suspension and debarment proceedings pursuant with 2 CFR Parts 180 and 1200 or applicable state law.

f. Is not a responsible subcontractor, as determined by the Department.

g. Voluntarily withdraws from the project and provides written notice to the Contractor of its withdrawal.

h. Is ineligible to receive DBE credit for the type of work required.

i. Is unable to complete its work on the contract as a result of death or disability of an owner; and/or

j. For other documented good cause, the Department may elect to compel the termination of the DBE subcontractor; provided that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE was engaged, or so that the Contractor can substitute another DBE or non-DBE subcontractor after contract award.

3. Brokering of work by DBEs is not allowed and is a material breach of contract. A DBE firm involved in brokering of work may result in removal or suspension of DBE certification and/or formal enforcement actions, including civil actions for false claims, suspension and debarment proceedings, or other administrative actions affecting bidder qualifications. Any firm involved in brokering of work that engages in willful falsification distortion, or misrepresentation with respect to any facts related to the project shall be referred to the U. S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U.S. Code, Section 641. Contractor shall place this provision in all subcontracts with DBEs.

4. The Contractor shall provide notification to the Project Supervisor at least 24 hours prior to each DBE beginning work. A Department Project Supervisor/Inspector must complete a Commercially Useful Function (CUF) Checklist to document the first date of work, work items, equipment, and forces of each DBE.

5. The Contractor shall provide a monthly payment certification to the Department entitled "Prompt Payment Certification Form." The Department shall provide the Contractor with a computer generated Prompt Payment Certification Form: LP Form 8-29. An officer of the Contractor shall provide electronic signature to the Prompt Payment Certification Form and return via email to DBE.Runningtally@tn.gov.

   Prompt Payment data shall be submitted monthly beginning no later than sixty (60) days after payment of the first estimate.

6. The Department will hold estimate payment if previously listed information is not submitted. Reasons for non- payment to a DBE could include the following:

   a. Whether the DBE is performing satisfactorily.

   b. Whether the Contractor has reason to believe the DBE is not performing a commercially useful function, and if so, why, and what steps the Contractor is taking to rectify the situation.

In the event the Contractor reports questions in relation to prompt payment regarding whether a DBE is independent and performing a commercially useful function and takes appropriate steps promptly to address the issue, then the Department will take this effort into account when considering Contractor compliance measures as described below. Payments must abide by the conditions set in TCA 12-4-707.

E. Post Construction Requirements

Prior to receiving final payment, the Contractor shall provide to the Project Engineer and CRD-SBDP certification of the dollars paid to each DBE firm, using Form 8-35; CC3. The certification shall be dated and signed by a responsible officer of the contractor and by a responsible officer of the DBE. Falsification of this certification may result in removal or suspension of DBE certification and/or formal enforcement actions, including civil actions for false claims, suspension and debarment proceedings, or other administrative actions affecting bidder qualifications. The final estimate will not be paid to the Contractor until proper certifications including CC-3 have been made.

F. Required Records

The Contractor and all subcontractors shall retain, for a period of not less than three (3) years after final acceptance of a project, copies of canceled checks or other documentation that substantiates payments to DBE firms. These records shall be available at reasonable times and places for inspection by authorized representatives of the Department and various Federal Agencies. Copies shall be provided to the Department if requested.

G. Contractor Compliance

If the Contractor fails to comply with Special Provision 1247 and/or 49 CFR Part 26, including failure to obtain goal where a good faith effort was not accepted, the Department shall take one or a combination of the following steps:

1. Withhold from the Contractor the monetary value of the unattained goal percentage plus an additional 10% for engineering costs, not as penalty but as liquidated damages.

2. Suspend the Contractor from participation in Department bid lettings pursuant to rules promulgated by the Department.

3. For repeated failures to comply, debar the Contractor pursuant to rules promulgated by the Department.

4. Invoke other remedies available by law and/or in the contract.

5. Invoke any other lawful remedy agreed upon by the Commissioner and the Contractor in writing.

DO NOT UNBIND

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Non-segregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
XI. Certification Regarding Use of Contract Funds for Lobbying
XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (*see* 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than $10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH–1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.,* the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH–347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* $31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of $150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. **Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

* * * * *

3. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these Instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal 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 Federal 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. 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 31 U.S.C. 1352. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

DO NOT UNBIND

(Rev. 01/03/25)

STATE OF TENNESSEE

TENNESSEE DEPARTMENT OF TRANSPORTATION

2025 MINIMUM WAGE SCALES FOR FEDERAL AID HIGHWAY CONSTRUCTION

"General Decision Number: TN20250147 01/03/2025

Superseded General Decision Number: TN20240147

State: Tennessee

Construction Type: Highway

Counties: Tennessee Statewide.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at http://www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2025

SUTN2016-001 07/13/2016

	Rates	Fringes
BRICKLAYER	$ 14.26 **	
CARPENTER	$ 17.52 **	
CEMENT MASON/CONCRETE FINISHER	$ 15.55 **	
ELECTRICIAN	$ 24.08	
IRONWORKER		
Reinforcing	$ 16.29 **	
Structural	$ 16.89 **	
LABORER		
Common/Unskilled	$ 13.11 **	
Skilled		
Air Tool Operator, Asphalt Raker, Chain Saw Operator, Concrete Mixer (less than 1 yd), Concrete Rubber, Edger, Fence Erector, Form Setter (steel), Guard Rail Erector, Mechanic's Tender (tire changer or oiler), Mortar Mixer, Nozzleman or Gun Operator (gunite), Pipelayer, Sign Erector	$ 15.27 **	
PAINTER (INCLUDES SANDBLASTER)	$ 26.36	
POWER EQUIPMENT OPERATOR:		

GROUP 1
Backhoe/Hydraulic Excavator (3/4 yd & over), Crane (less than 20 Tons), End Loader (3 yd & over), Motor Patrol (finish),Piledriver, Dragline.....$ 19.14
GROUP 1A
Drill Operator (Caisson)...$ 25.26
Farm Tractor Operator (Power Broom).....$ 13.50 **
GROUP 2
Backhoe/Hydraulic Excavator (less than 3/4 yd), Bulldozer or Push Dozer, End Loader (less than 3 yd), Motor Patrol (rough), Tractor (crawler/ utility), Truck Driver (Heavy Duty, Off Road) Scraper, Shovel, or Trenching Machine.....$ 17.08 **
GROUP 3
Asphalt Paver, Concrete Finishing Machine, Concrete Paver, Scale, Spreader (self-propelled), Concrete Grinder, Asphalt Milling Machine, Boring Machine (horizontal).....$ 17.75
GROUP 4
Bobcat, Central Mining Plant, Concrete Pump, Concrete Saw, Curb Machine (automatic or manual), Dozer or Loader (stockpile), Drill (piling), Mulcher or Seeder, Rock Drill (truck mounted), Roller (asphalt), Roller (compaction self-propelled), Soil Stabilization Machine, Tractor (boom and hoist), Bituminous Distributor Machine, pump, Track Drill, Striping Machine....$ 16.48 **
Heavy Duty Mechanic.....$ 20.33
Light Duty Mechanic.....$ 19.53

Sweeping Machine (Vacuum)

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     Operator.....................$ 15.56 **
    GROUP 5
     Crane (over 20 Tons).......$ 20.44

TRUCK DRIVER
     2 axles.....................$ 15.36 **
     3-4 axles...................$ 14.86 **
     5 or more axles.............$ 16.27 **
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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($17.75) or 13658 ($13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications

and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union

prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be

directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION"

STATE OF TENNESSEE

(Rev. 7-28-21) January 1, 2021

SPECIAL PROVISION

REGARDING

HIGHWAY SIGNS, LUMINAIRES, AND TRAFFIC SIGNALS

Scope

These design requirements shall apply to **713**-Highway Signing, **714**-Roadway and Structure Lighting, and **730**-Traffic Signals of the current Standard Specifications.

Description

The design of the supports for overhead sign bridges and butterfly configurations, high mast lighting, luminaires, CCTV camera poles, and traffic signal strain poles and mast arm structures shall be in accordance with the American Association of Highway and Transportation Officials (AASHTO) LRFD Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, 1st edition, with addenda.

General Conditions

All overhead sign bridges and butterfly sign structures, traffic signal strain poles and mast arm structures and high mast light poles 90-feet or greater in height, shall be designed using the Fatigue Category 1 provisions found in the subject specifications except that, design for galloping-induced fatigue and truck-induced gust fatigue, are excluded. Fatigue designs are not required for luminaire poles less than 55-feet in height, span-wire poles, or roadside sign poles.

In lieu of designing for galloping-induced fatigue in mast arm pole assemblies, a 60-inch by 16-inch by 0.125 gauge aluminum or galvanized steel panel shall be installed horizontally near the end of the mast arm with the long axis of the panel collinear with the long axis of the mast. The panel shall be mounted at such a height as to provide a least a 6-inch clearance from the top of the signal assembly or sign blank located on the mast arm within the length of the anti-galloping panel. The panel and attachment hardware shall be shown on the shop drawings, and is considered an item included in the price bid for the mast arm assembly.

Additionally, all mast arm connections to the support pole shall be accomplished using a wrap-around ring stiffener assembly.

The design coordination instructions are as follows:

a. The Basic Wind Speed shall be 120 mph for Extreme 1 Limit State.
b. The Design Life shall be 50 years resulting in a 1,700 year Recurrence Interval.

PROPOSAL

TO THE TOWN OF SMYRNA, TENNESSEE

By submitting this Proposal, the undersigned bidder represents that it has carefully examined the site of the work described herein, has become familiar with local conditions and the character and extent of the work; has carefully examined the Plans, the *Standard Specifications for Road and Bridge Construction* (January 1, 2021) adopted by the State of Tennessee, Department of Transportation, with subsequent revisions which are acknowledged to be a part of this Proposal, the Special Provisions, the Proposal Form, the Form of Contract, and the Form of Contract Payment and Performance Bond; and thoroughly understands their stipulations, requirements, and provisions.

The undersigned bidder has determined the quality and quantity of materials required; has investigated the location and determined the sources of supply of the materials required; has investigated labor conditions; and, has arranged for the continuous prosecution of the work herein described.

By submitting this Proposal, the undersigned bidder agrees to provide all necessary equipment, tools, labor, incidentals, and other means of construction, to do all the work, and furnish all the materials of the specified requirements which are necessary to complete the work in accordance with the Plans, and the Specifications, and agrees to accept as payment in full the unit prices for the various items described in the Specifications that are set forth in this Proposal. The bidder understands that the quantities of work specified are approximate only and are subject to increase or decrease and that any such increase or decrease will not affect the unit prices set forth in this Proposal. Compensation for "extra work" which may be required by the TOWN OF SMYRNA in connection with the construction and completion of the work but which was not reflected in the Plans and Specifications at the time of bidding, will be made in the following manner: work for which there is a unit price set forth in this Proposal will be compensated at that unit price; work for which there is no unit price set forth in this Proposal will be compensated in accordance with the applicable Tennessee Department of Transportation Standard Specifications.

By submitting this Proposal, the parties hereto, in the performance of this Contract, shall not act as 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 an employer/employee 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.

By submitting this Proposal, the undersigned bidder, if awarded the contract, agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

By submitting this Proposal, the undersigned bidder, if awarded the contract, shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax or provide confirmation from the Department of Revenue that the bidder is not required to register for the Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

DO NOT UNBIND

By submitting this Proposal, the undersigned bidder hereby agrees to be bound by the award of the Contract and, if awarded the Contract on this Proposal, to execute the required Contract and the required Contract Payment and Performance Bond within ten (10) days after receipt of notice of the award. The undersigned bidder submits herewith the required Proposal guaranty in an amount of not less than five percent (5%) of the total amount of the Proposal offered and agrees and consents that the Proposal guaranty shall immediately be at the disposal of the TOWN OF SMYRNA, not as a penalty, but as an agreed liquidated damage if the required Contract and Contract Payment and Performance Bond are not executed within ten days from receipt of the notice of award.

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State per the Iran Divestment Act, T.C.A. §§ 12-12-101 – 113, and the current list may be found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage at the following link: http://tn.gov/assets/entities/generalservices/cpo/attachments/List_of_persons_pursuant_to_Tenn._Code_Ann._12-12-106._Iran_Divestment_Act-July.pdf.

DO NOT UNBIND

THIS PROPOSAL SUBMITTED BY:

Sessions Paving Company
Bidder (1)

By: Robert N. Hutcheson

Robert N. Hutcheson President
Printed Name and Title

P. O. Box 90266 (6535 Robertson Avenue)
Address

Nashville, TN 37209
City/State/Zip

Bidder (1) being a Corporation (Type of business entity) composed of officers, partners, or owners as follows:

Robert N. Hutcheson President Name/Title	Name/Title
Davis W. Duncan Vice-Pres. Name/Title	Name/Title
Scott T. Price Sec.-Treas. Name/Title	Name/Title

Bidder (2)*

By:

Printed Name and Title

Address

City/State/Zip

Bidder (2) being a (Type of business entity) composed of officers, partners, or owners as follows:

Name/Title	Name/Title
Name/Title	Name/Title
Name/Title	Name/Title

Sam Ridley Parkway (SR-266) Intersection at Old Nashville Highway L.M. 1.5 in Smyrna					
BID FORM					
ITEM NO.	**DESCRIPTION**	**UNIT**	**QUANTITY**	**UNIT COST**	**TOTAL PRICE**
105-01	CONSTRUCTION STAKES, LINES AND GRADES	LS	1	50,000.00	50,000.00
201-01	CLEARING AND GRUBBING	LS	1	30,000.00	30,000.00
202-01	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	11,000.00	11,000.00
202-02.21	REMOVAL OF PIPE (18 INCH)	L.F.	379	33.00	12,507.00
202-02.22	REMOVAL OF PIPE (24 INCH)	L.F.	360	33.00	11,880.00
202-03	REMOVAL OF RIGID PAVEMENT, SIDEWALK, ETC.	S.Y.	169	22.00	3718.00
202-08.10	REMOVAL OF CURB (EXTRUDED CURB)	L.F.	42	22.00	924.00
202-08.15	REMOVAL OF CURB AND GUTTER (OLD NASHVILLE HIGHWAY)	L.F.	953	10.00	9530.00
203-01	ROAD & DRAINAGE EXCAVATION (UNCLASSIFIED)	C.Y.	5508	55.00	302,940.00
203-06	WATER	M.G.	97	25.00	2425.00
203-07	FURNISHING AND SPREADING TOPSOIL	C.Y.	1074	44.00	47,256.00
209-03.20	FILTER SOCK (8 INCH)	L.F.	50	15.00	750.00
209-05	SEDIMENT REMOVAL	C.Y.	68	25.00	1700.00
209-08.03	TEMPORARY SILT FENCE (WITHOUT BACKING)	L.F.	2535	13.00	32,955.00
209-08.07	ROCK CHECK DAM	EACH	10	550.00	5500.00
209-08.08	ENHANCED ROCK CHECK DAM	EACH	2	825.00	1650.00
209-09.43	CURB INLET PROTECTION (TYPE 4)	EACH	21	440.00	9240.00
209-20.03	POLYETHYLENE SHEETING (6 MIL. MINIMUM)	S.Y.	500	11.00	5500.00
209-40.30	CATCH BASIN PROTECTION (TYPE A)	EACH	12	500.00	6000.00
209-40.33	CATCH BASIN PROTECTION (TYPE D)	EACH	12	550.00	6600.00
209-40.41	CATCH BASIN FILTER ASSEMBLY(TYPE 1)	EACH	1	825.00	825.00
209-40.42	CATCH BASIN FILTER ASSEMBLY(TYPE 2)	EACH	10	1100.00	11,000.00
209-40.43	CATCH BASIN FILTER ASSEMBLY(TYPE 3)	EACH	3	1375.00	4125.00

209-40.44	CATCH BASIN FILTER ASSEMBLY(TYPE 4)	EACH	1	825.00	825.00
209-40.47	CATCH BASIN FILTER ASSEMBLY(TYPE 7)	EACH	4	1100.00	4400.00
303-01	MINERAL AGGREGATE, TYPE A BASE, GRADING D	TON	6156	55.00	338,580.00
307-01.21	ASP. CONC. MIX(PG70-22) (BPMB-HM) GR. A-S	TON	378	182.00	68,796.00
307-02.01	ASPHALT CONCRETE MIX (PG70-22) (BPMB-HM) GRADING A	TON	1913	182.00	348,166.00
307-02.08	ASPHALT CONCRETE MIX (PG70-22) (BPMB-HM) GRADING B-M2	TON	1285	185.00	237,725.00
402-01	BITUMINOUS MATERIAL FOR PRIME COAT (PC)	TON	13	1200.00	15,600.00
402-02	AGGREGATE FOR COVER MATERIAL (PC)	TON	46	75.00	3450.00
403-01	BITUMINOUS MATERIAL FOR TACK COAT (TC)	TON	16	1200.00	19,200.00
407-20.05	SAW CUTTING ASPHALT PAVEMENT	L.F.	4011	13.00	52,143.00
411-02.10	ACS MIX (PG70-22) GRADING D	TON	1734	210.00	364,140.00
411-12.01	SCORING SHOULDERS (CONTINUOUS) (16 IN WIDTH)	L.M.	0.2	55,000.00	11,000.00
415-01.01	COLD PLANING BITUMINOUS PAVEMENT	TON	1506	46.00	69,276.00
607-03.02	18" CONCRETE PIPE CULVERT (CLASS III)	L.F.	481	190.00	91,390.00
607-05.02	24" CONCRETE PIPE CULVERT (CLASS III)	L.F.	573	250.00	143,250.00
611-01.02	MANHOLES, > 4' - 8' DEPTH	EACH	3	11,500.00	34,500.00
611-07.01	CLASS A CONCRETE (PIPE ENDWALLS)	C.Y.	2	2200.00	4400.00
611-07.02	STEEL BAR REINFORCEMENT (PIPE ENDWALLS)	LB.	70	6.00	420.00
611-07.57	24IN ENDWALL (CROSS DRAIN) 3:1	EACH	1	5000.00	5000.00
611-09.02	REWORK CATCHBASIN	EACH	1	1625.00	1625.00
611-12.02	CATCH BASINS, TYPE 12, > 4' - 8' DEPTH	EACH	1	6600.00	6600.00
611-25.02	CATCH BASINS, TYPE 25, > 4' - 8' DEPTH	EACH	8	6600.00	52,800.00
611-26.02	CATCH BASINS, TYPE 26, > 4' - 8' DEPTH	EACH	4	7150.00	28,600.00
611-42.01	CATCH BASINS, TYPE 42, 0' - 4' DEPTH	EACH	3	6000.00	18,000.00
701-01.01	CONCRETE SIDEWALK (4")	S.F.	155	30.00	4650.00

702-03	CONCRETE COMBINED CURB & GUTTER	C.Y.	121	585.00	70,785.00
709-05.05	MACHINED RIP-RAP (CLASS A-3)	TON	151	85.00	12,835.00
710-02	AGGREGATE UNDERDRAINS (WITH PIPE)	L.F.	1545	16.00	24,720.00
710-05	LATERAL UNDERDRAIN	L.F.	104	15.70	1632.80
710-06.15	LATERAL UNDERDRAIN ENDWALL (6:1)	EACH	5	2800.00	14,000.00
712-01	TRAFFIC CONTROL	LS	1	100,000.00	100,000.00
712-02.02	INTERCONNECTED PORTABLE BARRIER RAIL	L.F.	5157	55.00	283,635.00
712-02.60	TEMPORARY WORK ZONE CRASH CUSHION (MASH TL-3)	EACH	4	10,000.00	40,000.00
712-04.01	FLEXIBLE DRUMS (CHANNELIZING)	EACH	215	50.00	10,750.00
712-04.50	BARRIER RAIL DELINEATOR	EACH	258	15.00	3870.00
712-05.03	WARNING LIGHTS (TYPE C)	EACH	55	20.00	1100.00
712-06	SIGNS (CONSTRUCTION)	S.F.	1284	8.00	10,272.00
712-07.03	TEMPORARY BARRICADES (TYPE III)	L.F.	70	20.00	1400.00
712-08.03	ARROW BOARD (TYPE C)	EACH	5	2000.00	10,000.00
712-09.02	REMOVABLE PAVEMENT MARKING (8" BARRIER LINE)	L.F.	2567	5.00	12,835.00
713-11.01	"U" SECTION STEEL POSTS	LB.	34	8.00	272.00
713-13.03	FLAT SHEET ALUMINUM SIGNS (0.100" THICK)	S.F.	9	20.00	180.00
713-15	REMOVAL OF SIGNS, POSTS AND FOOTINGS	LS	1	1000.00	1000.00
713-15.02	REMOVAL & RELOCATION OF SIGN & SUPPORT	EACH	1	125.00	125.00
713-16.01	CHANGEABLE MESSAGE SIGN UNIT	EACH	2	10,650.00	21,300.00
713-16.50	SIGN (STREET NAME SIGN - REMOVE & RELOCATION)	EACH	4	RNH 600.00	2400.00 RNH
716-01.21	SNOWPLOWABLE RAISED PAVEMENT MARKERS (BI-DIR)(1 COLOR)	EACH	80	50.00	4000.00
716-01.23	SNOWPLOWABLE RAISED PAVEMENT MARKERS (BI-DIR)(2 COLOR)	EACH	221	50.00	11,050.00
716-01.30	REMOVAL OF SNOWPLOWABLE REFLECTIVE MARKER	EACH	174	16.00	2784.00
716-02.04	PLASTIC PAVEMENT MARKING (CHANNELIZATION STRIPING)	S.Y.	165	40.00	6600.00

716-02.05	PLASTIC PAVEMENT MARKING (STOP LINE)	L.F.	266	25.00	6650.00
716-02.06	PLASTIC PAVEMENT MARKING (TURN LANE ARROW)	EACH	39	250.00	9750.00
716-02.08	PLASTIC PAVEMENT MARKING (8" DOTTED LINE)	L.F.	622	4.00	2488.00
716-02.12	PLASTIC PAVEMENT MARKING (8" LINE)	L.M.	1.2	10,000.00	12,000.00
716-03.01	PLASTIC WORD PAVEMENT MARKING (ONLY)	EACH	6	450.00	2700.00
716-04.04	PLASTIC PAVEMENT MARKING (TRANSVERSE SHOULDER)	L.F.	68	15.00	1020.00
716-05.04	PAINTED PAVEMENT MARKINGS (CHANNELIZATION STRIPING)	S.Y.	72	20.00	1440.00
716-05.20	PAINTED PAVEMENT MARKING (6" LINE)	L.M.	0.2	5000.00	1000.00
716-05.49	PAINTED PAVEMENT MARKINGS (8" LINE)	L.M.	2.9	6000.00	17,400.00
716-08.02	REMOVAL OF PAVEMENT MARKING (8" BARRIER LINE)	L.F.	13700	1.75	23,975.00
716-08.04	REMOVAL OF PAVEMENT MARKING (CHANNELIZATION STRIPING)	S.Y.	81	12.00	972.00
716-08.20	REMOVAL OF PAVEMENT MARKING (LINE)	L.M.	0.2	7000.00	1400.00
716-12.02	ENHANCED FLATLINE THERMO PVMT MRKNG (6" LINE)	L.M.	2.6	8500.00	22,100.00
717-01	MOBILIZATION	LS	1	RWH 75,000.00	RWH 75000.00
730-01.01	REMOVE & RELOCATE EXISTING TRAFFIC SIGNAL EQUIPMENT	EACH	1	1500.00	1500.00
730-01.02	REMOVAL OF SIGNAL EQUIPMENT	EACH	1	3500.00	3500.00
730-02.03	SIGNAL HEAD ASSEMBLY (130 A3 WITH BACKPLATE)	EACH	8	1700.00	13,600.00
730-02.09	SIGNAL HEAD ASSEMBLY (130 WITH BACKPLATE)	EACH	7	1600.00	11,200.00
730-02.17	SIGNAL HEAD ASSEMBLY (150 A2H WITH BACKPLATE)	EACH	2	2100.00	4200.00
730-03.21	INSTALL PULL BOX (TYPE B)	EACH	5	1100.00	5500.00
730-05.01	ELECTRICAL SERVICE CONNECTION	EACH	1	7500.00	7500.00
730-08.02	SIGNAL CABLE - 5 CONDUCTOR	L.F.	1170	2.50	2925.00
730-08.03	SIGNAL CABLE - 7 CONDUCTOR	L.F.	1600	2.75	4400.00
730-12.23	CONDUIT 2" DIAMETER (DIRECTIONAL BORE)	L.F.	920	78.00	71,760.00
730-12.26	CONDUIT 2" DIAMETER (PVC SCHEDULE 80)	L.F.	270	25.00	6750.00

730-13.13	VEHICLE DETECTOR (RADAR-ADVANCE)	EACH	3	12,640.00	37,920.00
730-13.15	VEHICLE DETECTOR (TWO 360-DEGREE CAMERA)	EACH	1	76,200.00	76,200.00
730-15.32	CABINET(EIGHT PHASE BASE MOUNTED)	EACH	1	25,260.00	25,260.00
730-25.13	CANTILEVER SIGNAL SUPPORT (1 ARM @ 65')	EACH	1	42,000.00	42,000.00
730-25.15	CANTILEVER SIGNAL SUPPORT (1 ARM @ 75')	EACH	1	48,000.00	48,000.00
730-25.16	CANTILEVER SIGNAL SUPPORT (1 ARM @ 80')	EACH	1	59,500.00	59,500.00
730-25.17	CANTILEVER SIGNAL SUPPORT (1 ARM @ 85')	EACH	2	60,000.00	120,000.00
730-25.18	CANTILEVER SIGNAL SUPPORT (1 ARM @ 90')	EACH	1	61,000.00	61,000.00
801-01.07	TEMPORARY SEEDING (WITH MULCH)	UNIT	170	35.00	5950.00
801-02.08	TEMPORARY SEEDING (WITHOUT MULCH)	UNIT	5	110.00	550.00
801-03	WATER (SEEDING & SODDING)	M.G.	100	110.00	1100.00
803-01	SODDING (NEW SOD)	S.Y.	6444	RNH 7.50	48,330.00 RNH
805-12.01	EROSION CONTROL BLANKET (TYPE I)	S.Y.	500	3.00	1500.00

GRAND TOTAL BID = $ 3,988,046.80

GRAND TOTAL AMOUNT IN WORDS Three Million Nine Hundred Eighty Eight Thousand Forty Six and 80/100 Dollars

ACKNOWLEDGE EACH RECEIPT OF ADDENDUM BY INITIALING

ADDENUM 1 - RNH

ADDENUM 2 - _____

ADDENUM 3 - _____

Sessions Paving Company
by Robert N. Hutcheson
President

DO NOT UNBIND

PROPOSAL CERTIFICATION

The undersigned, being first duly sworn, certifies on behalf of the bidder that it has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Proposal or Contract. This is an official document that is required or authorized by law to be made under oath and is presented in an official proceeding. A person who makes a false statement in this certification is subject to the penalties of perjury.

The undersigned further certifies that said bidder is not under the control of any person, firm, partnership, or corporation, which has or exercises any control of any other person, firm, partnership, or corporation, which is submitting a bid on this Contract.

Seasians Paving Company
Bidder (1)

By: Robert N. Hutcheson

Robert N. Hutcheson President
Printed Name and Title

Sworn to and subscribed before me

this 17th day of July, 2025

Jean M. Starkey
Notary Public

JEAN M. STARKEY
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON

My commission expires January 22, 2029

(Seal)

_____
Bidder (2)

By: _____

_____
Printed Name and Title

Sworn to and subscribed before me

this _____ day of _____, _____

_____
Notary Public

My commission expires _____

(Seal)

TDOT Department of Transportation

Local Government Guidelines Form 8-5
March 9, 2018

DBE AWARD INFORMATION FOR CONTRACTORS AND CONSULTANTS ON LOCALLY LET FEDERAL AID CONTRACTS

County: Rutherford

Contract Award Amount: 3,988,046.80

Federal Dollars in Contract: _____

Contract Award Date: _____

Name of Prime Contractor: Sessions Paving Company

Proposed DBE Goal or None: 7 % or ☐ None

PIN: 127985.00

Federal Project Number: CM-266(30)

State Project Number: 75LPLM-F3-083

*This form must be resubmitted to Local.Programs@tn.gov if the DBEs change on the project.

NAMES OF SUBCONTRACTORS	ETHNICITY**	GENDER	SUBCONTRACT AMOUNT
L&G Construction Co., Inc.			
DBE Certified Work Type to be performed: Clearing and Grubbing, Excavation Etc. ☐ 2nd Tier	FBE	Female	$ 339,890.50
DBE Certified Work Type to be performed: _____ ☐ 2nd Tier			$
DBE Certified Work Type to be performed: _____ ☐ 2nd Tier			$
DBE Certified Work Type to be performed: _____ ☐ 2nd Tier			$
DBE Certified Work Type to be performed: _____ ☐ 2nd Tier			$
		TOTAL DBE COMMITMENT: 8.5%	$ 339,890.50

SUBMITTED BY: Sessions Paving Company Robert A. Hutcheson President DATE: 7/17/2025

**Ethnicity= Black American (BA), Hispanic American (HA), Native American (NA), Asian Indian American (AIA), Asian-Pacific American (APA), Non-Minority Women (FBE), Other (OT)

201 E. Main St., STE 100, Murfreesboro, TN 37130 (615) 278-1500 hmbpe.com

ADDENDUM NO. 1

ISSUED: **July 15, 2025**

RE: **PIN 127985.00 Sam Ridley Parkway (SR-266) Intersection at Old Nashville Highway L.M. 1.5 in Smyrna**

FROM: **Town of Smyrna**
315 S. Lowry St.
Smyrna, TN 37167

TO: **Planholders**

This addendum forms a part of the Contract Documents and modifies the original Bidding Document distributed on June 10, 2025, prepared by HMB Professional Engineers, LLC to the same extent as all other documents. This addendum is issued to make certain revisions, clarifications, and/or alterations to the Plans, Specifications, and/or Contract Documents for the Project. We have been made aware of the questions below. The answers are listed in red. Please acknowledge receipt of this Addendum by including it in the submitted bid documents.

1. **The plans have a furnish and install topsoil item, but it looks like we will be stripping some. How will we be paid for the redistribution of topsoil that's already on site?**
    a. **The striped topsoil will need to be stockpiled and then used under 203-07. The initial stripping of topsoil will be paid under 203-01: Road & Drainage Excavation (Unclassified).**
2. **Please confirm the contractor must complete one phase before moving onto the next phase.**
    a. **If the contractor can keep traffic operating, the Town approves with more than one phase at a time.**
3. **If a lane closure is complete using barrier rail, is the 9 AM to 3 PM work window still enforced?**
    a. **If it is a complete closure, the Town approves removing the 9 to 3 window.**
4. **If the contractor has barrier rail set and traffic is reduced to one lane, can the contractor work during normal business hours?**
    a. **Yes**
5. **The plans show temporary asphalt and mineral aggregate for traffic control. How will the removal of these items be paid?**
    a. **203-01 Road & Drainage Excavation (Unclassified)**
6. **Can you confirm that only asphalt pavement removal is measured and paid for in the roadway excavation, and that all sidewalk and concrete will be measured and paid for under removal of rigid pavement?**
    a. **Yes**

Received
Sessions Paving Company
by Robert A. Hutcheson
President

DO NOT UNBIND

***NOTE: The signature and information for Bidder (2) is to be provided when there is a joint venture.**

TOWN OF SMYRNA, TENNESSEE

PROPOSAL BOND

CONTRACT NO. 127985

Principal: Sessions Paving Company
Print Name of Principal

Surety: Berkley Insurance Company
Print Name of Surety

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety above named, are held and firmly bound unto the TOWN OF SMYRNA in the full and just sum of five percent (5%) of the total amount bid by the Principal for the project stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

NOW, THEREFORE, the condition of this obligation is: the Principal shall not withdraw its bid within sixty (60) days after the opening of the bids, or within such other time period as may be provided in the Proposal, and if the TOWN OF SMYRNA shall award a Contract to the Principal, the Principal shall, within ten (10) days after written notice of the award is received by him, fully execute a Contract on the basis of the terms, conditions and unit prices set forth in his Proposal or bid and provide bonds with good and sufficient surety, as required for the faithful performance of the Contract and for the protection of all persons supplying labor, material, and equipment for the prosecution of the work. In the event the Principal withdraws its bid after bids are opened, or after award of the Contract has been made fails to execute such the Contract and/or such additional documents as may be required and to provide the required bonds within the time period specified above, then the amount of the Proposal Bond shall be immediately paid to the TOWN OF SMYRNA, not as a penalty, but as agreed upon liquidated damages.

DO NOT UNBIND

IN WITNESS WHEREOF, the Principal has caused these presents to be signed by a duly authorized official and the Surety has caused these presents to be duly signed and sealed by an authorized agent or attorney-in-fact.

Sessions Paving Company	Berkley Insurance Company
Principal (1)	**Surety (1)**
By: Robert N. Hutcheson	By: Jo A Warpool
	General Agent or Attorney-in-Fact
	Jo A. Warpool, Attorney-in-Fact
Robert N. Hutcheson, President	07/17/2025
Print Name and Title	**Date**
July 17, 2025	
Date	**(Seal)**
Principal (2)	**Surety (2)**
By:	By:
	General Agent or Attorney-in-Fact
Print Name and Title	**Date**
Date	**(Seal)**

***NOTE: The signature and information for Principal(2) and Surety(2) is to be provided when there is a joint venture.**

No. BI-463g-el

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: ***William R. Carpenter; Kathryn M. Byus; Vickie Harvey; Jo A. Warpool; Branden Miller; or Hunter Wells of Arthur J. Gallagher Risk Management Services, LLC of Brentwood, TN*** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Fifty Million and 00/100 U.S. Dollars (U.S.$50,000,000.00),** to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 23rd day of March, 2023.

Attest:

By _____
Ira S. Lederman
Executive Vice President & Secretary

Berkley Insurance Company

By _____
Jeffrey M. Hafter
Senior Vice President

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 23rd day of March, 2023, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C RUNDBAKEN
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES
APRIL 30, 2024

_____
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 17th day of July, 2025.

_____
Vincent P. Forte

CONTRACTOR DRUG-FREE WORKPLACE AFFIDAVIT

STATE OF TENNESSEE

COUNTY OF DAVIDSON

1. Now comes the Affiant, who being duly sworn, deposes and says:

2. He/she is the principal officer for SESSIONS PAVING COMPANY
(Name and Address of Bidding Entity)

P.O. Box 90266 (6535 Robertson Avenue) Nashville, TN 37209

3. That the bidding entity has submitted a bid to Town of Smyrna, TN
(Owner)

for the construction of Sam Ridley Parkway (SR-266) Intersection at Old Nashville Highway L.M.1.5 in Smyrna PIN: 127985.00
(Name of Project)

4. That the bidding entity employs no less than five (5) employees.

5. That the Affiant certifies that the bidding entity has in effect, at the time of submission of its bid to perform the construction referred to above, a drug-free workplace program that complies with § 50-9-113, *Tennessee Code Annotated*.

6. That this affidavit is made on personal knowledge.

Further Affiant saith not.

Robert N. Hutcheson
AFFIANT President

STATE OF TENNESSEE

COUNTY OF DAVIDSON

Before me personally appeared Robert N. Hutcheson, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledges that such person executed the foregoing affidavit for the purposes therein contained.

Witness my hand and seal at office this 17th day of July, 20 25.

Jean M. Starkey
Notary Public

My commission expires January 22, 2029

JEAN M. STARKEY
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON

DO NOT UNBIND

***NOTE: The signature and information for Bidder (2) is to be provided when there is a joint venture.**

TOWN OF SMYRNA, TENNESSEE

PROPOSAL BOND

CONTRACT NO. 127985

Principal: _____
Print Name of Principal

Surety: _____
Print Name of Surety

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety above named, are held and firmly bound unto the TOWN OF SMYRNA in the full and just sum of five percent (5%) of the total amount bid by the Principal for the project stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

NOW, THEREFORE, the condition of this obligation is: the Principal shall not withdraw its bid within sixty (60) days after the opening of the bids, or within such other time period as may be provided in the Proposal, and if the TOWN OF SMYRNA shall award a Contract to the Principal, the Principal shall, within ten (10) days after written notice of the award is received by him, fully execute a Contract on the basis of the terms, conditions and unit prices set forth in his Proposal or bid and provide bonds with good and sufficient surety, as required for the faithful performance of the Contract and for the protection of all persons supplying labor, material, and equipment for the prosecution of the work. In the event the Principal withdraws its bid after bids are opened, or after award of the Contract has been made fails to execute such the Contract and/or such additional documents as may be required and to provide the required bonds within the time period specified above, then the amount of the Proposal Bond shall be immediately paid to the TOWN OF SMYRNA, not as a penalty, but as agreed upon liquidated damages.

DO NOT UNBIND

IN WITNESS WHEREOF, the Principal has caused these presents to be signed by a duly authorized official and the Surety has caused these presents to be duly signed and sealed by an authorized agent or attorney-in-fact.

Principal (1)	Surety (1)
By:	By:
	General Agent or Attorney-in-Fact
Print Name and Title	Date
Date	(Seal)

Principal (2)	Surety (2)
By:	By:
	General Agent or Attorney-in-Fact
Print Name and Title	Date
Date	(Seal)

***NOTE: The signature and information for Principal(2) and Surety(2) is to be provided when there is a joint venture.**

DO NOT UNBIND

TOWN OF SMYRNA, TENNESSEE

PROPOSAL GUARANTEE

CONTRACT NO. 127985

Bidder: _____

Print Name of Bidder

KNOW ALL MEN BY THESE PRESENTS, that the above-named Bidder has tendered the attached cashier's or certified check in an amount equal to five percent (5%) of the total amount it bid for the project stated above, payable to the TOWN OF SMYRNA, to be held pending the fulfillment of the following obligation conditions.

NOW, THEREFORE, the condition of this obligation is: the Bidder shall not withdraw its bid within sixty (60) days after the opening of the bids, or within such other time period as may be provided in the Proposal, and if the TOWN OF SMYRNA shall award a Contract to the Bidder, the Bidder shall, within ten (10) days after it receives written notice of the award, fully execute a Contract on the basis of the terms, conditions and unit prices set forth in its Proposal or bid and provide bonds with good and sufficient surety, as required for the faithful performance of the Contract and for the protection of all persons supplying labor, material, and equipment for the prosecution of the work. In the event the Bidder withdraws its bid after bids are opened, or after award of the Contract has been made fails to execute such the Contract and/or such additional documents as may be required and to provide the required bonds within the time period specified above, then the TOWN OF SMYRNA shall cash the attached check and retain the funds, not as a penalty, but as agreed upon liquidated damages.

IN WITNESS WHEREOF, the Bidder has caused these presents to be signed by a duly authorized official.

Bidder (1)	Bidder (2)*
By: _____	By: _____
Print Name and Title	Print Name and Title
Date	Date

***NOTE: The signature and information for Bidder(2) is to be provided when there is a joint venture.**

DO NOT UNBIND

TOWN OF SMYRNA, TENNESSEE

CONTRACT NO. 127985

This agreement is made and executed in three (3) originals, between the TOWN OF SMYRNA, and _____ hereinafter referred to as the "Contractor."

WITNESSETH

The TOWN OF SMYRNA did advertise for, receive and accept a bid from the Contractor for work on the above identified contract.

In consideration of the agreements herein contained, to be performed by the parties hereto and of the payments hereafter agreed to be made, it is mutually agreed by both parties that:

1. The contract between the parties consists of the following "Contract Documents" all of which constitute one instrument:
   (a) the Instructions to Bidders
   (b) the Proposal
   (c) all conditions and terms of this Contract form
   (d) the Contract Payment & Performance Bond and/or Letter of Credit, where applicable
   (e) the most current version of the *Tennessee Department of Transportation Standard Specifications for Road and Bridge* Construction (herein referred to as *TDOT Standard Specifications)*
   (f) Supplemental Specifications
   (g) Revisions and Additions
   (h) Special Provisions
   (i) Addenda
   (j) The most current version of the TDOT Standard Drawings
   (k) The Contract Plans,
   (l) The Work Order
   (m) Construction Changes
   (n) Supplemental Agreements

   All of the provisions contained in the listed Contract Documents are incorporated herein by reference with the same force and effect as though set out in full.

2. The Contract Documents are intended to be complementary and to describe and provide for a complete work. Requirements in one of these are as binding as if occurring in all of them. In case of discrepancy, Supplemental Specifications will govern over the TDOT Standard Specifications; the TDOT Standard Specifications will govern over the local government standard specifications; the Contract Plans will govern over both Supplemental and Standard Specifications, and Special Provisions will govern over both Plans and Specifications. In interpreting Plans, calculated dimensions will govern over scaled dimensions. Contract Plans, typical cross sections and approved working drawings will govern over Standard Drawings.

3. The Contractor agrees to furnish all materials, equipment, machinery, tools and labor and to perform the work required to complete the project in a thorough and

workmanlike manner, to the satisfaction of the appropriate official of the TOWN OF SMYRNA.

4. The TOWN OF SMYRNA agrees to pay to the Contractor such unit prices for the work actually done as are set out in the accompanying proposal, in the manner provided for in the TDOT Standard Specifications, Supplemental Specifications and applicable Special Provisions.

5. The Contractor shall, at all times, observe and comply with all applicable federal, state and local laws, ordinances and regulations and shall indemnify and hold harmless the TOWN OF SMYRNA and all of its officers, agents and servants against any claim of liability or assessment of fines or penalties arising from or based upon the Contractor's and/or its employees' violations of any such law ordinance or regulation. The Contractor shall maintain documentation for all charges against the TOWN OF SMYRNA under this Contract. The books, records and documents of the Contractor insofar as they relate to the work performed or money received under this contract shall be maintained for a period of seven (7) 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 TOWN OF SMYRNA, the State, the Comptroller of the Treasury, the Tennessee Department of Transportation, or their duly appointed representatives.

6. The Contractor shall be responsible for any and all injury or damage to persons or to property arising from the prosecution of the work and due to any act, omission, neglect or misconduct in its manner or method of prosecuting the work or due to its non-execution of the work or due to defective work or materials. The Contractor shall provide proof of adequate and appropriate general liability insurance providing liability coverage in an amount not less than $1 million dollars per occurrence and $300,000 per claimant, naming the TOWN OF SMYRNA as an additional insured.

7. The Contractor shall indemnify and hold harmless the TOWN OF SMYRNA and all of its officers, agents and employees from all suits, actions or claims of any character arising from the Contractor's acts or omissions in the prosecution of the work, use of unacceptable materials in constructing the work, infringement of patent, trademark or copyright, or claims for Workers' Compensation. If any such suit, action or claim is filed, the TOWN OF SMYRNA may retain from the monies due to the Contractor under this Contract a sum deemed sufficient by the TOWN OF SMYRNA to protect the TOWN OF SMYRNA from loss therefrom. Upon resolution of the suit, action or claim, any remaining retained funds will be released.

8. Upon execution of this Contract, the Contractor shall be prepared to begin the work to be performed under the Contract but will not proceed until it has received official "Notice to Proceed". This official notice will stipulate the date upon which it is expected that the Contractor will begin his work, and from which date the working days tabulated against its time limit will begin. All other requirements in regard to the beginning of construction set forth in the Proposal and Special Provisions will date from the official notice.

IN WITNESS WHEREOF, the parties hereto have cause this Contract to be signed and executed by their respective authorized agents or officials.

Contractor 1	Contractor 2*
By:	By:
Print Name and Title	Print Name and Title
Date	Date

TOWN OF SMYRNA, TENNESSEE

This Contract is accepted this _____ day of _____,

and is effective on the _____ day of _____,

_____
[CITY/COUNTY Official]

Approved:

_____
TOWN OF SMYRNA Attorney

***NOTE: The signature and information for Contractor 2 is to be provided when there is a joint venture.**

DO NOT UNBIND

CONTRACT PAYMENT AND PERFORMANCE BOND

Note: to be filled out post-award

CONTRACT NO. 127985

Be it known that _____, as Principal, and _____, as Surety(ies), all authorized to do business in the State of Tennessee, hereby bind themselves to the TOWN OF SMYRNA, and other potential claimants, for all obligations incurred by the Principal under its contract with TOWN OF SMYRNA, for the construction of the above identified contract; in the full contract amount of _____ _____ ($_____).

The obligations of the Principal and Surety(ies) under these payment and performance bonds shall continue in full force and effect until all materials, equipment and labor have been provided AND all requirements contained in the contract, plans and specifications have been completed in a timely, thorough and workmanlike manner. The parties agree that these bonds are statutory in nature and are governed by the provisions contained in Title 12, chapter 4 and Title 54, chapter 5 of the Tennessee Code Annotated relating to bonds required of contractors and that those provisions constitute a part of this bond.

By this instrument, the Principal and Surety(ies) specifically bind themselves, their heirs, successors, and assigns, *in solido*, under the following bonds:

Payment Bond. To the TOWN OF SMYRNA and all "Claimants," as contemplated by T.C.A. Title 54, chapter 5, in the full contract amount of

_____ _____ ($_____), in order to secure the payment in full of all timely claims under the project.

Performance Bond. To the TOWN OF SMYRNA in the full contract amount of _____ _____ ($_____), in order to secure the full and faithful performance and timely completion of the project according to its plans and specifications, inclusive of overpayments to the contractor and liquidated damages as assessed.

Upon receipt of notice that the Principal is in default under the contract, the Surety(ies) shall undertake to complete performance, without regard to cost. If the Surety(ies) fail or refuse to complete performance of the contract, the TOWN OF SMYRNA may then proceed with the work in any lawful manner that it may elect until it is finally completed. When the work is thus finally completed, the total cost of the same will be computed. All costs and charges incurred by the TOWN OF SMYRNA in completing the Work will be deducted from any monies due or which may become due to the Principal. If the total costs of completion exceeds the sum which would have been payable under the Contract, then the Principal and the Surety(ies), *in solido*, shall be liable for and shall pay to the TOWN OF SMYRNA the amount of such excess.

In witness whereof we have signed this instrument as dated.

Principal/Contractor 1:

By: _____ Date: _____

_____
Printed Name and Title

(For Joint Venture)
Principal/Contractor 2:

By: _____ Date: _____

_____
Printed Name and Title

Surety 1:	**Surety 2:**
By:	By:
Attorney-in-Fact	Attorney-in-Fact
Printed Name	Printed Name
Agency Name	Agency Name
Street Address	Street Address
City/State/Zip	City/State/Zip

(Seal) (Seal)

DO NOT UNBIND

Subsequent correspondence/communication from TOWN OF SMYRNA with respect to monthly progress reports and/or the contract bonds should be directed to:

For Surety 1:	**For Surety 2:**
Name	Name
Address	Address
City	City
State/Zip	State/Zip
Phone Number	Phone Number
Fax Number	Fax Number

Amendment Number: **2**

Agreement Number: **180136**

Project Identification Number: **127985.00**

Federal Project Number: **CM-266(30)**

State Project Number: **75LPLM-F3-083**

THIS AGREEMENT AMENDMENT is made and entered into this 15th day of October, 20 24 by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the TOWN OF SMYRNA (hereinafter called the "Agency"), for the purpose of providing an understanding among the parties of their respective obligations related to the management of the project described as:

SR-266 (Sam Ridley Parkway), Intersection at Old Nashville Highway, LM 1.5 in Smyrna

1. The language of Agreement # 180136 A1 dated December 26, 2023 Exhibit A is hereby deleted in its entirety and replaced with the attached Exhibit A for Amendment 2 .

2. The language of Agreement # 180136 A1 dated December 26, 2023 Section B.2 a) is hereby deleted in its entirety.

3. The following is added as B.2 a) .

   B.2 a) The Agency agrees to complete the herein assigned phases of the Project on or before **December 31, 2026**. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

All provisions of the original contract not expressly amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

TOWN OF SMYRNA

Signature: Mary Esther Reed
Mary Esther Reed (Oct 10, 2024 11:25 CDT)

Email: me.reed@townofsmyrna.org

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

B

Signature:

Email: TDOT.COMMISSIONER'S.Office@tn.gov

APPROVED AS TO
FORM AND LEGALITY

Signature: Jeffrey L. Peach
Jeffrey L. Peach (Oct 10, 2024 11:26 CDT)

Email: jeff.peach@townofsmyrna.org

APPROVED AS TO
FORM AND LEGALITY

B

Signature: Leslie South
Leslie South (Oct 14, 2024 14:33 CDT)

Email: TDOT.Legal.Attorneys@tn.gov

Signature: Daniel Pallme

Email: Daniel.Pallme@tn.gov

EXHIBIT "A" for AMENDMENT **2**

Agreement #: 180136
Project Identification #: 127985.00
Federal Project #: CM-266(30)
State Project #: 75LPLM-F3-083

✓

Project Description: SR-266 (Sam Ridley Parkway), Intersection at Old Nashville Highway, LM 1.5 in Smyrna: This project involves the construction of turn lanes and the installation of short range detection equipment at the intersection of Sam Ridley Parkway (SR-266) and Old Nashville Highway.

Change in Cost: Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

Type of Work: Turn Lanes

Phase	Funding Source	Fed %	State %	Local %	Estimated Cost
PE-NEPA	CMAQ	80	0	20	$111,534.00
PE-DESIGN	CMAQ	80	0	20	$94,000.00
RIGHT-OF-WAY	CMAQ	80	0	20	$95,625.00
CONSTRUCTION	CMAQ	80	0	20	$2,032,846.00
CONSTRUCTION	LOCAL	0	0	100	$1,929,636.00
CEI	CMAQ	80	0	20	$396,248.20
TDOT ES	CMAQ	80	0	20	$39,624.80

Ineligible Cost: One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said state or federal funds is ruled ineligible at any time by the Federal Highway Administration.

Legislative Authority: CMAQ: 23 U.S.C.A., Section 149, Congestion Mitigation and Air Quality Improvement Program funds allocated or subject to allocation to the Agency.

TDOT Engineering Services (TDOT ES): In order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to ensure that TDOT's expenses associated with the project during construction are covered.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 3.
Department: Public Works
Date: August 28, 2025

Subject:
Approval of the terms of, and authorization for the Mayor to execute Amendment No. 2 with Energy Land & Infrastructure, LLC for Professional Services for Phase 2 design of the Weakley Lane Improvements project.

Fiscal Impact:
Total cost for Amendment No. 2 $ 179,657.00

Contract Type:
Contract Change Order /Amendment

Contract Term (if applicable):

Background:
Original Contract was for Functional Design Drawings for the entire project from Swan Drive to the Town Limits
Contract Amendment No. 1 was for Design Plans for Phase 1 from Swan Drive to 8th Ave
Contract Amendment No. 2 is for Design Plans for Phase 2 from 8th Ave to Lakeside Drive.

Summary:

Original Contract	$ 172,500.00
Contract Amendment No. 1	$ 165,849.00
Contract Amendment No. 2	$179,657.00
Total Contract Amount	$518,006.00

Recommended Council Action:
Staff recommends approval of this contract amendment proposal.

Attachments:
1. Weakley Lane Amendment No. 2_Phase 2 Design
2. Weakley Lane ELI Amendent No.1_Phase I Design Executed
3. Weakley Lane - ELI Original contract (Executed)

Energy Land & Infrastructure

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. **2**

Owner: **Town of Smyrna, Tennessee**
Engineer: **Energy Land & Infrastructure, LLC**
Project: **Weakley Lane Widening**
Effective Date of Owner-Engineer Agreement: **September 12, 2023**

Nature of Amendment: (Check those that apply)
☒ Additional Services to be performed by Engineer
☒ Modifications to services of Engineer
☐ Modifications to responsibilities of Owner
☒ Modifications of payment to Engineer
☒ Modifications to time(s) for rendering services
☐ Modifications to other terms and conditions of the Agreement

Description of Modifications:

The Agreement is amended to include roadway design, right-of-way and easement acquisition support, and bid phase services for Phase 2 of Weakley Lane Widening as defined by programming documents provided under the original agreement. Phase 1 extends from Swan Drive north approximately 0.50 miles, ending just north of 8th Avenue. Phase 2 continues northward approximately 0.69 miles, to just north of Lakeside Drive. Improvements include widening the roadway to three 11-ft lanes to allow for new left-turn lanes at the industrial properties, Huntley Industrial Drive, and Lakeside Drive. Phase 2 also includes pedestrian improvements at the intersection with Huntley Industrial Drive, improving the crosswalk and installing flashing warning lights for improved pedestrian visibility. New 4-ft shoulders will be constructed through Phase 2.

For the specific scope of Services, refer to EXHIBIT A: ENGINEER'S SCOPE OF SERVICES of this Amendment 2.

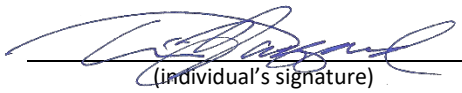
In addition, the agreement is modified to include Engineer's 2025 Standard Hourly Rates and Expenses Schedule in accordance with Exhibit J, Article 1, Paragraph 1.03 D, thereby replacing the Standard Hourly Rates and Reimbursable Expenses Schedule in Appendix 1 of Exhibit J of the Agreement.

The 2025 Standard Hourly Rates and Reimbursable Expenses Schedule is included as EXHIBIT B in this Amendment 2 to the Agreement.

Agreement Summary:		
Original agreement amount:	$ 172,500.00	
Net change for prior amendments:	$ 165,849.00	
This amendment amount:	$ 179,657.00	
Adjusted Agreement amount:	$ 518,006.00	
Change in time for services (days or date, as applicable):		12 months from amendment effective date

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Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. The Effective Date of the Amendment is _____.

Owner	Engineer
_____ (typed or printed name of organization)	_____ (typed or printed name of organization)
By: _____ (individual's signature)	By:  (individual's signature)
Date: _____ (date signed)	Date: July 29, 2025 (date signed)
Name: Mary Esther Reed (typed or printed)	Name: Timothy L. Haggard, PE, RLS (typed or printed)
Title: Mayor (typed or printed)	Title: Associate Vice President (typed or printed)

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Project Understanding

The work is generally described as roadway design, right-of-way and easement acquisition support, utility coordination & deconfliction, permitting, and bid phase services for Phase 2 of Weakley Lane Widening as defined by programming documents provided under the Agreement. Phase 2 extends from just north of 8th Avenue approximately 0.69 miles, to just north of Lakeside Drive. Improvements include widening the roadway to three 11-ft lanes to allow for new left-turn lanes at the industrial properties, Huntley Industrial Drive, and Lakeside Drive. Phase 2 also includes pedestrian improvements at the intersection with Huntley Industrial Drive, improving the crosswalk and installing flashing warning lights for improved pedestrian visibility. A new 4-ft shoulder will be constructed through Phase 2.

More specifically, the work will be subdivided into the following Scope Items:

Scope Item 1: Roadway Design Services

ELI will prepare Roadway Design Plans in accordance with TDOT's Roadway Design Guidelines and current Town of Smyrna roadway design standards. The Roadway Design Plans will be prepared to generally conform to TDOT's current MicroStation and ORD CAD standards and will be delivered in three phases including Preliminary Plans, Right-of-way Plans, and Construction Plans more particularly described as follows:

1.1 Preliminary Plans:

1.1.1 Preliminary Plans will consist of the following sheets:

- Title Sheet with Index
- Roadway Typical Sections
- Present Layout Sheets
- Proposed Layout Sheets
- Mainline/Sideroad Profiles
- Driveway Profiles
- Culvert Cross Sections
- Roadway Cross Sections

1.1.2 Preliminary Plans submittal and Review

ELI will submit Preliminary Plans (Electronic PDF Copy) to the Town for review and comment. ELI will meet with the Owner to discuss staff comments. Following this review meeting, ELI will revise the plans based on the comments received and direction from the review meeting. ELI will document the comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting.

1.1.3 Preliminary Engineer's Opinion of Probable Construction Costs

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ELI will prepare a limited opinion of the probable construction cost of the proposed improvements. Given broad variability in factors that impact construction cost, ELI can only provide limited information based on recent historical cost of similar facilities constructed in the project area. Opinions made on the basis of experience and judgment do not guarantee that proposals, bids or actual costs will not vary from their opinions of cost. ELI may apply contingency at an amount desired by the Owner to opinions for probable cost.

1.2 Right-of-Way Plans

1.2.1 Following acceptance of the Preliminary Plans, ELI will begin preparation of the Right-of-Way Plans which will include the following sheets:

- Title Sheet with Index
- Typical Roadway Sections
- Detail Sheets
- Right-of-Way Notes
- Property Map and Right-of-Way Acquisition Table
- Present Layout
- Right-of-Way Layout
- Proposed Layout
- Mainline/Sideroad Profiles
- Culvert Cross Section
- Driveway Profiles
- Drainage Map
- Erosion Prevention and Sediment Control Plans
- Roadway Cross Sections

1.2.2 Right-of-way Plans Submittal and Review

ELI will submit Right-of-Way Plans (Electronic PDF Copy) to the Owner for review and comment. ELI will meet with Town staff to discuss their comments. Following this review meeting, ELI will revise the plans based on the comments received and direction from the review meeting. ELI will document the comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting.

1.3 Construction Plans:

1.3.1 Following Owner concurrence and acceptance of the Right-of-Way Plans, ELI will begin preparation of the Construction Plans consisting of the following sheets:

- Title Sheet
- Index and Standard Drawings
- Estimated Roadway Quantities
- Roadway Typical Sections
- General Notes
- Special Notes

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- Environmental Notes
- Tabulated Quantities
- Detail Sheets
- Right-of-Way Notes, Utility Notes, and Utility Owners
- Property Map and Right-of-Way Acquisition Table
- Present Layout
- Right-of-Way Layout
- Proposed Layout
- Mainline/Sideroad Profiles
- Culvert Cross Section(s)
- Driveway Profiles
- Drainage Map
- Erosion Prevention and Sediment Control Plans
- Traffic Control Plans
- Signing and Pavement Marking Plans
- Roadway Cross Sections

1.3.2 Final Engineer's Opinion of Probable Construction Cost

ELI will prepare a limited opinion of the probable construction cost of the proposed improvements. Given broad variability in factors that impact construction cost, ELI can only provide limited information based on recent historical cost of similar facilities constructed in the project area. Opinions made on the basis of experience and judgment do not guarantee that proposals, bids or actual costs will not vary from their opinions of cost. ELI may apply contingency at an amount desired by the Owner to opinions for probable cost.

1.3.3 Construction Plans Submittal and Review

ELI will submit Right-of-Way Plans (Electronic PDF Copy) to the Owner for review and comment. ELI will meet with Town staff to discuss their comments. Following this review meeting, ELI will revise the plans based on the comments received and direction from the review meeting. ELI will document the comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting. The final Construction Plans will be signed and sealed by a State of Tennessee Licensed Professional Engineer.

Scope Item 2: Right-of-Way and Easement Acquisition Support

2.1 Right-of-Way and Easement Acquisition Staking

2.1.1 Staking of the proposed right-of-way and/or easement acquisition parcels will be provided as needed to assist with necessary right-of-way and/or easement acquisition.

2.2 Right-of-Way and Easement Acquisition Parcel Exhibits and Descriptions

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2.2.1 Right-of-way and Easement Acquisition Exhibits and Descriptions will be provided as needed to assist with necessary right-of-way and/or easement acquisition.

Scope Item 3: Utility Coordination and Deconfliction

3.1. Preliminary Utility Coordination

3.1.1. Early Notification

Upon receiving Project notice to proceed, ELI will provide a notification to the potentially affected utility owners along the project corridor. The notification to each utility owner will consist of a project map and a letter requesting that the utility company review the project map to determine if they own facilities within the project limits. The letter will request a written response from each utility.

3.1.2. Preliminary Plan Distribution

Upon completion of Preliminary Plans, ELI will distribute said plans to the identified utility owners within the project limits. The submittal to each utility owner will consist of an electronic set of plan drawings (PDF format) and a letter requesting that the utility company review the potential impacts of the proposed project on their existing facilities. The letter will request preliminary relocation plans from each utility and will also request that the utility company identify any private utility easements that fall within the project limits but are not shown on the Preliminary plans.

3.1.3. Utility Coordination Meeting

ELI will prepare for and host a utility coordination meeting as part of this task. Known impacted utility companies will be invited to attend a coordination meeting to discuss potential utility relocations within the project limits. ELI will document the discussions and decisions made during the meeting and distribute a copy to the meeting attendees. Utility Owners will be responsible for identifying utility conflicts within the project limits and the design and relocation of their facilities.

3.2. Final Utility Coordination

3.2.1. Right-of-Way Plan Distribution

Upon completion of Right-of-Way Plan preparation, ELI will distribute the approved Right-of-Way Plans to utility owners identified in task 3.1 above. The submittal to each utility owner will consist of an electronic set of plan drawings, information detailing any design changes made during Right-of-Way design, and a letter requesting that the utility company review the potential impacts of the proposed project on their facilities and prepare final utility relocation plans.

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3.2.2. Final Plans Review Meeting

During the Construction Plans final design phase, if there are any changes made to the proposed design plans that will impact final utility relocation plans, ELI will submit the revised plans to the utility owners. Via this task, utility companies will also be invited to attend the Construction Plans review meeting. **ELI will not perform any utility relocation design services as part of this task**. It is understood that each utility owner will design, provide plans for, and construct their respective utility relocations if required.

Scope Item 4: Environmental Permitting

4.1 Storm Water Pollution Prevention Plan (SWPPP) Preparation

ELI will prepare and submit the Storm Water Pollution Prevention Plan (SWPPP) permit documents required by TDEC for the land disturbance activities associated with this project. The SWPPP will consist of drawings and a technical narrative describing erosion and sediment control measures that should be implemented during construction to reduce the negative downstream impacts due to pollutant run-off related to construction activities.

ELI will submit the SWPPP document to TDEC for review. ELI will revise the SWPPP document in accordance with comments received from TDEC and will resubmit a final SWPPP document to TDEC for approval. The Town of Smyrna shall be responsible for all permitting and review fees associated with this task.

4.2 National Pollutant Discharge Elimination System (NPDES) Permit Application

Based on the assumed impact of the project improvements on the surrounding environment, it is assumed that an NPDES General Permit for Storm Water Discharges Associated with Construction Activity will be required for the project. ELI will prepare the NPDES General Permit application and will submit it to TDEC along with the approved SWPPP document for processing by TDEC.

Preparation of technical studies or applications for other project-specific environmental permits are not part of this task. If additional environmental permits are required by TDEC, USACE, or any other agency, those permits can be provided by ELI in accordance with the Additional Services clause of the Agreement.

Scope Item 5: Bid Phase Services

5.1. Proposal Contract (Bid Book) Preparation

ELI will prepare a proposal contract in accordance with TDOT and Town of Smyrna standards. ELI will prepare technical specifications for those items that are not covered by TDOT or Town of Smyrna specifications. The remainder of the technical specifications will be based upon TDOT's Standard Specifications for Road and

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Bridge Construction or will be documented in the construction plans. The proposal contract will contain the Request for Proposals, the contract documents, bid forms, specifications, required special provisions, and an 11" x 17" plan set. The proposal contract will be submitted to the Town of Smyrna for approval. Upon authorization from the Town, ELI will proceed with bidding the project and if requested will print and deliver 10 bound copies of the plans and Proposal Contract to the Town.

5.2. Bid Assistance

ELI will assist the Town with drafting the advertisement for bids and conduct one pre-bid meeting with potential bidders. ELI will be responsible for plans distribution during the bid phase. ELI will assist the Town with requests for information (RFI) that arise during the bidding process and issue statements of clarification or bid addenda as appropriate. ELI will conduct the bid opening and meet with Town of Smyrna staff following the bid opening to assist with bid review. In addition, ELI will tabulate the bids received and evaluate the compliance of the bids with the bidding documents. ELI will prepare a written summary of this tabulation and evaluation. ELI will submit the bid tabulation and other required documentation to the Town for review and approval to award the contract to the lowest responsive bidder.

ELI Scope Item 5 Deliverables:

- Draft Proposal Contract (one electronic copy in Adobe PDF format) to the Town
- Final Proposal Contract (one electronic copy in Adobe PDF format) to the Town
- Plans Package and Proposal Contract copies for bidders (ten bound copies)
- Responses to bidder questions (one electronic copy in Adobe PDF format)
- Bid tabulation and recommendation of lowest responsive bidder submittal to the Town (one electronic copy in Adobe PDF format)

Scope Item 6: Construction Engineering & Inspection Services

All Construction Administration, Construction Engineering, and Inspection Services are **excluded** from this Amendment 2 or the Agreement until such time the Owner chooses to issue an Amendment to the Agreement to include the performance of said services. Construction Engineering & Inspection Services can be added in accordance with the terms of the Agreement and approval and execution of a completed AMENDMENT TO OWNER-ENGINEER AGREEMENT included therein.

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A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Exhibit B and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

2. The Standard Hourly Rates apply only as specified in the Agreement and are subject to annual review and adjustment.

B. Reimbursable Expenses are subject to review and adjustment per the Agreement.

Professional Staff Rates

Senior Principal Engineer	$240
Program Manager/Principal Engineer	$225
Senior Project Manager	$225
Project Manager	$185
Assistant Project Manager	$165
Senior Engineer/Engineer V	$185
Engineer IV	$170
Engineer III	$145
Engineer II	$130
Engineer I	$120
Intern	$85
CAD Manager	$150
Senior CAD Designer	$130
CAD Designer I	$95
CAD Technician II	$95
CAD Technician I	$75

CEI Staff Rates

CEI Manager	$225
CEI Team Leader (Specialty) Sr./RPR.	$165
CEI Project Manager/RPR	$145
Sr Construction Inspector	$130
Construction Inspector	$120
Sr Construction Support Tech	$95
Construction Support Tech.	$85

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Survey Staff Rates

Director of Survey	$210
Survey Manager (Office Level)	$180
Senior R/PLS | Assistant Survey Manager	$160
R/PLS | Survey/SUE Team Leader	$155
Professional Land Surveyor (R/PLS)	$145
Survey /SUE Project Manager	$145
Lead Survey Technician	$125
Senior Survey Technician/Senior CAD Technician	$105
Survey Technician /CAD Technician	$98
Sr Survey/SUE Crew Chief	$105
Survey/SUE Crew Chief	$98
Sr Survey/SUE Technician	$85
Survey/SUE Technician	$75
Survey Crew (4-Person)	$315
Survey Crew (3-Person)	$240
Survey Crew (2-Person)	$175
Survey Crew (1-Person)	$155
UAS/UAV Photogrammetry Crew	$317
UAS/UAV LiDAR Crew	$317
Mobile Scan Crew	$270

Administrative Staff Rates

Senior Administrative Professional	$95
Administrative Professional	$65

Reimbursable Expenses

Mileage:	GSA Rate
Materials Markup:	Cost plus 10%
Outside Services, Subcontractors, Miscellaneous Expenses:	Cost plus 10%
Per Diem:	$195/day
ATV Plus Trailer:	$60/day

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Energy Land & Infrastructure

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. **1**

Owner: **Town of Smyrna, Tennessee**
Engineer: **Energy Land & Infrastructure, LLC**
Project: **Weakley Lane Widening**
Effective Date of Owner-Engineer Agreement: **September 12, 2023**

Nature of Amendment: (Check those that apply)	
☒	Additional Services to be performed by Engineer
☒	Modifications to services of Engineer
☐	Modifications to responsibilities of Owner
☒	Modifications of payment to Engineer
☒	Modifications to time(s) for rendering services
☐	Modifications to other terms and conditions of the Agreement

Description of Modifications:

The Agreement is amended to include roadway design, right-of-way and easement acquisition support, and bid phase services for Phase 1 of Weakley Lane Widening as defined by programming documents provided under the original agreement. Phase 1 extends from Swan Drive north approximately 0.50 miles, ending just north of 8th Avenue. Improvements include widening the roadway to three 11-ft lanes to allow for new left-turn lanes at Arnold Drive, Mitchell Drive, 9th Avenue, and 8th Avenue. Also, new sidewalk and curb and gutter will be constructed along the east side, connecting pedestrians from Swan Drive to the Smyrna Greenway at 9th Avenue to Beauregard Street. Phase 1 also includes pedestrian improvements at the intersection with 9th Avenue, adding a crosswalk and installing flashing warning lights for improved pedestrian visibility. On the west side and where sidewalk is not used on the east side, a new 4-ft shoulder will be constructed.

For the specific scope of Services, refer to EXHIBIT A: ENGINEER'S SCOPE OF SERVICES of this Amendment 1.

In addition, the agreement is modified to include Engineer's 2024 Standard Hourly Rates and Expenses Schedule in accordance with Exhibit J, Article 1, Paragraph 1.03 D, thereby replacing the Standard Hourly Rates and Reimbursable Expenses Schedule in Appendix 1 of Exhibit J of the Agreement.

The 2024 Standard Hourly Rates and Reimbursable Expenses Schedule is included as EXHBIT B in this Amendment 1 to the Agreement.

Agreement Summary:		
Original agreement amount:	$ 172,500.00	
Net change for prior amendments:	$ 0.00	
This amendment amount:	$ 165,849.00	
Adjusted Agreement amount:	$ 338,349.00	
Change in time for services (days or date, as applicable):		12 months from amendment effective date

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Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. The Effective Date of the Amendment is September 10, 2024.

Owner	Engineer
Town of Smyrna	Energy Land & Infrastructure, LLC
(typed or printed name of organization)	(typed or printed name of organization)
By: [signature]	By: DocuSigned by: [signature] 63918CE8FD3E4A9...
(individual's signature)	(individual's signature)
Date: 9/10/2024	Date: 9/11/2024
(date signed)	(date signed)
Name: Mary Esther Reed	Name: Timothy L. Haggard, PE, RLS
(typed or printed)	(typed or printed)
Title: Mayor	Title: Associate VP | Operations Manager
(typed or printed)	(typed or printed)

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Project Understanding

The work is generally described as roadway design, right-of-way and easement acquisition support, utility coordination & deconfliction, permitting, and bid phase services for Phase 1 of Weakley Lane Widening as defined by programming documents provided under the Agreement. Phase 1 extends from Swan Drive north approximately 0.50 miles, ending just north of 8th Avenue. Improvements include widening the roadway to three 11-ft lanes to allow for new left-turn lanes at Arnold Drive, Mitchell Drive, 9th Avenue, and 8th Avenue. Also, new sidewalk and curb and gutter will be constructed along the east side, connecting pedestrians from Swan Drive to the Smyrna Greenway at 9th Avenue to Beauregard Street. Phase 1 also includes pedestrian improvements at the intersection with 9th Avenue, adding a crosswalk and installing flashing warning lights for improved pedestrian visibility. On the west side and where sidewalk is not used on the east side, a new 4-ft shoulder will be constructed.

More specifically, the work will be subdivided into the following Scope Items:

Scope Item 1: Roadway Design Services

ELI will prepare Roadway Design Plans in accordance with TDOT's Roadway Design Guidelines and current Town of Smyrna roadway design standards. The Roadway Design Plans will be prepared to generally conform to TDOT's current MicroStation and ORD CAD standards and will be delivered in three phases including Preliminary Plans, Right-of-way Plans, and Construction Plans more particularly described as follows:

1.1 Preliminary Plans:

1.1.1 Preliminary Plans will consist of the following sheets:

- Title Sheet with Index
- Roadway Typical Sections
- Present Layout Sheets
- Proposed Layout Sheets
- Mainline/Sideroad Profiles
- Driveway Profiles
- Culvert Cross Sections
- Preliminary Signing and Marking
- Roadway Cross Sections

1.1.2 Preliminary Plans submittal and Review

ELI will submit Preliminary Plans (Electronic PDF Copy) to the Town for review and comment. ELI will meet with the Owner to discuss staff comments. Following this review meeting, ELI will revise the plans based on the comments received and direction from the review meeting. ELI will document the

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comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting.

1.1.3 Preliminary Engineer's Opinion of Probable Construction Costs

ELI will prepare a limited opinion of the probable construction cost of the proposed improvements. Given broad variability in factors that impact construction cost, ELI can only provide limited information based on recent historical cost of similar facilities constructed in the project area. Opinions made on the basis of experience and judgment do not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. ELI may apply contingency at an amount desired by the Owner to opinions for probable cost.

1.2 Right-of-Way Plans

1.2.1 Following acceptance of the Preliminary Plans, ELI will begin preparation of the the Right-of-Way Plans which will include the following sheets:

- Title Sheet
- Index with Standard Drawings
- Typical Roadway Sections
- Detail Sheets
- Right-of-Way Notes
- Property Map and Right-of-Way Acquisition Table
- Present Layout
- Right-of-Way Layout
- Proposed Layout
- Mainline/Sideroad Profiles
- Culvert Cross Section
- Driveway Profiles
- Drainage Map
- Erosion Prevention and Sediment Control Plans
- Traffic Control
- Signing and Marking
- Roadway Cross Sections

1.2.2 Right-of-way Plans Submittal and Review

ELI will submit Right-of-Way Plans (Electronic PDF Copy) to the Owner for review and comment. ELI will meet with Town staff to discuss their comments. Following this review meeting, ELI will revise the plans based on the comments received and direction from the review meeting. ELI will document the comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting.

1.3 Construction Plans:

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1.3.1 Following Owner concurrence and acceptance of the Right-of-Way Plans, ELI will begin preparation of the Construction Plans consisting of the following sheets:

- Title Sheet
- Index and Standard Drawings
- Estimated Roadway Quantities
- Estimated Bridge Quantities
- Roadway Typical Sections
- General Notes
- Special Notes
- Detail Sheets
- Property Map and Right-of-Way Acquisition Table
- Present Layout
- Right-of-Way Layout
- Proposed Layout
- Mainline/Sideroad Profiles
- Culvert Cross Section(s)
- Driveway Profiles
- Drainage Map
- Erosion Prevention and Sediment Control Plans
- Traffic Control Plans
- Signing and Marking
- Roadway Cross Sections

1.3.2 Final Engineer's Opinion of Probable Construction Cost

ELI will prepare a limited opinion of the probable construction cost of the proposed improvements. Given broad variability in factors that impact construction cost, ELI can only provide limited information based on recent historical cost of similar facilities constructed in the project area. Opinions made on the basis of experience and judgment do not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. ELI may apply contingency at an amount desired by the Owner to opinions for probable cost.

1.3.3 Construction Plans Submittal and Review

ELI will submit Right-of-Way Plans (Electronic PDF Copy) to the Owner for review and comment. ELI will meet with Town staff to discuss their comments. Following this review meeting, ELI will revise the plans based on the comments received and direction from the review meeting. ELI will document the comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting. The final Construction Plans will be signed and sealed by a State of Tennessee Licensed Professional Engineer.

Scope Item 2: Right-of-Way and Easement Acquisition Support

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2.1 Right-of-Way and Easement Acquisition Staking

2.1.1 Staking of the proposed right-of-way and/or easement acquisition parcels will be provided as needed to assist with necessary right-of-way and/or easement acquisition.

2.2 Right-of-Way and Easement Acquisition Parcel Exhibits and Descriptions

2.2.1 Right-of-way and Easement Acquisition Exhibits and Descriptions will be provided as needed to assist with necessary right-of-way and/or easement acquisition.

Scope Item 3: Utility Coordination and Deconfliction

3.1. Preliminary Utility Coordination

3.1.1. Early Notification

Upon receiving Project notice to proceed, ELI will provide a notification to the potentially affected utility owners along the project corridor. The notification to each utility owner will consist of a project map and a letter requesting that the utility company review the project map to determine if they own facilities within the project limits. The letter will request a written response from each utility.

3.1.2. Preliminary Plan Distribution

Upon completion of Preliminary Plans, ELI will distribute said plans to the identified utility owners within the project limits. The submittal to each utility owner will consist of an electronic set of plan drawings (PDF format) and a letter requesting that the utility company review the potential impacts of the proposed project on their existing facilities. The letter will request preliminary relocation plans from each utility and will also request that the utility company identify any private utility easements that fall within the project limits but are not shown on the Preliminary plans.

3.1.3. Utility Coordination Meeting

ELI will prepare for and host a utility coordination meeting as part of this task. Known impacted utility companies will be invited to attend a coordination meeting to discuss potential utility relocations within the project limits. ELI will document the discussions and decisions made during the meeting and distribute a copy to the meeting attendees. Utility Owners will be responsible for identifying utility conflicts within the project limits and the design and relocation of their facilities.

3.2. Final Utility Coordination

3.2.1. Right-of-Way Plan Distribution

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Upon completion of Right-of-Way Plan preparation, ELI will distribute the approved Right-of-Way Plans to utility owners identified in task 3.1 above. The submittal to each utility owner will consist of an electronic set of plan drawings, information detailing any design changes made during Right-of-Way design, and a letter requesting that the utility company review the potential impacts of the proposed project to their facilities and prepare final utility relocation plans.

3.2.2. Final Plans Review Meeting

During the Construction Plans final design phase, if there are any changes made to the proposed design plans that will impact final utility relocation plans, ELI will submit the revised plans to the utility owners. Via this task, utility companies will also be invited to attend the Construction Plans review meeting. **ELI will not perform any utility relocation design services as part of this task.** It is understood that each utility owner will design, provide plans for, and construct their respective utility relocations.

Scope Item 4: Environmental Permitting

4.1 Storm Water Pollution Prevention Plan (SWPPP) Preparation

ELI will prepare and submit the Storm Water Pollution Prevention Plan (SWPPP) permit documents required by TDEC for the land disturbance activities associated with this project. The SWPPP will consist of drawings and a technical narrative describing erosion and sediment control measures that should be implemented during construction to reduce the negative downstream impacts due to pollutant run-off related to construction activities.

ELI will submit the SWPPP document to TDEC for review. ELI will revise the SWPPP document in accordance with comments received from TDEC and will resubmit a final SWPPP document to TDEC for approval. The Town of Smyrna shall be responsible for all permitting and review fees associated with this task.

4.2 National Pollutant Discharge Elimination System (NPDES) Permit Application

Based on the assumed impact of the project improvements on the surrounding environment, it is assumed that an NPDES General Permit for Storm Water Discharges Associated with Construction Activity will be required for the project. ELI will prepare the NPDES General Permit application and will submit it to TDEC along with the approved SWPPP document for processing by TDEC.

Preparation of technical studies or applications for other project-specific environmental permits are not part of this task. If additional environmental permits are required by TDEC, USACE, or any other agency, those permits can be provided by ELI in accordance with the Additional Services clause of the Agreement.

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Scope Item 5: Bid Phase Services

5.1. Proposal Contract (Bid Book) Preparation

ELI will prepare a proposal contract in accordance with TDOT and Town of Smyrna standards. ELI will prepare technical specifications for those items that are not covered by TDOT or Town of Smyrna specifications. The remainder of the technical specifications will be based upon TDOT's Standard Specifications for Road and Bridge Construction or will be documented in the construction plans. The proposal contract will contain the Request for Proposals, the contract documents, bid forms, specifications, required special provisions, and an 11" x 17" plan set. The proposal contract will be submitted to the Town of Smyrna for approval. Upon authorization from the Town, ELI will proceed with bidding the project and will print and deliver 10 bound copies of the plans and Proposal Contract to the Town.

5.2. Bid Assistance

ELI will assist the Town with drafting the advertisement for bids and conduct one pre-bid meeting with potential bidders. ELI will be responsible for plans distribution during the bid phase. ELI assist the Town with requests for information (RFI) that arise during the bidding process and issue statements of clarification or bid addenda as appropriate. ELI will conduct the bid opening and meet with Town of Smyrna staff following the bid opening to assist with bid review. In addition, ELI will tabulate the bids received and evaluate the compliance of the bids with the bidding documents. ELI will prepare a written summary of this tabulation and evaluation. ELI will submit the bid tabulation and other required documentation to the Town for review and approval to award the contract to the lowest responsive bidder.

ELI Scope Item 5 Deliverables:

- Draft Proposal Contract (one electronic copy in Adobe PDF format) to the Town
- Final Proposal Contract (one electronic copy in Adobe PDF format) to the Town
- Plans Package and Proposal Contract copies for bidders (ten bound copies)
- Responses to bidder questions (one electronic copy in Adobe PDF format)
- Bid tabulation and recommendation of lowest responsive bidder submittal to the Town (one electronic copy in Adobe PDF format)

Scope Item 6: Construction Engineering & Inspection Services

All Construction Administration, Construction Engineering, and Inspection Services are **excluded** from this Amendment 1 or the Agreement until such time the Owner chooses to issue an Amendment to the Agreement to include the performance of said services. Construction Engineering & Inspection Services can be added in accordance with the terms of the Agreement and approval and execution of a completed AMENDMENT TO OWNER-ENGINEER AGREEMENT included therein.

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A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Exhibit B and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

2. The Standard Hourly Rates apply only as specified in the Agreement and are subject to annual review and adjustment.

B. Reimbursable Expenses are subject to review and adjustment per the Agreement.

Professional Staff Rates

Senior Principal Engineer	$235
Operations Manager/Discipline Lead	$235
Program Manager/Principal Engineer	$219
Senior Project Manager	$219
Project Manager	$182
Assistant Project Manager	$162
Senior Engineer/Engineer V	$177
Engineer IV	$162
Engineer III	$141
Engineer II	$125
Engineer I	$115
Intern	$83
CAD Manager	$146
Senior CAD Designer	$125
CAD Designer I	$94
CAD Technician II	$89
CAD Technician I	$73

CEI Staff Rates

CEI Manager	$219
CEI Team Leader (Specialty) Sr./RPR.	$162
CEI Project Manager/RPR	$141
Sr Construction Inspector	$125
Construction Inspector	$115
Sr Construction Support Tech	$94
Construction Support Tech.	$83

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Survey Staff Rates

Director of Survey	$203
Survey Manager (Office Level)	$172
Senior R/PLS | Assistant Survey Manager	$156
R/PLS | Survey/SUE Team Leader	$146
Survey /SUE Project Manager	$136
Lead Survey Technician	$120
Senior Survey Technician/Senior CAD Technician	$104
Survey Technician /CAD Technician	$94
Professional Land Surveyor (R/PLS)	$130
Sr Survey/SUE Crew Chief	$104
Survey/SUE Crew Chief	$94
Sr Survey/SUE Technician	$83
Survey/SUE Technician	$73
Survey Crew (4-Person)	$302
Survey Crew (3-Person)	$234
Survey Crew (2-Person)	$166
Survey Crew (1-Person)	$151
UAS/UAV Photogrammetry Crew	$291
UAS/UAV LiDAR Crew	$296
Mobile Scan Crew	$260

Administrative Staff Rates

Senior Administrative Professional	$94
Administrative Professional	$62

Reimbursable Expenses

Mileage:	GSA Rate
Materials Markup:	Cost plus 10%
Outside Services, Subcontractors, Miscellaneous Expenses:	Cost plus 10%
Per Diem:	$145/day
ATV Plus Trailer:	$40/day

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement between **Town of Smyrna, TN** (Owner) and **Energy Land & Infrastructure, LLC** (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as **Weakley Lane Capacity Improvements** (Project). Other terms used in this Agreement are defined in Article 7. Engineer's services under this Agreement are generally identified as **Roadway Database Survey and Preliminary Functional Drawings for approximately 1.96 miles of Weakley Lane from Swan Drive to the Smyrna Town Limits**.

Owner and Engineer further agree as follows:

ARTICLE 1—SERVICES OF ENGINEER

1.01 Scope

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

B. All phases of service will include Management of Engineering Services as shown in Exhibit A.

ARTICLE 2—OWNER'S RESPONSIBILITIES

2.01 Project Information

A. To the extent Owner has not already provided the following, or has new, additional, or revised information from that previously provided, Owner shall provide Engineer with information and data needed by Engineer in the performance of Basic and Additional Services, including Owner's:

1. design objectives and constraints;
2. space, capacity, and performance requirements;
3. flexibility and expandability needs;
4. design and construction standards;
5. budgetary limitations; and
6. any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.

B. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information as Additional Services. Such additional information or data may include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Surveys, topographic mapping, and utility documentation.

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4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretation of such information or data.

6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.

7. Data or consultations as required for the Project but not otherwise identified in this Agreement.

C. Owner shall examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

D. Owner shall furnish to Engineer data as to Owner's anticipated costs for services to be provided to Owner by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) so that Engineer may assist Owner in collating the various cost categories that comprise Total Project Costs.

E. Owner shall advise Engineer if any invention, design, process, product, or device that Owner has requested, required, or recommended for inclusion in the Drawings or Specifications will be subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights.

F. Owner shall inform Engineer as to whether Engineer's assistance is requested with respect to Owner's evaluation of the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.

G. Owner shall inform Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.

2.02 Owner's Instructions Regarding Bidding/Proposal and Front-End Construction Contract Documents

A. Owner shall give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable) and Owner's construction contract practices and requirements, and furnish to Engineer (or give specific directions requesting Engineer to use copies already in Engineer's possession) the following:

1. Owner's standard contract forms, general conditions (if other than the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract), supplementary conditions, text, and related documents and content for Engineer to include in the draft Bidding/Proposal Documents, and in draft Front-End Construction Contract Documents;

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2. insurance and bonding requirements;

3. protocols for electronic transmittals during bidding and construction;

4. Owner's safety and security programs applicable to Contractor and other Constructors;

5. diversity and other social responsibility requirements;

6. bidding and contract requirements of funding, financing, or regulatory entities;

7. other specific conditions applicable to the procurement of construction or contract documents;

8. any other information necessary for Engineer to assist Owner in preparing its Bidding/Proposal Documents and Front-End Construction Contract Documents.

B. Owner shall have responsibility for the final content of (1) such Bidding/Proposal Documents, and (2) such Front-End Construction Contract Documents, other than content furnished by Engineer concerning the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters.

1. Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.

C. If there will be an advertisement soliciting bids for construction, Owner shall place and pay for such advertisement.

2.03 Owner-Furnished Services

A. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, Owner shall obtain, as required for the Project:

1. Accounting, bond and financial advisory services (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.

2. Legal services, including attorney review of proposed Construction Contract Documents, legal services required by Owner, legal services needed as a result of issues raised by Contractor, and Project-related legal services reasonably requested by Engineer.

3. Auditing services, including those needed by Owner to ascertain how or for what purpose Contractor has used money paid to it.

B. Owner shall provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Owner shall provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.

C. Owner shall acquire or arrange for acquisition of the Site(s) and any temporary or permanent rights of access, easements, or property rights needed for the Project.

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D. With respect to the portions or phases of the Project designed or specified by Engineer, Owner shall provide, obtain, or arrange for:

1. all required reviews, approvals, consents, and permits from governmental authorities having jurisdiction, and

2. such reviews, approvals, and consents from others as may be necessary for completion of each portion or phase of the Project.

E. Owner may delegate to Contractor or others the responsibilities set forth in Paragraphs 2.03.C and D.

2.04 Owner's General Responsibilities

A. Owner shall inform Engineer of the policies, procedures, and requirements of Owner that are applicable to Engineer's performance of services under this Agreement.

B. Owner shall provide Engineer with Owner's budget for the Project, including type and source of funding to be used, and will promptly inform Engineer if the budget or funding sources change.

C. Owner shall inform Engineer in writing of any safety or security programs that are applicable to the personnel of Engineer, its Subconsultants, and Engineer's Subcontractors, as they visit the Site or otherwise perform services under this Agreement.

D. Owner shall arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under this Agreement.

E. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance of its services.

F. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

G. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:

1. any development that affects the scope or time of performance of Engineer's services;

2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

H. Owner shall advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

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I. If Owner designates a construction manager, site representative, or any individual or entity other than, or in addition to, Engineer to represent Owner at the Site, Owner shall define and set forth as an exhibit to this Agreement the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

J. Owner shall:

1. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

2. Primarily communicate with Engineer's Subcontractors and Subconsultants through the Engineer.

a. Promptly inform Engineer of the substance of any communications between Owner and Engineer's Subcontractors or Subconsultants.

b. Refrain from directing the services of Engineer's Subcontractors or Subconsultants.

3. Authorize Engineer to provide Additional Services as set forth in Article 2 of Exhibit A of the Agreement, as required.

2.05 Payment

A. Owner shall pay Engineer as set forth in Article 4 and Exhibit J.

B. Engineer's compensation is summarized as follows; if there is a conflict between the following summary and the contents of Exhibit J, then Exhibit J will prevail.

Description of Service		Amount	Basis of Compensation
1.	Basic Services (Article 1 of Exhibit A)	$ 172,500.00	Hourly Rates

1. Compensation items and totals based in whole or in part on Hourly Rates, Direct Labor, or Percentage of Construction Cost are estimates only.

2. Lump sum amounts incorporate Engineer's labor, overhead, profit, and Engineer's Subcontractor and Subconsultants' charges.

ARTICLE 3—SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit B, and are hereby agreed to be reasonable.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed

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or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.

D. If Engineer fails, for reasons within control of Engineer, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages to the extent, if any, resulting from such failure by Engineer.

ARTICLE 4—INVOICES AND PAYMENTS

4.01 Invoices

A. Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices, the progress reporting and special invoicing requirements (if any) in Exhibit A Paragraph 1.01.A, and the terms of Exhibit J. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

A. Application to Interest and Principal: Payment will be credited first to any interest owed to Engineer and then to principal.

B. Disputed Invoices: If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so; may withhold only that portion so disputed; and must pay the undisputed portion, subject to the terms of Paragraph 4.01. After a disputed item has been resolved, Engineer shall include the agreed-upon amount on a new invoice.

C. Failure to Pay: If Owner fails to make any undisputed payment due Engineer within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and

2. Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement until Owner has paid in full amounts due. Owner waives any and all claims against Engineer for any such suspension.

D. Sales or Use Taxes: If after the Effective Date any governmental entity takes an action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement will be in addition to the compensation to which Engineer is entitled under the terms of Exhibit J.

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ARTICLE 5—OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. Engineer's opinions of probable Construction Cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 Opinions of Total Project Costs

A. The services, if any, of Engineer with respect to Total Project Costs will be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6—GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. Standard of Care: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

B. Technical Accuracy: Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. Engineer's Subcontractors and Subconsultants: Engineer may retain such Engineer's Subcontractors and Subconsultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. Reliance on Others: Subject to the standard of care set forth in Paragraph 6.01.A, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. Compliance with Laws and Regulations, and Policies and Procedures

1. Engineer and Owner shall comply with applicable Laws and Regulations.

2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in

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Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:

   a. changes after the Effective Date to Laws and Regulations,

   b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures, and

   c. changes after the Effective Date to Owner-provided written policies or procedures.

F. General Conditions of Construction Contract: The general conditions for any Construction Contract Documents prepared hereunder are to be the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract, prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise.

G. Copies of Drawings and Specifications: If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one complete electronic copy of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations, and one complete printed copy, duly signed and sealed.

H. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant conditions whose existence Engineer cannot ascertain within the authorized scope of Engineer's services. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to Engineer in any way contingent upon Engineer signing any such document.

I. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

J. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.

K. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer.

L. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

M. Engineer's services do not include providing legal advice or representation.

N. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and

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Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

O. While at the Site, Engineer, its Subconsultants, and Engineer's Subcontractors, and their employees and representatives will comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 Ownership and Use of Documents

A. All Documents are instruments of service, and Engineer owns the Documents, including all associated copyrights and the right of reuse at the discretion of the Engineer. Engineer shall continue to own the Documents and all associated rights whether or not the Project is completed.

1. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project.

2. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations:

a. Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;

b. any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Subconsultants;

c. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and

d. such limited license to Owner shall not create any rights in third parties.

B. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

C. Engineer shall inform Owner if Engineer is aware of any invention, design, process, product, or device specified in the Drawings, Specifications, or other Documents that is subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights. If Engineer's good-faith inclusion in the Drawings, Specifications, or other Documents of new, innovative, or non-standard technologies, for the benefit of Owner and the Project, results in third-party claims of infringement or violation of

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intellectual property rights, then Owner and Engineer shall share equally the costs of defending against, settling, or paying such claims.

D. Engineer will obtain Owner's consent, which will not be unreasonably withheld, prior to releasing any publicity, including news and press releases, promotional publications, award and prize competition submittals, and other advertising regarding the subject matter of this Agreement. Nothing herein will limit the Engineer's right to include information in statements of qualifications and proposals to others accurately describing its participation and participation of employees in the Project.

6.03 Electronic Transmittals

A. To the fullest extent practical, Owner and Engineer agree to transmit, and accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with Exhibit F, Electronic Documents Protocol (EDP).

1. Compliance with the EDP by Engineer shall be considered a Basic Service and no direct or separate compensation will be paid to Engineer for such compliance, unless provisions for separate compensation are expressly set forth in the EDP.

2. Engineer's costs directly attributable to changes in Engineer's Electronic Documents obligations, after the effective date of this Agreement, necessitated by revisions to Exhibit F, delayed adoption of Exhibit F, or implementation of other Electronic Documents protocols, will be compensated as Additional Services.

B. If this Agreement does not include Exhibit F or otherwise does not establish or include protocols for transmittal of Electronic Documents by Electronic Means, then Owner and Engineer may operate without specific protocols or may jointly develop such protocols at a later date.

C. Except as stated otherwise in Exhibit F (if included in this Agreement), when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents, or from those established in applicable protocols.

D. This Agreement (including the EDP) is not intended to create obligations for Owner or Engineer with respect to transmittals to or from third parties, except as expressly stated in the EDP.

6.04 Insurance

A. Engineer shall procure and maintain insurance as set forth in Exhibit G.

B. Additional Insureds: The Engineer's commercial general liability, automobile liability, and umbrella or excess liability policies, must:

1. include and list as additional insureds Owner, and any individuals or entities identified as additional insureds in Exhibit G;

2. include coverage for the respective officers, directors, members, partners, and employees of all such additional insureds;

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3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations); and

4. not seek contribution from insurance maintained by the additional insured.

C. Owner shall procure and maintain insurance as set forth in Exhibit G.

D. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer, its Subconsultants, and Engineer's Subcontractors to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project. Owner shall give Engineer access to any certificates of insurance and copies of endorsements and policies obtained by Owner from Contractor.

E. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates must be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

1. Upon request by Owner or any other insured, Engineer shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subconsultants and Engineer's Subcontractors. In any documentation furnished under this provision, Engineer may redact (a) any confidential premium or pricing information and (b) any wording specific to projects or jurisdictions other than those applicable to this Agreement.

F. All construction contracts entered into by Owner with respect to the Project must require builder's risk or similar property insurance.

G. All policies of property insurance relating to the Project, including but not limited to any builder's risk or similar policy, must allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer, its Subconsultants, or Engineer's Subcontractors. Owner and Engineer waive all rights against each other, Contractor, Engineer's Subcontractors and Subconsultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any such builder's risk or similar policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

H. All policies of insurance must contain a provision or endorsement that the coverage afforded will not be canceled, and that renewal will not be refused, until at least 10 days' prior written notice has been given to the primary insured. Upon receipt of such notice, the primary insured must promptly forward a copy of the notice to the other party to this Agreement and replace the coverage being cancelled or reduced to conform to the requirements of this Agreement.

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I. At any time, Owner may request that Engineer, or Engineer's Subcontractors or Subconsultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require Engineer's Subcontractors or Subconsultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 Suspension and Termination

A. Suspension

1. By Owner: Owner may suspend Engineer's services for up to 90 days upon 7 days' written notice to Engineer.

2. By Engineer: Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement:

a. if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraphs 4.02.B and 4.02.C;

b. in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.09.D; or

c. if persistent circumstances beyond the control of Engineer have prevented it from performing its obligations under this Agreement.

B. Termination for Cause

1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.

a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. In addition to its termination rights in Paragraph 6.05.B.1, Engineer may terminate this Agreement for cause upon 7 days' written notice:

a. if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional;

b. if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control; or

c. as the result of the presence at or adjacent to the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.09.E.

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3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.

C. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.

D. Extension of Effective Date of Termination: If Owner terminates the Agreement for cause or convenience, Owner may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Engineer shall be entitled to compensation for such tasks.

E. Payments Upon Termination: In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.02.A.

1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the Documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.

2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Subcontractors or Subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit J.

6.06 Successors, Assigns, and Beneficiaries

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.06.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

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1. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

2. Nothing in this Agreement will be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C will appear in the Construction Contract Documents.

6.07 Dispute Resolution

A. Unless otherwise required by Exhibit H, Owner and Engineer shall resolve all disputes in the following manner:

1. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice, prior to invoking mediation.

2. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process will be conducted on a confidential basis, and must be completed within 120 days.

3. If the parties fail to resolve a Dispute through negotiations under Paragraph 6.07.A.1 or mediation under Paragraph 6.07.A.2, then:

a. either or both may invoke the applicable dispute resolution procedures of Exhibit H for final resolution of Disputes.

b. If Exhibit H is not included, or if no final dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.08 Controlling Law; Venue

A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

B. Venue for any exercise of rights at law will be the state court having jurisdiction at the location of the Project; or at the choice of either party, and if federal jurisdictional requirements can be met, in federal court in the district in which the Project is located.

6.09 Environmental Condition of Site

A. Owner represents to Engineer that, as of the Effective Date, to the best of Owner's knowledge, no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.

B. Undisclosed Constituents of Concern: For purposes of this Paragraph 6.09, the presence at or adjacent to the Site of Constituents of Concern that were not disclosed to Engineer pursuant to Paragraph 6.09.A, in such quantities or circumstances that such Constituents of Concern may present a danger to persons or property exposed to them, will be referred to as "undisclosed" Constituents of Concern.

1. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained

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pursuant to industry practices, Laws and Regulations, and the requirements of this Agreement or the Construction Contract, are not undisclosed Constituents of Concern.

2. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under this Agreement are not undisclosed Constituents of Concern.

3. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under another professional services contract for Owner, or as part of the work under a construction or remediation contract, are not undisclosed Constituents of Concern if Engineer has been informed of the general scope of such contract.

C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate authorities having jurisdiction if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, or if encountered, uncovered, or revealed Constituents of Concern are present in substantially greater quantities or substantially different locations than disclosed or anticipated, or if investigative or remedial action, or other professional services, are necessary or required by applicable Laws and Regulations with respect to such Constituents of Concern, then Engineer may, at its option and without liability for direct, consequential, or any other damages, suspend performance of services on the portion of the Project adversely affected thereby until such portion of the Project is no longer so affected; and Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

E. If the presence at the Site of undisclosed Constituents of Concern, or of Constituents of Concern in substantially greater quantities or in substantially different locations than disclosed or anticipated, adversely affects the performance of Engineer's services under this Agreement, then:

1. if the adverse effects do not preclude Engineer from completing its Project services in general accordance with this Agreement on unaffected or marginally affected portions of the Project, Engineer may accept an equitable adjustment in its compensation or in the time of completion, or both; and the Agreement will be amended to reflect changes necessitated by the presence of such Constituents of Concern; or

2. if the adverse effects are of such materiality to the overall performance of Engineer that it cannot complete its services without significant changes to the scope of services, time of completion, and compensation, then Engineer may terminate this Agreement for cause on 7 days' written notice.

F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and will not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

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6.10 Indemnification and Mutual Waiver

A. Indemnification by Engineer: To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."

B. Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer, its Subconsultants, Engineer's Subcontractors, and their officers, directors, members, partners, agents, employees, and subconsultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that:

1. any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and

2. nothing in this paragraph obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

C. No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.

D. Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, will not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

E. Mutual Waiver: To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's officers, directors, members, partners, agents, employees, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes. Such excluded damages include but are not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and cost of capital.

6.11 Records Retention

A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, or such other period as required by Laws and Regulations, all

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Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.12 Miscellaneous Provisions

A. Notices: Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All such notices are effective upon the date of receipt.

B. Survival: Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Engineer.

D. No Waiver: A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.

E. Accrual of Claims: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

ARTICLE 7—DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. Addenda—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. Additional Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 2 of Exhibit A of this Agreement.

3. Agreement—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.

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5. Basic Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 1 of Exhibit A of this Agreement.

6. Bidding/Proposal Documents—Documents related to the selection of the Contractor, including advertisements or invitations to bid; requests for proposals; instructions to bidders or proposers, including any attachments such as lists of available Site-related documents; bid forms; bids; proposal forms; proposals; bidding requirements; and qualifications documents.

7. Change Order—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

8. Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

9. Constituents of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

10. Construction Contract—The entire and integrated written contract between Owner and Contractor concerning the Work.

11. Construction Contract Documents—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract. See also definition of "Front-End Construction Contract Documents" below.

12. Construction Contract Price—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

13. Construction Contract Times—The number of days or the dates by which Contractor must: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

14. Construction Cost—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

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15. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, or Subconsultants, or Engineer's Subcontractors), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, design-builders, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

16. Contractor—The entity or individual with which Owner enters into a Construction Contract.

17. Documents—All documents expressly identified as deliverables in this Agreement, whether in printed or Electronic Document form, required by this Agreement to be provided or furnished by Engineer to Owner. Such specifically required deliverables may include, by way of example, Drawings, Specifications, data, reports, building information models, and civil integrated management models.

18. Drawings—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. Effective Date—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

20. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

21. Electronic Means—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Agreement. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. Engineer—The individual or entity named as such in this Agreement.

23. Engineer's Subcontractor—An individual, firm, vendor, or other entity having a contract with Engineer to furnish general services, equipment, or materials with respect to the Project as an independent contractor.

24. Field Order—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

25. Front-End Construction Contract Documents—Those Construction Contract Documents whose primary purpose is to establish legal and contractual terms and conditions, typically including the Owner-Contractor agreement, bonds, general conditions, and supplementary conditions. The term excludes the Drawings and Specifications, and any

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Construction Contract Documents delivered or issued after the effective date of the Construction Contract.

26. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

27. Owner—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.

28. Project—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

29. Record Drawings—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

30. Resident Project Representative—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of the RPR.

31. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

32. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

33. Site—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

34. Specifications—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

35. Subconsultant—An individual, design firm, consultant, or other entity having a contract with Engineer to furnish professional services with respect to the Project as an independent contractor.

36. Subcontractor—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

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37. Submittal—A written or graphic document, prepared by or for Contractor, which the Construction Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Construction Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Construction Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

38. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

39. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

40. Total Project Costs—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties and private utilities (including relocation if not part of Construction Cost), Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

41. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

42. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all

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materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

43. Work Change Directive—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. Terminology

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8—EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits to Agreement

The following exhibits are incorporated by reference and included as part of this Agreement:

A. Exhibit A, Engineer's Services.

B. Exhibit B, Deliverables Schedule.

C. Exhibit C, Amendment to Owner-Engineer Agreement (form).

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. **(NOT USED)**

E. Exhibit E, EJCDC® C-626, Notice of Acceptability of Work (form). **(NOT USED)**

F. Exhibit F, Electronic Documents Protocol (EDP). **(NOT USED)**

G. Exhibit G, Insurance.

H. Exhibit H, Dispute Resolution.

I. Exhibit I, Limitations of Liability.

J. Exhibit J, Payments to Engineer for Services and Reimbursable Expenses.

8.02 Total Agreement

A. This Agreement (which includes the exhibits listed above) constitutes the entire contractual agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit C to this Agreement.

8.03 Designated Representatives

A. With the execution of this Agreement, Engineer and Owner shall each designate a specific individual to act as representative under this Agreement. Such an individual must have authority to transmit instructions, receive information, and render decisions with respect to this Agreement on behalf of the party that the individual represents.

8.04 Engineer's Certifications

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

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1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 Conflict of Interest

A. Nothing in this Agreement will be construed to create or impose any duty on the part of Engineer that would be in conflict with Engineer's paramount obligations to the public health, safety, and welfare under the professional practice requirements governing Engineer, its Subconsultants, and all licensed professionals employed by Engineer or its Subconsultants.

B. If during the term of this Agreement a potential or actual conflict of interest arises or is identified:

1. Engineer and Owner together will make reasonable, good faith efforts to avoid or eliminate the conflict of interest; to mitigate any adverse consequences of the conflict of interest; and, if necessary and feasible, to modify this Agreement to address the conflict of interest and its consequences, such that progress under the Agreement may continue.

2. Such efforts will be governed by applicable Laws and Regulations and by any pertinent Owner's policies, procedures, and requirements (including any conflict of interest resolution methodologies) provided to Engineer under Paragraph 2.04.A of this Agreement.

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This Agreement's Effective Date is September 12, 2023

Owner:	Engineer:
Town of Smyrna, Tennessee (name of organization)	Energy Land & Infrastructure, LLC (name of organization)
By: (individual's signature)	By: (individual's signature)
Date: 9/12/2023 (date signed)	Date: 9/12/23 (date signed)
Name: Mary Esther Reed (typed or printed)	Name: Timothy L. Haggard, PE, RLS (typed or printed)
Title: Mayor (typed or printed)	Title: Associate Vice President (typed or printed)
Attach evidence of authority to sign.	Attach evidence of authority to sign.
Attest: (individual's signature)	Attest: (individual's signature)
Title: Town Clerk (typed or printed)	Title: (typed or printed)
Address for giving notices:	Address for giving notices:
Designated Representative:	Designated Representative:
Name: Charles King (typed or printed)	Name: Timothy L. Haggard, PE, RLS (typed or printed)
Title: Engineer (typed or printed)	Title: Associate Vice President (typed or printed)
Address: 315 S Lowry Street Smyrna, TN 37167	Address: 745 South Church Street, Suite 801 Murfreesboro, TN 37130
Phone:	Phone: (615) 438-9664
Email: Charles.King@townofsmyrna.org	Email: Tim.Haggard@eli-llc.com

EJCDC® E-500, Agreement between Owner and Engineer for Professional Services.
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EXHIBITS TO AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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EXHIBIT E—EJCDC® C-626, NOTICE OF ACCEPTABILITY OF WORK **(NOT USED)**

EXHIBIT F—ELECTRONIC DOCUMENTS PROTOCOL (EDP) **(NOT USED)**

EXHIBIT G—INSURANCE

EXHIBIT H—DISPUTE RESOLUTION

EXHIBIT I—LIMITATIONS OF LIABILITY

EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

APPENDIX 1: STANDARD HOURLY RATES AND REIMBURSABLE EXPENSES SCHEDULE

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Scope Item 1: Roadway Database Survey

ELI will perform a roadway database survey for engineering design for the full length of the proposed improvements to Weakley Lane from Swan Drive to the Smyrna town limits, which is approximately 1.96 miles of mainline corridor length. The DTM width will be 100' centered on existing Weakley Lane. This will include 15 side roads that will extend 100 to 150 feet along the side roads from the centerline of Weakley Lane. ELI will employ traditional field-run ground survey methods to collect topographic and roadway features. ELI will provide field survey services to collect aboveground utilities and storm and sanitary inverts. Underground utilities will be limited to 811 markings and records provided to ELI by individual utility owners. No quality level "A" or quality level "B" S.U.E. will be included under this scope of services. Right of way lines will be resolved throughout the survey limits along with the resolution of approximately 52 adjoining property tracts. Deliverables will include planimetrics, contours, and digital terrain model. CAD deliverables will be in Bentley OpenRoads Designer (ORD) formats per TDOT CADD standards. The utility model will be excluded from the delivery. Refer to the following pages for the survey limits.

Scope Item 2: Preliminary Functional Drawings

ELI will prepare a preliminary design functional plan set in accordance with TDOT's Roadway Design Guidelines and current Town of Smyrna roadway design standards. The preliminary functional plans will be prepared to generally conform to TDOT's current MicroStation and ORD CAD standards. The plans will consist of the following sheets:

- Title Sheet with index
- Roadway Typical Sections
- Present Layout
- Proposed Layout

ELI will also provide phasing recommendations for future completion of full preliminary and final design plans and construction of the planned improvements.

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EXHIBIT B—DELIVERABLES SCHEDULE

Upon written authorization, ELI will proceed with completion of the Roadway Database Survey. Please allow (3) complete months for completion of Scope Item 1.

Please allow two (2) additional months for completion of Scope Item 2 based on the results of the survey completed under Scope Item 1.

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AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. **[Enter Amendment Number]**

Owner: **[Name of Owner]**
Engineer: **[Name of Engineer]**
Project: **[Name of Project]**
Effective Date of Owner-Engineer Agreement: **[Effective Date of Agreement]**
Nature of Amendment: (Check those that apply)

- ☐ Additional Services to be performed by Engineer
- ☐ Modifications to services of Engineer
- ☐ Modifications to responsibilities of Owner
- ☐ Modifications of payment to Engineer
- ☐ Modifications to time(s) for rendering services
- ☐ Modifications to other terms and conditions of the Agreement

Description of Modifications:

[Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary. Include cost breakdown and documentation, if applicable.]

Agreement Summary:
Original agreement amount: $
Net change for prior amendments: $
This amendment amount: $
Adjusted Agreement amount: $
Change in time for services (days or date, as applicable):

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. The Effective Date of the Amendment is **[Enter Effective Date of Amendment]**.

Owner	Engineer
_____ (typed or printed name of organization)	_____ (typed or printed name of organization)
By: _____ (individual's signature)	By: _____ (individual's signature)
(Attach evidence of authority to sign.)	(Attach evidence of authority to sign.)
Date: _____ (date signed)	Date: _____ (date signed)
Name: _____ (typed or printed)	Name: _____ (typed or printed)
Title: _____ (typed or printed)	Title: _____ (typed or printed)

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EXHIBIT G—INSURANCE

ARTICLE 1—INSURANCE

Paragraph 6.04 of the Agreement, Insurance, is supplemented to include the following Exhibit G Paragraphs 1.01 and 1.02:

1.01 Insurance Policies and Limits

A. Commencing with the performance of the Services hereunder, and continuing until the termination of the Agreement including during the performance of any warranty services, Consultant (and any tier subcontractors) shall maintain or cause to be maintained occurrence form insurance policies as follows: (a) Workers' Compensation specific to the applicable statutory requirements for the Services to be performed; provided that Consultant (or its subcontractor(s)) must notify if exempt from the statutory Workers' Compensation requirements; (b) Employer's Liability Insurance of not less than $1,000,000 each accident/employee/disease; (c) Commercial General Liability Insurance having an available limit of at least $1,000,000 per occurrence/$2,000,000 in the annual aggregate for contractual liability, personal injury, bodily injury to or death of persons, and/or loss of use or damage to property, including but not limited to products and completed operations liability (which shall continue for at least three (3) years after completion), and premises and operations liability coverage (d) Commercial/Business Automobile Liability Insurance (including owned, non-owned or hired autos) having an available limit of at least $1,000,000 each accident for bodily injury, death, property damage, with any fellow employee exclusion removed, and contractual liability; (e) Umbrella/Excess Liability insurance with available limits of at least $4,000,000 per occurrence and follow form of the underlying Employer's Commercial General and Auto Liability insurance, and providing at least the same scope of coverages thereunder; (f) Professional Liability/Errors & Omissions (E&O) Insurance (claims-made form acceptable with reporting requirements of at least three (3) years after completion) with no resulting bodily injury or property damage exclusion with available limits of at least $1,000,000 each claim.

B. During the term of this Agreement the Engineer shall notify Owner of any other Subconsultant or Engineer's Subcontractor to be listed as an additional insured on Owner's and applicable Contractor's general liability policies of insurance.

C. The Owner must be listed on Engineer's general liability policy as provided in Paragraph 6.04.B.

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EXHIBIT H—DISPUTE RESOLUTION

Paragraph 6.07 of the Agreement, Dispute Resolution, is supplemented to include the following Exhibit H Paragraph 1.01:

1.01 Non-Binding Mediation. If a good faith effort to resolve a dispute on terms satisfactory to both parties is unsuccessful, Engineer and Owner shall submit the dispute to non-binding mediation unless the parties mutually agree otherwise. The mediation will be conducted by a mediator acceptable to Engineer and will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by the Construction Industry Mediation Procedures of the American Arbitration Association. Each party agrees to pay its own costs in connection with the mediation and its proportionate share of the fees and costs of the mediation. Any dispute not resolved within thirty days after submission to mediation may be resolved by litigation in a court of competent jurisdiction in the State of Tennessee. If Engineer's Services relate to a Project in a state that requires venue for any action related to the Project lie within the state where the Project is located, venue may also lie in a court of competent jurisdiction within that state.

1.02 Duty to Continue Performance. Each party shall continue to perform under this Agreement pending the final resolution of any dispute or disagreement between Engineer and Owner.

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ARTICLE 1—LIMITATIONS OF LIABILITY

Paragraph 6.10 of the Agreement is supplemented to include Exhibit I Paragraph(s) 1.01, Mutual Indemnification, and 1.02, Limitation of Engineer's Liability:

1.01 Mutual Indemnification

A. Indemnification by Owner: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants, and Engineer's Subcontractors, from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

1.02 Limitation of Engineer's Liability

A. Engineer's Liability Limited to Stated Amount, or Amount of Engineer's Compensation: To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's Subcontractors, officers, directors, members, partners, agents, employees, and Subconsultants, to Owner and anyone claiming by, through, or under Owner for any and all injuries, claims, losses, expenses, costs, or damages whatsoever (including but not limited to direct, indirect, special, incidental, punitive, exemplary, or consequential damages) arising out of, resulting from, or in any way related to the Project, to Engineer's or its Subconsultants' or Engineer's Subcontractor's services, or to this Agreement, from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Subconsultants, or Engineer's Subcontractors, will not exceed the total amount of **$250,000** or the total compensation received by Engineer under this Agreement, whichever is greater. Higher limits are available for an additional fee.

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EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

ARTICLE 1—STANDARD HOURLY RATES

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraphs 1.01, 1.02, and 1.03:

1.01 Compensation for Basic Services (other than Resident Project Representative)—Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A (except for Resident Project Representative services, if any) as follows:

1. An amount equal to the cumulative hours charged to the Project by Engineer's personnel times Standard Hourly Rates for the applicable billing class, plus Reimbursable Expenses, plus Engineer's Subcontractors' and Subconsultants' charges, if any.

2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer's services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer's Subcontractor's and Subconsultants' charges.

3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit J as Appendix 1

4. The total compensation for such services is estimated to be **$172,500** based on the following estimated distribution of compensation:

a.	Roadway Database Survey Phase	$ 117,000.00
b.	Preliminary Functional Design Phase	$ 55,500.00

5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but compensation will not exceed the total estimated compensation amount unless approved in writing by Owner. See also Exhibit J Paragraph 1.03.C.2 below.

6. The total estimated compensation for Engineer's services included in the breakdown by phases incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Subcontractor's and Subconsultants' charges.

7. The amounts billed for Engineer's services under Exhibit J Paragraph 1.01 will be based on the cumulative hours charged to the Project during the billing period by Engineer's employees times Standard Hourly Rates for the applicable billing class, plus Reimbursable Expenses and Engineer's Subcontractor's and Subconsultants' charges.

1.02 Compensation for Reimbursable Expenses

A. Owner shall reimburse Engineer for Reimbursable Expenses directly related to the provision of Basic Services, using the rates set forth in Appendix 1 to this Exhibit J when applicable.

B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing

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and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.

C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.10.

1.03 Other Provisions Concerning Payment

A. Whenever Engineer is entitled to compensation for the charges of Engineer's Subcontractors and Subconsultants, such compensation will be the amounts billed to Engineer by Engineer's Subconsultants times a factor of 1.10.

B. Factors: The external Reimbursable Expenses and Engineer's Subcontractors' and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. Estimated Compensation Amounts

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer will promptly review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer will be paid for all services rendered hereunder.

D. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.

E. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

APPENDIX 1: STANDARD HOURLY RATES AND REIMBURSABLE EXPENSES SCHEDULE

A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit J and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

2. The Standard Hourly Rates apply only as specified in Exhibit J.

B. Reimbursable Expenses are subject to review and adjustment per Exhibit J.

Engineering Staff Rates

Senior Principal Engineer	$225
Program Manager/Principal Engineer	$210
Senior Project Manager	$210
Project Manager	$175
Assistant Project Manager	$155
Senior Engineer/Engineer V	$170
Engineer IV	$155
Engineer III	$135
Engineer II	$120
Engineer I	$110
Intern	$80
CAD Manager	$140
Senior CAD Designer	$120
CAD Designer I	$90
CAD Technician II	$85
CAD Technician I	$70

Survey Staff Rates

Director of Survey/SUE	$195
Survey Manager (Office Level)	$165
Senior R/PLS | Assistant Survey Manager	$150
R/PLS | Survey/SUE Team Leader	$140
Survey/SUE Project Manager	$130
Lead Survey Technician	$115
Senior Survey Technician/Senior CAD Technician	$100
Survey Technician /CAD Technician	$90
Survey Intern	$80

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Professional Land Surveyor (R/PLS)	$125
Sr Survey/SUE Crew Chief	$100
Survey/SUE Crew Chief	$90
Sr Survey/SUE Technician	$80
Survey/SUE Technician	$70
Survey Crew (4-Person)	$290
Survey Crew (3-Person)	$225
Survey Crew (2-Person)	$160
Survey Crew (1-Person)	$145
UAS/UAV Photogrammetry Crew	$280
UAS/UAV LiDar Crew	$285
Mobile Scan Crew	$250

Administrative Staff Rates

Senior Admin	$90
Admin	$60

Reimbursable Expenses

Mileage	GSA Rate
Materials Markup:	Cost plus 10%
Outside Services, Subcontractors, Miscellaneous Expenses	Cost plus 10%
Per Diem:	$145/day
ATV Plus Trailer	$40/day

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STANDARD ADDENDUM TO AGREEMENT

This standard contract addendum is executed on the 12th day of September, 2023 by and between **THE TOWN OF SMYRNA, TENNESSEE,** a municipal corporation in the State of Tennessee, herein further referenced and identified as ("The Town") and Energy Land + Infrastructure herein further referenced and identified as ("Vendor") in order to amend the terms of the Agreement, including all attachments, exhibits, or any actual or virtual documents or writing, including, but not limited to, all any "clickwrap," "clickthrough" or "click and accept" agreement or other Terms of Service scheduled for presentation to the Town Council for approval on the 12th day of , Sept. 2023.

WITNESSETH

WHEREAS, the parties wish to execute this addendum to the Agreement for the purposes of substituting, clarifying or inserting certain terms of or into their original Agreement executed on the 12th day of September, 2023; and

WHEREAS, the terms of this addendum to the Agreement shall take precedence over all other terms, conditions or language to the contrary or in conflict with the language contained in the Agreement; however, any term or clause not modified by the provisions herein shall be governed by the original agreement. The parties agree that this addendum shall not be construed to create any ambiguity, it being the expressed intent of the parties that this addendum shall control;

THEREFORE, In consideration of using Vendor's form Agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Vendor the parties hereto agree to the following:

1. VENUE: The parties agree that venue for any legal or other dispute arising under the terms of the original agreement or this addendum to agreement shall lie exclusively in the courts of Rutherford County, Tennessee or the United States District Court, for the Middle District of Tennessee. The parties hereby waive their right to a jury trial;

2. CHOICE OF LAW: The Agreement shall be deemed to be entered into under Tennessee law, and the rights and obligation of the parties are governed by the laws of the State of Tennessee, without regard to its conflict of laws principles, and all obligations of the parties are performable in Smyrna, Tennessee.

3. INDEMNIFICATION: The parties hereto agree that Vendor shall indemnify The Town for any and all claims of negligence, tortious conduct or otherwise unlawful acts committed by Vendor in the performance of their obligations under the terms of the original agreement or this addendum to agreement and Vendor agrees to pay any and all costs associated with the enforcement of the terms of this indemnity agreement by The Town, including but not limited to, court costs, civil judgments, assessments or any other reasonable fees associated therewith. In addition, Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private or public entities and, therefore, prohibits an agreement by the Town to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring the Town to indemnify or hold harmless Vendor or any other person or entity or any limitation of liability in favor of Vendor shall be deemed null, void and unenforceable against the Town under any and all circumstances.

4. NON-APPROPRIATION: Vendor acknowledges that the Town is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event the Town fails to appropriate funds or make monies available for any fiscal year covered by the term of the Agreement for services to be provided, the Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to the Town, and such termination shall not be a breach of the Agreement, and any unused payment made to Vendor shall be returned to the Town.

5. TAX EXEMPTION: As a tax-exempt entity, the Town shall not be responsible for sales or use taxes incurred for products or services. The Town shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of the Town's tax

exemption certificate and Vendor shall assume all liability for such taxes, if any, that should be incurred.

6. NO ATTORNEY'S FEES: The parties hereto agree that The Town shall be in no event liable for any attorney's fees which Vendor may incur due to breach of the original agreement or this addendum agreement by either party; and further, The Town shall not acquiesce to any term of the original contract/agreement that indicates or infers The Town may or shall be responsible for the fees of another party or the Vendor's attorney fees.

7. MEDIATION; NO ARBITRATION: The Town may, at its option, require the attempted resolution of any dispute arising under the original contract or this addendum to agreement by mediation prior to the filing of any lawsuit or other claim. Should any dispute arise, Vendor shall provide the Town notice of any intent to file suit by certified mail. The Town shall notify the Vendor of its intent to exercise its right to mediation within thirty (30) days of receiving such notice. If the Town does not exercise its right to mediation, Vendor may file suit. Any mediator selected under this clause shall be agreed upon by the parties and the costs of such mediation shall be divided and paid equally between the parties. The parties hereby further agree that, except as provided for in this addendum or by applicable law, the parties shall not be required to participate in any alternative dispute resolution process or procedure, including but not limited to arbitration and med-arb, relating to disputes that arise between the parties to the Agreement.

8. FAILURE TO PERFORM: The parties agree, in the event Vendor fails to perform any obligation, other than with regards to the date of delivery, set out in the Agreement/Contract, the Town shall be reimbursed by Vendor for any and all expenses associated with having to obtain a new provider to finish out the contracted term, including, but in no way limited to, any charges/fees, which are above and beyond the amount the Town would have paid to Vendor to complete the same task; provided, however, that if the failure, by its nature, is one that can be cured, the Vendor shall have fifteen (15) business days after receipt of written notice from the Town to cure said failure to perform. The parties hereby agree, unless a specific date of delivery is

provided in the Agreement/Contract all deliveries shall be made to the Town no later than ninety (90) days from the date of the Agreement/Contract. The parties further agree that if Vendor, in good faith, is not able to meet this ninety (90) day deadline of delivery due to forces beyond his, her or its control, that were unforeseeable at the time of signing the Agreement/Contract, then the entire Agreement/Contract shall be voidable at the sole discretion of the Town. Should the Town elect to void the Agreement/Contract due to Vendor's good faith inability, due to forces beyond his, her or its control, and which were unforeseeable at the time of signing the Agreement/Contract to meet the delivery deadline, then neither party shall be deemed to have breached the Agreement/Contract, and Vendor shall return all monies, within seven (7) business days, paid by the Town for the products/items that could not be delivered in the allotted time. This provision shall take propriety over any Force Majeure Clause contained within the Agreement/Contract.

9. USE OF TOWN's LOGO OR NAME: Vendor shall not use the Town's name or any logo in marketing or publicity materials or for marketing or publicity purposes without the prior written authorization from the Town. Vendor shall not issue, publish, or divulge any materials developed or used in the performance of this Agreement or make any statement to the media relating to this Agreement without the prior written consent of the Town.

10. WARRANTY: Vendor warrants that the product(s) herein, when used in accordance with the documentation, shall operate and conform in all material respects in conformity with this Agreement and the written representations of Vendor, including applicable user manuals and guides supplied by Vendor or with Vendor's Software. If it does not perform as warranted, Vendor shall use all commercially reasonable efforts to correct the product(s) so that it operates in all material respects in conformity with the written representations of Vendor. If Vendor cannot correct the product(s) within a reasonable period of time, Vendor shall refund the purchase price of the product(s).

11. SOFTWARE DEADLINE, TESTING AND ACCEPTANCE: If applicable to the Agreement, software provided by Vendor shall be installed for the purposes of testing, as stated herein below, no later than one hundred twenty (120) days from the

effective date of the Agreement and this Addendum thereto, unless the Agreement states a specific date which is before or after said deadline. In Addition, software provided by Vendor to the Town is subject to inspection and testing to verify that the software conforms to its written specifications and to ensure it meets the Town's needs. The Town shall have seven (7) business days after the software is installed to perform testing of the software using the Town's data. The Town shall provide Vendor with written notice of acceptance or rejection of the software five (5) business days or less after the end of the testing period. If the Town does not provide timely written notice of acceptance or rejection to Vendor, the software shall be deemed to be accepted by the Town. If the software is rejected, the Town may, at its sole discretion, either (1) return the software and receive a refund of all fees paid with respect thereto, or (2) allow Vendor to repair or replace the software, without charge, in a timely manner. In the event the Town elects to allow the Vendor to repair or replace the software, the Town shall have an additional (7) business days in which to accept or reject the software as laid out hereinabove.

12. NO AUTOMATIC RENEWAL: The term of the Agreement shall not be renewed or extended beyond the initial term and any provision providing for automatic or continuing renewal of the Agreement is not applicable.

13. UNILATERAL MODIFICATION OF AGREEMENT NOT PERMITTED: Vendor may make unilateral changes to its Privacy Policy, provided any such changes are subject to the provisions of this Addendum, shall not alter this Addendum, and shall not materially alter the use of the service or reduce the level of protection provided to the Town at the time of the execution of this Agreement. Except as provided in the preceding sentence, notwithstanding anything in the Agreement to the contrary, any change to the Agreement made by Vendor that is not in writing and that is not properly executed by the signatures of authorized representatives of the parties hereto, including attestation by the Town's Clerk and approved as to form by the Town Attorney are subject to the terms and conditions of this Addendum, and shall not alter this Addendum and shall not materially alter the use of the service or reduce the level of protection provided to the Town at the time of the execution of this Agreement.

14. CHANGES TO TERMS. Except as provided in Paragraph No. 13 above pertaining to Vendor's Privacy Policy, Vendor shall provide the Town written notice, sent in care of Town Attorney's Office, Smyrna, Tennessee, 315 South Lowry Street, Tennessee 37167, of any proposed change to the Agreement at least ninety (90) days prior to being effective to the Town. The Town shall have thirty (30) days after receiving the written notice to terminate this Agreement, and such cancellation shall not be a breach of this Agreement. Vendor will refund to the Town any payment made by the Town to Vendor equal to the difference between the number of months the payment was intended for and the number of months remaining on Agreement that the fee was intended to cover.

15. PRICE ASSURANCE: Unless specifically stated in the Agreement, the price shall be valid for the full term of the Agreement. If Vendor, specifically states, in the Agreement that he, she or it cannot honor the price for the full term of the Agreement; the Agreement is voidable at the sole discretion of the Town, if at any time during the full term of the Agreement, Vendor requests to raise the contract price. If the Town elects to void the Agreement, at its sole discretion, it shall not be deemed to be a breach of the contract by either party.

16. CONFIDENTIALITY: The Town, as a Tennessee Municipal Corporation is subject to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq; therefore, this Addendum, the Agreement and all documents or materials, in any format, including, but not limited to paper, electronic or virtual, that are public records pursuant to law, are not confidential and are subject to disclosure, without regard to any provision contained in the Agreement declaring information confidential. The Town will respond to all proper Open Records Requests in the time allowed by law, without any requirement to disclose such request to Vendor or provide Vendor with notice or the time to obtain a protective order. The Town does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 16 serves to meet such burden and authorization of disclosure.

17. BOYCOTT OF ISRAEL: The Vendor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

18. NO PRESUMPTION AGAINST DRAFTER: The parties are both business entities having substantial experience with the subject matter of this addendum, and each has fully participated in the negotiation and drafting of this addendum. Accordingly, this addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed addendum differs in any respect from any previous draft hereof.

19. SURVIVAL: This entire addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference and shall remain in full force and effect until the expiration of any applicable statute of limitation.

20. EFFECTIVE DATE: This addendum shall be deemed to have the same effective date of the Agreement.

(execution page follows)

IN WITNESS WHEREOF, the parties hereto warrant and represent that the individual who has signed this addendum on behalf of such party is duly authorized by all necessary and appropriate corporate action to sign this addendum.

VENDOR OR AGENT

VENDOR OR AGENT

MAYOR OF SMYRNA, TENNESSEE

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 4.
Department: Public Works
Date: August 28, 2025

Subject:
Approval of the terms of and authorization for the Mayor to approve the National Pollutant Discharge Elimination System (NPDES) Annual Report.

Fiscal Impact:

Contract Type:

Contract Term (if applicable):

Background:
The Town of Smyrna operates under a National Pollutant Discharge Elimination System (NPDES) Permit issued by the State of Tennessee under the Clean Water Act. This annual report is required to be submitted to the State of TN and describes the Town's activities related to the six minimum control measures for Small Municipal Separate Storm Sewer Systems (MS4s).

Summary:
This report covers the following: Public Education and Outreach, Public Participation, Illicit Discharge Detection and Elimination, Management of Construction Site Runoff, Management of Post Construction Site Runoff, and Good Housekeeping in Municipal Operations.

Recommended Council Action:
The Public Works Department requests the Council to approve the Mayor to electronically sign the Annual Report.

Attachments:
1. NPDES MS4 Annual Report

NPDES MS4 Annual Report

version 1.10

(Submission #: HQE-32V4-ZY2HW, version 1)

Details

Originally Started By	Bradly Jordan
Submission ID	HQE-32V4-ZY2HW
MS4 Owner Name	Town of Smyrna
Status	Draft

Form Input

General Information

Permit Number
TNS075779

MS4 Owner/Operator (e.g. City of ...)
Town of Smyrna

County
Rutherford

Reporting Period

Per subpart 5.1
a. The Annual Report shall cover the period beginning on July 1st and ending on June 30th;
b. The Annual Report shall be due on September 30th after the end of the reporting period.

Reporting Period Start Date
07/01/2024

Reporting Period End Date
06/30/2025

MS4 Population At NOI Submittal
Population greater than or equal to 50,001

Name and contact information of MS4 Responsible Authority (e.g. Mayor ...)

Prefix
NONE PROVIDED

First Name	Last Name
Mary Esther	Reed

Title
Mayor

Company Name
Town of Smyrna

Phone Type	Number	Extension
Business	615-459-2553	

Email
me.reed@townofsmyrna.org

Address
315 S. Lowry St.
Smyrna, TN 37167

Designated MS4 Stormwater Management Program Contact

Prefix
Mr.

First Name	Last Name
Bradly	Jordan

Title
Stormwater Coordinator

Company Name
Town of Smyrna

Phone Type	Number	Extension
Business	615-355-5701	

Email
bradly.jordan@townofsmyrna.org

Address
315 S LOWRY ST
SMYRNA, TN 37167

MCM 1: Public Education

Below report on the educational activities completed during the reporting year. Delete unused rows (click X at end of row). Add rows (add row button on bottom of table) to report add activities.

Provide the number of activities completed during the reporting year for the Public (Subpart 4.2.1.1. of the permit).
16

Provide the number of activities completed during the reporting year for the Engineering and Development Community (Subpart 4.2.1.2. of the permit).
2

For new employees: provide the total number of employees NOT educated in accordance with the PIE plan within 6 months?
0

For existing employees: provide the total number of employees NOT educated in accordance with the PIE plan within the permit term.
0

A population of greater than or equal to 50,001 at NOI submittal was selected in the General Information Section. Per Subpart 4.2.1.1. the MS4 is required to conduct six (6) activities during the reporting year addressing each of the four (4) management measures for the public. A single activity may address multiple management measures.
You may need to use the scroll bars to view the whole table.
To Add a Row - Click Add Row near the bottom right of the table
To Delete a Row - Click the "X" at the far right end of the row.

Column Descriptions

Target Audience (This column is fixed and cannot be changed.)

Activity Description: (Provide details as to the specific activity that was conducted.)

Management Measure: Impacts on Water Quality (Select Yes if the activity listed in this row addressed the 4.2.1.1.a.General awareness of the impacts on water quality.)

Management Measure: SCM/BMP Maintenance (Select Yes if the activity listed in this row addressed the 4.2.1.1.b. Awareness of the importance of maintenance activities for operators of permanent Best Management Practices (BMPs)/Stormwater Control Measures (SCMs).)

Management Measure: Storage, Use, Disposal of Fluids (Select Yes if the activity listed in this row addressed the 4.2.1.1.c. Awareness of the proper storage, use, and disposal of pesticides, herbicides, fertilizers oil and other automotive-related fluids.)

Management Measure: Illicit Discharges (Select Yes if the activity listed in this row addressed the 4.2.1.1.d. Awareness of identifying and reporting procedures for illicit connections/discharges, sanitary sewer seepage, spills, etc.)

Date of Activity (Enter the date the activity took place. If the activity took place across multiple days enter the Date of the first day of the activity.)

Specifically Targeted Audience (This column is used to provide more details as to the audience the activity was targeting e.g. school age children, Homeowners with SCMs) A broad based event such as tabling at a festival may list general public as the specifically targeted audience.

# of Audience (Enter the approximate number of individuals that were reached with this activity.)

Sponsored Activities (Identify if the event sponsored
monetarily e.g. money or as a donation in kind e.g. goods or services by the MS4 program. If it was not a sponsored activity, leave N/A in the cell.)

Provide the status of your MS4 program's public education and outreach activities for the Public audience during the reporting period.

Target Audience	Activity Description	Management Measure: Impacts on Water Quality	Management Measure: SCM/BMP Maintenance	Management Measure: Storage, Use, Disposal of Fluids	Management Measure: Illicit Discharges	Date of Activity	Specifically Targeted Audience	# of Audience	S
Public	Smyrna Annual Boat Day/Waterfest	Yes	No	Yes	Yes	06/21/2025	General Public, children	384	N
Public	Enviroscape Demonstration	Yes	Yes	Yes	Yes	01/21/2025	General Public, children	104	N
Public	Farmer's Market	Yes	No	No	No	07/30/2025	General Public, children	50	M
Public	TEC Booth	Yes	No	Yes	Yes	08/10/2025	General Public, children	15	M
Public	In-school demonstration	Yes	No	No	No	09/13/2024	General Public, children	367	M
Public	Importance of fresh water discussion	Yes	No	No	No	02/27/2025	General Public, children	60	M
Public	Read Across America school story telling	Yes	No	No	No	03/03/2025	General Public, children	65	M
Public	Enviroscape Demonstration	Yes	Yes	Yes	Yes	03/22/2025	General Public, children	20	M
Public	Stream erosion modeling	Yes	Yes	No	No	04/10/2025	General Public, children	30	M
Public	Enviroscape Demonstration	Yes	No	Yes	Yes	04/12/2025	General Public, children	100	M
Public	Watershed Modeling and water quality activity	Yes	No	Yes	Yes	06/16/2025	General Public, children	30	M
Public	Watershed Modeling and water quality activity	Yes	No	Yes	Yes	06/18/2025	General Public, children	40	M
Public	Benthic sampling and water cycle story	Yes	No	No	No	06/21/2025	General Public, children	20	M
Public	Garden Expo Booth	Yes	Yes	Yes	Yes	06/14/2025	General Public, children	10	N

A population of greater than or equal to 50,001 at NOI submittal was selected in the General Information Section. Per Subpart 4.2.1.2. the MS4 is required to conduct two (2) activities during the reporting year addressing each of the two (2) management measures for the Engineering and Development Community. A single activity may address multiple management measures.
You may need to use the scroll bars to view the whole table.
To Add a Row - Click Add Row near the bottom right of the table
To Delete a Row - Click the "X" at the far right end of the row.

Column Descriptions

Target Audience (This column is fixed and cannot be changed.)

Activity Description: (Provide details as to the specific activity that was conducted.)

Management Measure: Long Term Water Quality Impacts (Select Yes if the activity listed in this row addressed the 4.2.1.2.a Awareness of the stormwater ordinances, regulations, and guidance
materials related to long-term water quality impacts.)

Management Measure: Construction Water Quality Impacts (Select Yes if the activity listed in this row addressed the 4.2.1.2.b. Awareness of stormwater ordinances, regulations, and guidance materials
related to construction phase water quality impacts.)

Date of Activity (Enter the date the activity took place. If the activity took place across multiple days enter the Date of the first day of the activity.)

Specifically Targeted Audience (This column is used to provide more details as to the audience the activity was targeting e.g. restaurants, Engineers, Developers) A broad based event such as tabling at a local trade show may list commercial and development community as the specifically targeted audience.

# of Audience (Enter the approximate number of individuals that were reached with this activity.)

Provide the status of your MS4 program's public education and outreach activities for the Engineering and Development Community during the reporting period.

Target Audience	Activity Description	Management Measure: Long Term Water Quality Impacts	Management Measure: Construction Water Quality Impacts	Date of Activity	Specifically Targeted Audience	# of Audience
Engineering and Development Community	Grading Permit Pre-construction meeting	Yes	Yes	08/14/2024	Developers and engineers	109
Engineering and Development Community	Pre-development meetings	Yes	Yes	07/12/2024	Developers and engineers	84

Supporting Documentation for Activities described in this section.
Precon sign in sheets.pdf - 07/15/2025 08:47 AM
Pre-dev update.pdf - 07/15/2025 08:50 AM
Project WET 2024-2025 Participation.pdf - 07/16/2025 09:29 AM
Boat Day Flyer 2025.pdf - 07/16/2025 09:31 AM
Comment
21 total pre-development meetings and 45 total Grading Permit pre-construction meetings.

Notes:
21 total pre-development meetings and 45 total Grading Permit pre-construction meetings.

MCM 2: Public Involvement And Participation

Below report on the involvement/participation activities completed during the reporting year. Delete unused rows (click X at end of row). Add rows (add row button on bottom of table) to report add activities.

Is your Stormwater Management Program Plan documentation available online?
Yes

Provide the web address for the Stormwater Management Program plan documentation
https://www.townofsmyrna.org/Documents/Departments/Public%20Works/Storm%20Water/Resources/2024%20Revised%20SWMP.pdf

Was the MS4 program documentation formally placed on public notice during the reporting year?
Yes

Provide a copy of the public notice and response to comments.

10-24 Public Notice and Legislative report.pdf - 07/15/2025 10:26 AM

Comment

No public comments were received regarding the Stormwater Program.

Subpart 4.2.2. requires the following in the annual report
Detail applicable changes as directed in subpart 4.4.1
This requirement will be located in the Program Modifications Section

Is information for all construction site projects accessible to the public?

Yes

Number of comments received from the public on construction site projects.

65

Are all comments from the public on construction site projects considered?

Yes

Number of reports (or complaints) during the reporting period received from the public via public reporting system (IDDE reports)?

2

Provide the number of activities completed during the reporting year for the General Public (Subpart 4.2.2.1. of the permit).

25

Provide the number of activities completed during the reporting year for the Commercial and Development Community (Subpart 4.2.2.2. of the permit).

11

A population of greater than or equal to 50,001 at NOI submittal was selected in the General Information Section. Per Subpart 4.2.2.1. the MS4 is required to conduct six (6) activities during the reporting year addressing each of the four (4) management measures for the general public. A single activity may address multiple management measures.
You may need to use the scroll bars to view the whole table.
To Add a Row - Click Add Row near the bottom right of the table
To Delete a Row - Click the "X" at the far right end of the row.

Column Descriptions

Target Audience (This column is fixed and cannot be changed.)

Activity Description: (Provide details as to the specific activity that was conducted.)

Management Measure: Pollution Prevention (Select Yes if the activity listed in this row addressed the 4.2.2.1.a Pollution Prevention Management Measure.)

Management Measure: Impacts on Water Quality (Select Yes if the activity listed in this row addressed the 4.2.2.1.b. Impacts on water quality or local stormwater management issues.)

Management Measure: Storage, Use, Disposal of Fluids (Select Yes if the activity listed in this row addressed the 4.2.2.1.c. Storage, use, and disposal of household hazardous waste, automotive related fluids, pesticides, herbicides, and fertilizers use.)

Management Measure: Illicit Discharges (Select Yes if the activity listed in this row addressed the 4.2.2.1.d. Identifying and reporting procedures for illicit connections/discharges, sanitary sewer seepage, spills, etc.)

Date of Activity (Enter the date the activity took place. If the activity took place across multiple days enter the Date of the first day of the activity.)

Specifically Targeted Audience (This column is used to provide more details as to the audience the activity was targeting e.g. school age children, Homeowners with SCMs) A broad based event such as tabling at a festival may list general public as the specifically targeted audience.

# of Audience (Enter the approximate number of individuals that were reached with this activity.)

Sponsored Activities (Identify if the event sponsored
monetarily e.g. money or as a donation in kind e.g. goods or services by the MS4 program. If it was not a sponsored activity, leave N/A in the cell.)

Provide the status of your MS4 program's public involvement/participation activities for the General Public audiences during the reporting period.

Target Audience	Activity Description	Management Measure: Pollution Prevention	Management Measure: Impacts on Water Quality	Management Measure: Storage, Use, Disposal of Fluids	Management Measure: Illicit Discharges	Date of Activity	Specifically Targeted Audience	# of Audience	S A
General Public	Adopt-A-Stream	Yes	Yes	Yes	Yes	08/29/2024	General Public and schools	178	N
General Public	Adopt-A-Road	Yes	Yes	Yes	Yes	09/21/2024	General Public and schools	103	N
General Public	Smyna Annual Boat Day/Waterfest	Yes	Yes	Yes	Yes	06/21/2024	General Public, children	384	N

A population of greater than or equal to 50,001 at NOI submittal was selected in the General Information Section. Per Subpart 4.2.2.2. the MS4 is required to conduct two (2) activities during the reporting year addressing each of the two (2) management measures for the Commercial and Development Community. A single activity may address multiple management measures.
You may need to use the scroll bars to view the whole table.
To Add a Row - Click Add Row near the bottom right of the table
To Delete a Row - Click the "X" at the far right end of the row.

Column Descriptions

Target Audience (This column is fixed and cannot be changed.)

Activity Description: (Provide details as to the specific activity that was conducted.)

Management Measure: Pollution Prevention (Select Yes if the activity listed in this row addressed the 4.2.2.2.a Pollution Prevention Management Measure.)

Management Measure: Impacts on Water Quality (Select Yes if the activity listed in this row addressed the 4.2.2.2.b. Impacts on water quality or local stormwater management issues.)

Date of Activity (Enter the date the activity took place. If the activity took place across multiple days enter the Date of the first day of the activity.)

Specifically Targeted Audience (This column is used to provide more details as to the audience the activity was targeting e.g. restaurants, Engineers, Developers) A broad based event such as tabling at a local trade show may list commercial and development community as the specifically targeted audience.

# of Audience (Enter the approximate number of individuals that were reached with this activity.)

Provide the status of your MS4 program's public involvement/participation activities for the Commercial and Development Community during the reporting period.

Target Audience	Activity Description	Management Measure: Pollution Prevention	Management Measure: Impacts on Water Quality	Date of Activity	Specifically Targeted Audience	# of Audience
Commercial and Development Community	Adopt-A-Stream	Yes	Yes	11/09/2024	Businesses	8
Commercial and Development Community	Adopt-A-Road	Yes	Yes	09/21/2024	Businesses	43
Commercial and Development Community	Adopt-A-Highway	Yes	Yes	09/20/2024	Town Employees	13

Supporting Documentation for Activities described in this section.
Adoption Event Tracking Sheet - Google Sheets.pdf - 07/16/2025 09:46 AM
Comment
NONE PROVIDED

Notes:
13 Public Group Adopt-A-Stream Events
11 Public Group Adopt-A-Road Events
2 Town Adopt-A-Highway Events
1 Commercial/Development Community Adopt-A-Stream Events
8 Commercial/Development Community Adopt-A-Road Events

MCM 3: Illicit Discharge Detection & Elimination (IDDE)

Is the storm sewer map available through Spatial Rest Services?
Yes

Provide location for Spatial Rest Service for Map Layer(s)
https://maps.townofsmyrna.org/portal/apps/webappviewer/index.html?id=48d27f49311e4f26802d9919a21d14c7

The number of potential illicit discharges reported by the public.
2

The number of potential illicit discharges reported by internal personnel.
1

Total number of potential Illicit discharges reported (from any source) that are under investigation at the time of the annual report.
3

Were all potential illicit discharges investigated within 7 days of receipt?
Yes

Number of identified illicit discharges
3

Were all initial enforcement actions on confirmed illicit discharges taken within seven (7) calendar days of the investigation?
Yes

Number of corrective actions plans received for confirmed illicit discharges.
3

Were all corrective actions plans reviewed in accordance with established procedures?
Yes

Significant Contributor of Pollutants to the MS4

1.3.3.2. Non-stormwater Discharges
The permittee is authorized to discharge the following non-stormwater sources provided that the permittee has not determined these sources to be significant contributors of pollutants to the MS4:

- Water line flushing
- Landscape irrigation
- Diverted stream flows
- Rising ground waters
- Uncontaminated groundwater infiltration (Infiltration is defined as water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective pipes, pipe joint connections, or manholes. Infiltration does not include, and is distinguished from, inflow.)
- Uncontaminated pumped groundwater
- Discharges from potable water sources
- Foundation drains
- Air conditioning condensate
- Irrigation water
- Springs
- Water from crawl space pumps

- Footing drains
- Lawn watering
- Individual residential car washing
- Flows from riparian habitats and wetlands
- Dechlorinated swimming pool discharges
- Street wash water
- Discharges or flows from firefighting activities

Subpart 8.1 Definitions
Significant Contributor is defined as a source of pollutants where the volume, concentration, or mass of a pollutant in a stormwater discharge can cause or threaten to cause pollution, contamination, or nuisance that adversely impact human health or the environment and cause or contribute to a violation of any applicable water quality standards for receiving water.

Total number of non-stormwater discharges or flows investigated.
1

Has the MS4 identified an allowable non-stormwater dicharges from subpart 1.3.3.2 as a signficant contributer of pollutants?
No

Number of non-stormwater discharges (Subpart 1.3.3.2) or flows identified as a significant contributor of pollutants to the MS4.
0

Were all non-stormwater discharges or flows identified as a significant contributor of pollutants to the MS4 investigated?
No

MCM 4: Construction Site Stormwater Runoff Pollutant Control

For reporting construction activities in this section, count all activities e.g., projects, sites that were active during the reporting period. It is understood that activities will overlap multiple reporting years. For example: If a project plan is submitted and reviewed in reporting year 1, that plan review will go only on the report for that year. If that same project begins construction in reporting year 2, it would be included in the year 2 report for active construction activity, but not the year 1 report. If a construction activity is terminated in the beginning of a reporting year before the first inspection for that reporting year is required, that activity may be left off the count.

Identify if the regulatory mechanisms for construction site runoff control have been updated to be consistent with the CGP?
In Effect

Total number of active construction activities (or sites).
97

Number of new development and redevelopment projects reviewed in accordance with established policies and procedures.
135

Were all new development and redevelopment projects reviewed in accordance with the established policy and procedure?
Yes

Number of active non-priority construction activities.
82

Were all nonpriority active construction activities inspections conducted accordance with Stormwater Management Program.
Yes

The question below is asking for the number of non-priority construction activities that the MS4 **DOES NOT** have all of the required information for which indicates an issue with the MS4's tracking system.

Number of active priority construction activities.
15

Total number of active non-priority construction activities with incomplete inventory information.
0

Did all Priority Construction Activities have Pre-Construction meetings?
Yes

Were all priority Construction Activities inspected at least once per calendar month?
Yes

MCM 5: Post Construction/ Permanent Stormwater Management

Has an offsite mitigation program or payment in lieu into a public stormwater fund been developed as outlined in subpart 4.2.5.3.?
No

Did all of the projects approved meet the buffer requirements of subpart 4.2.5.4?
Yes

Does the Stormwater Management Program implement alternative buffer widths?
No

The 2009 scorecard can be found on TDEC's website.
Water Quality Scorecard

Scorecard
NONE PROVIDED
Comment
NONE PROVIDED

Number of all new development and redevelopment projects reviewed.
135

Number of new development and redevelopment projects reviewed in accordance with the established policy and procedure.
135

Number of sites verified that 100% of SCMs are installed per design specifications in accordance with approved plan.
49

Were all SCMs verified to be installed per design specifications in accordance with approved plan within 90 days of installation?
Yes

Does the permittee have adequate legal authority as required by 4.2.5.7 for all SCMs installed?
Yes

Number of SCMs that have not been properly operated or maintained.
67

> Please Note: This question is asking for the number of SCM that have **NOT** been properly operated or maintained. These are going to be the SCMs with issues that require some action to return to proper operations such as maintenance or repairs.

Have enforcement actions been taken in accordance with the appropriate legal authority or ERP?
Yes

Number of public requests for SCM inventory.
0

Are all SCMs in the inventory tracking system?
Yes

Do all SCMs in the inventory tracking system have complete information?
Yes

SCM inventory tracking system information
Detention Basin Inventory 2025.xlsx - 07/16/2025 11:24 AM
Comment
NONE PROVIDED

MCM 6: Pollution Prevention/Good Housekeeping For Municipal Operations

Number of applicable Municipal Operations and Facilities under subpart 4.2.6.2.
11

Do all applicable Municipal Operations and Facilities have a O&M Facility Plan?
Yes

Number Municipal Operations Facilities NOT inspected in accordance with the Stormwater Management Program in the previous 12 months.
0

Stormwater Management Program Modification

Have any municipal facilities covered under this permit been added during the reporting term?
Yes

In the table below identify if any changes were made to your Stormwater Management Program during the reporting period.

For minor modifications that add, but neither subtract nor replace, components, controls, or requirements to the Stormwater Management Program provide a description of that modification. - See Subpart 4.4.1.1.a

For minor modifications that replace an ineffective or infeasible BMP, or SCM which is specifically identified in the Stormwater Management Program provide a description of the analysis of why the former BMP was ineffective or infeasible; Expectations on the effectiveness of the replacement BMP or SCM; and an analysis, if applicable, of why the replacement BMP or SCM will ensure the optimization of equipment use. a description of that modification. - See Subpart 4.4.1.1.e

For major modifications that subtract BMPs, SCMs, components, controls, or requirements of the Stormwater Management Program provide a description of the analysis of why the component was ineffective or infeasible; and detailed explanation of why, with the elimination of this component, the Stormwater Management Program will continue to achieve a reduction in pollutants to the MEP and shall not cause or contribute to violations of State water quality standards in the receiving stream. - See Subpart 4.4.1.2.a.

Where any changes were made to the program elements during the reporting period?

Program Elements	Changes	Modifications that Add Components	Replaced an Ineffective or Infeasible BMP or SCM	Subtracted BMP, SCM, Components, Controls etc.
MCM 1	No	*NONE PROVIDED*	*NONE PROVIDED*	*NONE PROVIDED*
MCM 2	No	*NONE PROVIDED*	*NONE PROVIDED*	*NONE PROVIDED*
MCM 3	No	*NONE PROVIDED*	*NONE PROVIDED*	*NONE PROVIDED*
MCM 4	No	*NONE PROVIDED*	*NONE PROVIDED*	*NONE PROVIDED*
MCM 5	Yes	Implementation of LTMA and LTMP	*NONE PROVIDED*	*NONE PROVIDED*
MCM 6	No	*NONE PROVIDED*	*NONE PROVIDED*	*NONE PROVIDED*
QLP	N/A	*NONE PROVIDED*	*NONE PROVIDED*	*NONE PROVIDED*
Enforcement	No	*NONE PROVIDED*	*NONE PROVIDED*	*NONE PROVIDED*
Monitoring & Program Evaluation	No	*NONE PROVIDED*	*NONE PROVIDED*	*NONE PROVIDED*

Other Program Changes not Identified above
NONE PROVIDED

Summary Of Enforcement Actions

Note: Non-traditional MS4s may not have legal authority to enforce one or more MS4 permit requirements. For example, a university campus regulated as a MS4 permittee or co-permittee may not have the legal authority to enforce MS4 permit requirements against another entity.

Summary of Enforcement Actions Taken during the reporting year

Action	IDDE	Construction	Permanent Stormwater/Post-Construction	Total
Verbal Warnings	0	67	0	67
Written Notice of Violation	2	11	0	13
Citations or Administrative Orders	0	0	0	0
Stop Work Orders	0	5	0	5
Withholding of Plan Approvals or Other Authorizations	0	0	0	0
Civil Penalties	0	0	0	0
Additional Measures	6	2	23	31

Action	IDDE	Construction	Permanent Stormwater/Post-Construction	Total
				Sum: 116

Results Of Information Collected And Analyzed (Monitoring)

Was monitoring for the reporting year performed in accordance with either 4.6.1.1.1 (Option 1) or 4.6.1.1.2 (Option 2)?
No

Provide a summary describing the results of information collected and analyzed, including monitoring data (analytical and non-analytical), if any, during the reporting period. If no monitoring was completed, explain.
All 5 year water quality monitoring currently put out to CEC for completion within 5 years of last cycle.

Electronic Data Deliverable (EDD) Sheets (Field Stream Survey and Habitat Sheets, Macroinvertebrate Taxa Report, and the TDEC E. coli and Field Water Parameter Report) are in the section labelled Water Quality Assessment Publications as excel files.

For your convenience, links to the required standard templates for reporting the results of your monitoring data are provided below.

If you have any questions about EDD sheets please contact tdec.watershedplanning@tn.gov.
Publications

Legal Authority

Per subpart 4.7.1.The initial solicitor's (Attorney's) statement was required in the 2024 annual report for existing permittees and will be required in the third annual report for new permittees.

If modifications are made to the legal authority as requried by subpart 4.7. a-f that necessitate a new evaluation by a solicitor, a new certification statement must be submitted. If you are unsure if a modification necessitates a new evaluation please contact the Division.

Per subpart 4.1.2. All updates to the legal authority (ordinances/resolutions et.) required by changes to the permit shall be fully implemented and adopted.

Is this a new MS4 or have modifications been made to the legal authority that necessitate a new evaluation by a solicitor (attorney)?
No

Attach Legal Authority - Ordinances, Resolutions, etc
2024 Revised SWMO.pdf - 07/15/2025 02:00 PM
2024 Revised WQBZ.pdf - 07/15/2025 02:00 PM
Comment
Up-to-date Stormwater Management Ordinance and Water Quality Buffer Zone Policy

Attach Legal Authority - Enforcement Response Plan and List or Table of Progressive Enforcement Actions
2024 Revised SWMP.pdf - 07/15/2025 02:01 PM
2024 Revised PIE.pdf - 07/15/2025 02:01 PM
2024 Revised ERP.pdf - 07/15/2025 02:01 PM
Comment
Up-to-date Stormwater Management Plan, Public Information and Education Program, and Enforcement Response Plan

Stormwater Management Program Evaluation

Stormwater Management Program Evaluation

In accordance with subpart 4.6.2. The permittee shall conduct an annual evaluation of the Stormwater Management Program to evaluate compliance with the terms and conditions of the permit, including the effectiveness of the BMPs, components, or controls of its stormwater management program, and the status of achieving the measurable requirements in the permit.

Summarize the results of the permittee's annual evaluation of the current Stormwater Management Program.
All Stormwater processes running smoothly with adoption of latest MS4 permit. The Town continues to exceed minimum standards for public education and outreach. Collection of stormwater data from new and old infrastructure is constantly on-going. Smyrna continues to goes above and beyond on EPSC plan review by ensuring multiple levels of protection to ensure construction sites do not cause conditions of pollution to offsite property. The Town of Smyrna inspects all known freestanding grease receptacles within Town limits on a quarterly basis to reduce illicit discharge frequency.

Identify modifications or replacement of an ineffective activity/control measure/component/BMP.
No new modifications have been introduced in the 2024-2025 reporting period.

Summarize the assessment results, and any modifications and improvements scheduled to be implemented in the next reporting period to improve the program or remedy deficiencies or weaknesses
All permit changes have been reflected in our regulations and implemented successfully.

Is MCM 1: Public Education and Outreach on Stormwater Impacts compliant with Permit Requirements?
Yes

Is MCM 2: Public Involvement/Participation compliant with Permit Requirements?
Yes

Is MCM 3: Illicit Discharge Detection and Elimination (IDDE) compliant with Permit Requirements?
Yes

Is MCM 4: Construction Site Stormwater Runoff Control compliant with Permit Requirements?
Yes

Is MCM 5: Post-Construction/Permanent Stormwater Management in New Development and Redevelopment compliant with Permit Requirements?
Yes

Is MCM 6: Pollution Prevention/Good Housekeeping compliant with Permit Requirements?
Yes

Is Monitoring Program (subpart 4.6.1.1) compliant with Permit Requirements?
Yes

The following questions are from subpart 5.2 Annual Report Requirements.

Is the permittee compliant with the permit terms and conditions?
Yes

This determination should be made as to the status of the program at the end of the reporting period and the requirements applicable at that date. For example, the permanent stormwater program changes are not required to be implemented until 24 months after the effective date of the permit. So if the MS4 has not yet implemented those changes at the first annual report, they would still be in compliance, if their program meets the previously established requirements.

Please Explain
NONE PROVIDED

Is the permittee relying on another governmental entity to satisfy some of the permit obligations?
No

Enter additional or clarifying information not elsewhere reported in this document.
Project WET is a multi-municipality effort to educate the general public throughout the entirety of Rutherford County.

Any other data specifically requested by the Division to substantiate statements and conclusions reached in the Annual Reports.

Master Stormwater Tracking Sheet (4).xlsx - 07/16/2025 10:33 AM
gradingpermitplanschecklist.pdf - 07/16/2025 10:37 AM
Long Term Maintenance Agreement Form.pdf - 07/16/2025 10:41 AM
Smyrna LTMP & Inspection Forms.pdf - 07/16/2025 10:41 AM
Q2 2025 Grease Receptacles.xlsx - 07/16/2025 11:20 AM
Comment
Stormwater tracking sheet actively tracks multiple efforts of the Stormwater Program
Grading Permit plans checklist lists basic EPSC requirements for all sites
Long Term Maintenance Agreement for all new SCMs
Standard Long Term Maintenance Plan to base LTMA on
Current up-to-date list of all known free-standing grease receptacles

Attachments

Date	Attachment Name	Context	User
7/16/2025 11:24 AM	Detention Basin Inventory 2025.xlsx	Attachment	Bradly Jordan
7/16/2025 11:20 AM	Q2 2025 Grease Receptacles.xlsx	Attachment	Bradly Jordan
7/16/2025 10:41 AM	Long Term Maintenance Agreement Form.pdf	Attachment	Bradly Jordan
7/16/2025 10:41 AM	Smyrna LTMP & Inspection Forms.pdf	Attachment	Bradly Jordan

Date	Attachment Name	Context	User
7/16/2025 10:37 AM	gradingpermitplanschecklist.pdf	Attachment	Bradly Jordan
7/16/2025 10:33 AM	Master Stormwater Tracking Sheet (4).xlsx	Attachment	Bradly Jordan
7/16/2025 9:46 AM	Adoption Event Tracking Sheet - Google Sheets.pdf	Attachment	Bradly Jordan
7/16/2025 9:31 AM	Boat Day Flyer 2025.pdf	Attachment	Bradly Jordan
7/16/2025 9:29 AM	Project WET 2024-2025 Participation.pdf	Attachment	Bradly Jordan
7/15/2025 2:01 PM	2024 Revised SWMP.pdf	Attachment	Bradly Jordan
7/15/2025 2:01 PM	2024 Revised PIE.pdf	Attachment	Bradly Jordan
7/15/2025 2:01 PM	2024 Revised ERP.pdf	Attachment	Bradly Jordan
7/15/2025 2:00 PM	2024 Revised WQBZ.pdf	Attachment	Bradly Jordan
7/15/2025 2:00 PM	2024 Revised SWMO.pdf	Attachment	Bradly Jordan
7/15/2025 10:26 AM	10-24 Public Notice and Legislative report.pdf	Attachment	Bradly Jordan
7/15/2025 8:50 AM	Pre-dev update.pdf	Attachment	Bradly Jordan
7/15/2025 8:47 AM	Precon sign in sheets.pdf	Attachment	Bradly Jordan

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 5.
Department: Public Works
Date: August 28, 2025

Subject:
Approval of the terms of, and authorization for the Mayor to execute, a contract addendum with Energy, Land, and Infrastructure, LLC for the design of sidewalks along Rock Springs Road from Mason Tucker to Old Nashville Highway.

Fiscal Impact:
Funds for this project will be taken from the approval CIP entitled "New Sidewalks". GL Acct 320-43100-945. Currently there is $750,000 in this budget item.

Contract Type:
Contract Change Order /Amendment

Contract Term (if applicable):
NA

Background:
This is part of a project to design and construct a sidewalk system that connects downtown to ONH along Rock Springs Road. This will make a looped sidewalk system from ONH along Enon Springs and back to downtown.

Summary:
The original contract was for $179,660. This addendum is for an additional $32,850 to complete the design. During design some unforeseen circumstances were discovered that required additional design work. Some of the circumstances included deconfliction with underground utilities, drainage alternatives and redesign, and additional meetings and coordination.

Recommended Council Action:
The Public Works Department requests the Council to approve the Mayor to sign the addendum.

Attachments:
1. Energy Land & Infrastructure Agmt- Rock Springs Sidewalk
2. Rock_Springs_Rd_ELI_Executed_Agreement

AGREEMENT

This Agreement is made and entered into as of this 13th day of February, 2024, by and between Energy Land & Infrastructure, a Tennessee Limited Liability Company (the "Bidder") and the Town of Smyrna, Tennessee, a Tennessee municipal corporation (the "Town") for the purpose of Engineering Design Services.

WHEREAS, the Bidder has submitted a quotation for the provision of certain products and/or services to the Town, all in accordance with the terms of the Invitation to Submit Quotations attached hereto and incorporated herein by reference as if set forth at length verbatim as Exhibit A (the "ISQ"), and which Proposal from the Bidder is attached hereto and incorporated herein by reference as if set forth at length verbatim as Exhibit B (the "Quotation"); the ISQ and the Quotation, together with any and all ancillary documents thereto, shall be collectively referred to herein as the "Bid Documents"; and

WHEREAS, the Town now desires to accept the Bidder's quotation, in accordance with the terms set forth in such Bid Documents.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned do hereby agree as follows:

1. Acceptance of Bid Documents. The terms of the Bid Documents, as incorporated herein by reference, are hereby accepted by the parties hereto. The Bidder hereby agrees to provide the goods and/or services contemplated by such Bid Documents in accordance with the terms set forth therein. The Town hereby accepts the Bidder's quotation to provide the goods and/or services contemplated by such Bid Documents in accordance with the terms set forth therein.

2. Entire Agreement. This Agreement, including the exhibits and any other documents referred to herein or therein, which form a part hereof, contains the entire understanding of the parties with respect to its subject matter. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein or therein. This Agreement supersedes all prior written or oral agreements and understandings between the parties with respect to its subject matter and may not be altered, modified or amended, in whole or in part, except by the express written authorization and consent of the parties hereto.

3. Severability. This agreement constitutes the product of negotiations of the parties hereto and any enforcement of hereof will be interpreted in a neutral manner and not more strongly against any party based upon the source of the draftsmanship of this Agreement. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall continue to be fully effective.

4. Limitation of Liability. The Town of Smyrna shall not be liable for any loss, claim, expense or damage caused by, contributed to or arising out of the acts or omission of Bidder or third parties, whether negligent or otherwise.

5. Warranties. The Bidder warrants to the Town that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects, suitable for the purpose for which the materials and equipment are furnished, and in conformance with the Agreement. If it does not perform as warranted, Bidder shall use all commercially reasonable efforts to correct the product(s) so that it operates in all material respects in conformity with the written representations of Bidder. If Bidder cannot correct the product(s) within a reasonable period of time, Bidder shall refund the purchase price of the product(s). All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

6. Software Deadline, Testing and Acceptance: If applicable to the Agreement, software provided by Bidder shall be installed for the purposes of testing, as stated herein below, no later than one hundred twenty (120) days from the effective date of this Agreement unless the parties, in writing, set a different specific date. In Addition, software provided by Bidder to The Town is subject to inspection and testing to verify that the software conforms to its written specifications and to ensure it meets The Town's needs. The Town shall have seven (7) business days after the software is installed to perform testing of the software using The Town's data. The Town shall provide Bidder with written notice of acceptance or rejection of the software five (5) business days or less after the end of the testing period. If the Town does not provide timely written notice of acceptance or rejection to Bidder, the software shall be deemed to be accepted by The Town. If the software is rejected, The Town may, at its sole discretion, either (1) return the software and receive a refund of all fees paid with respect thereto, or (2) allow Bidder to repair or replace the software, without charge, in a timely manner. In the event The Town elects to allow the Bidder to repair or replace the software, The Town shall have an additional (7) business days in which to accept or reject the software as laid out hereinabove.

7. Use of The Town's Logo or Name: Bidder shall not use The Town's name or any logo in marketing or publicity materials or for marketing or publicity purposes without the prior written authorization from The Town. Bidder shall not issue, publish, or divulge any materials developed or used in the performance of this Agreement or make any statement to the media relating to this Agreement without the prior written consent of The Town.

8. Indemnification. The parties hereto agree that Bidder shall indemnify The Town for any and all claims of negligence, tortious conduct or otherwise unlawful acts committed by Bidder in the performance of their obligations under the terms of this agreement, including any and all attachments or exhibits thereto and Bidder agrees to pay any and all costs associated with the enforcement of the terms of this indemnity agreement by The Town, including but not limited to, court costs, civil judgments, assessments or any other reasonable fees associated therewith. This clause shall survive the expiration or termination of this Agreement and shall remain in full force and effect until the expiration of any applicable statute of limitation. In addition, Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private of public entities and, therefore, prohibits an agreement by The Town to indemnify a third party or agree to a limitation of liability provision.

9. Non-Appropriation: Bidder acknowledges that The Town is a governmental entity, and the validity of this Agreement is based upon the availability of public funding under its authority. In the event The Town fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to The Town, and such termination shall not be a breach of the Agreement, and any unused payment made to Bidder shall be returned to The Town.

10. Tax Exemption: As a tax-exempt entity, The Town shall not be responsible for sales or use taxes incurred for products or services. The Town shall supply Bidder with its Sales and Use Tax Exemption Certificate upon Bidder's request. Bidder shall bear the burden of providing its suppliers with a copy of The Town's tax exemption certificate and Bidder shall assume all liability for such taxes, if any, that should be incurred.

11. Attorney Fees. The parties hereto agree that The Town shall be in no event liable for any attorney's fees which Bidder may incur due to breach of this Agreement by either party; and further, The Town shall not acquiesce to any term in any document that indicates or infers The Town may or shall be responsible for the Attorney's fees of another party or the Bidder's attorney fees.

12. Boycott of Israel. The Bidder certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-127.

13. Failure to perform. The parties agree, in the event Bidder fails to perform any obligation, other than with regards to the date of delivery, set out in this Agreement, the Town shall be reimbursed by Bidder for any and all expenses associated with having to obtain a new provider to finish out the contracted term, including, but in no way limited to, any charges/fees, which are above and beyond the amount the Town would have paid to Bidder to complete the same task; provided, however, that if the failure, by its nature, is one that can be cured, the Bidder shall have fifteen (15) business days after receipt of written notice from the Town to cure said failure to perform. The parties hereby agree, unless a specific date of delivery is provided in this Agreement or other bid documents, all deliveries shall be made to the Town no later than ninety (90) days from the date of order. The parties further agree that if Bidder, in good faith, is not able to meet this ninety (90) day deadline of delivery due to forces beyond his, her or its control, that were unforeseeable at the time of signing this contract, then this entire Agreement shall be voidable at the sole discretion of the Town. Should the Town elect to void this Agreement due to Bidder's good faith inability, due to forces beyond his, her or its control, and which were unforeseeable at the time of signing this Agreement to meet the delivery deadline, then neither party shall be deemed to have breached this Agreement, and Bidder shall return all monies, within seven (7) business days, paid by the Town for the products/items that could not be delivered in the allotted time.

14. Unilateral Modification of Agreement Not Permitted: Bidder may make unilateral changes to its Privacy Policy, provided any such changes are subject to the provisions of this Agreement but shall not materially alter the use of the service or reduce the level of protection provided to the Town at the time of the execution of this Agreement. Except as provided in the preceding sentence, notwithstanding anything in this Agreement to the contrary, any change to this Agreement made by Bidder that is not in writing and that is not properly executed by the signatures of authorized representatives of the parties hereto, including attestation by The Town's Clerk and approved as to form by the Town Attorney are subject to the terms and conditions of this Agreement.

15. Changes to Terms: Except as provided in Paragraph No. 13 above pertaining to Bidder's Privacy Policy, Bidder shall provide The Town written notice, sent in care of Town Attorney's Office, Smyrna, Tennessee, 315 South Lowry Street, Tennessee 37167, of any proposed change to this Agreement at least ninety (90) days prior to being effective to The Town. The Town shall have thirty (30) days after receiving the written notice to terminate this Agreement, and such cancellation shall not be a breach of this Agreement. Bidder will refund to The Town any payment made by The Town to Bidder equal to the difference between the number of months the payment was intended for and the number of months remaining on this Agreement that the fee was intended to cover.

16. Price Assurance: Unless specifically stated in this Agreement or other bid documents, the bid price shall be valid for the full term of this Agreement. If the Bidder, specifically states that he, she or it cannot honor the bid price for the full term of this Agreement; then this Agreement is voidable at the sole discretion of the Town, if

at any time during the full term of this Agreement, Bidder requests to raise the bid price. If the Town elects to void this Agreement, at its sole discretion, it shall not be deemed to be a breach of the contract by either party.

17. Confidentiality. The Town, as a Tennessee Municipal Corporation is subject to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq; therefore, this Agreement and all documents or materials, in any format, including, but not limited to paper, electronic or virtual, that are public records pursuant to law, are not confidential and are subject to disclosure. The Town will respond to all proper Open Records Requests in the time allowed by law, without any requirement to disclose such request to Bidder or provide Bidder with notice or the time to obtain a protective order. The Town does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 16 serves to meet such burden and authorization of disclosure.

18. Mediation. The Town may, at its option, require the attempted resolution of any dispute arising under this Agreement by mediation prior to the filing of any lawsuit or other claim. Should any dispute arise, Bidder shall provide the Town notice of any intent to file suit by certified mail. The Town shall notify the Bidder of its intent to exercise its right to mediation within thirty (30) days of receiving such notice. If the Town does not exercise its right to mediation, Bidder may file suit. Any mediator selected under this clause shall be agreed upon by the parties and the costs of such mediation shall be divided and paid equally between the parties.

19. No Presumption Against Drafter: The parties are both business entities having substantial experience with the subject matter of this Agreement, and each has fully participated in the negotiation and drafting of this Agreement. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

20. Governing Law. This Agreement shall be deemed to have been executed and delivered within the State of Tennessee, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Tennessee. The parties agree that all obligations of the parties are performable in Smyrna, Tennessee.

21. Choice of Forum and Venue. The parties' choice of forum and venue shall be exclusively in the courts of Rutherford County, Tennessee or the United States District Court, for the Middle District of Tennessee. The parties hereby waive their right to a jury trial. Any provision of the Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

TOWN OF SMYRNA, TENNESSEE

By: _____
Name: Mary Esther Reed
Title: Mayor

ATTEST:

_____
Amber Hobbs, Town Clerk

BIDDER:

By: _____
Name: Timothy L. Haggard
Title: Associate Vice President

ATTEST:

_____

ENERGY LAND & INFRASTRUCTURE

December 19, 2023

Tom Rose, PE
Public Works Director
Town of Smyrna
315 S. Lowry Street
Smyrna, TN 37167

Via email: tom.rose@townofsmyrna.org

Re: Proposal For Professional Services
Rock Springs Road Sidewalk Improvements – Phase 2
Survey and Design

Dear Mr. Rose,

Energy Land & Infrastructure, LLC (ELI) is pleased to offer this Proposal and Agreement for professional services to provide roadway survey and design of improvements for Rock Springs Road from Mason Tucker Drive to Old Nashville Highway. We value the Town of Smyrna as a client and we are pleased that you have chosen to place continued confidence in ELI for professional engineering consultant services.

Project Understanding
The Town of Smyrna plans to complete roadway and sidewalk improvements to Rock Springs Road from Mason Tucker Drive westward to Old Nashville Highway. The roadway is classified as a major collector on the TDOT Functional Classification Map (2019). On the Town of Smyrna Major Thoroughfare Plan Map (2017) the road is shown as a Collector with a desired 60' ROW. Rock Springs Road has an average daily traffic (ADT) of 6448 vehicles (TDOT count station 267 for 2023). The existing roadway has two traffic lanes with a crowned typical section, ditches for drainage, with no shoulders.

It is our understanding that the Town of Smyrna desires to complete improvements along the north side of Rock Springs Road. The improvements will include new sidewalk and curb and gutter along the north side of the road, with related storm drainage improvements. This project would be phase 2, with Phase 1 to the east of Mason Tucker Drive. This objective of this agreement would be for ELI to assist the Town in design of the roadway and sidewalk improvements.

Scope of Services Summary
ELI will provide survey and engineering services for the construction of sidewalks along the north side of Rock Springs Road, from Mason Tucker Drive to Old Nashville Highway. A detailed scope of services is provided in the proposal form.

Compensation
ELI proposal to provide the above described scope of services at our standard hourly rates, included herein as Attachment 2, with the following not to exceed budget estimates:

Task	Description	Fee
Item A	Roadway Survey	$ 68,575
Item B	Preliminary Plans Phase	$ 43,437
Item C	Right-of-way Plans Phase	$ 39,433
Item D	Construction Plans Phase	$ 28,215
Item E	Construction Phase Services	TBD
	TOTAL	$179,660

Schedule

Upon written authorization, ELI will proceed with the Roadway Database Survey. Please allow (2) complete months completion of Scope Item A. Please allow three (3) additional months for completion of Scope Items B & C based on the results of the survey.

We appreciate this opportunity to serve the Town of Smyrna. If you have any questions or require any additional information, please do not hesitate to give me a call.

Warmest regards,

ENERGY LAND & INFRASTRUCTURE, LLC

John R. Gordon, PE, PMP, CPESC
Principal Engineer

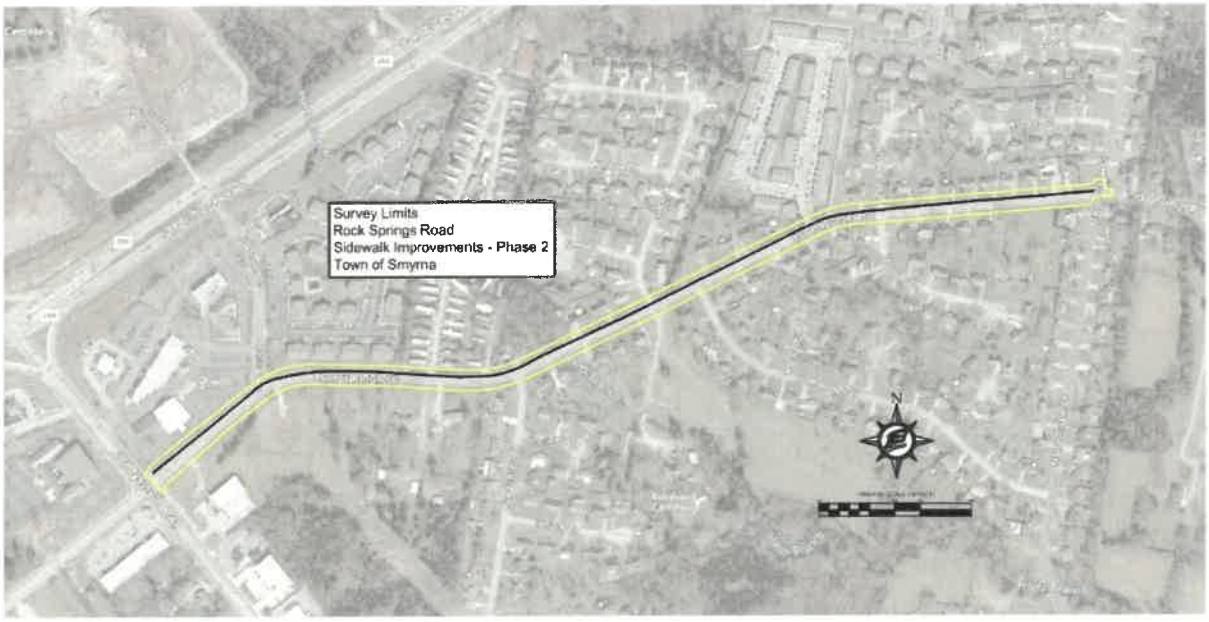
Timothy L. Haggard, PE, PLS, LEED AP
Associate VP | Office Lead

Attachments: 1) Survey Limits
2) Standard Hourly Rates

ATTACHMENT 1

Survey Extents

ELI will perform a roadway database survey for engineering design for the full length of the proposed improvements to Rock Springs Road from Mason Tucker Drive to Old Nashville Highway, which is approximately 0.76 miles of mainline corridor length.



ATTACHMENT 2

ELI Standard Hourly Rates & Reimbursable Expenses

Engineering Staff Rates

Senior Principal Engineer	$225
Program Manager/Principal Engineer	$210
Senior Project Manager	$210
Project Manager	$175
Assistant Project Manager	$155
Senior Engineer/Engineer V	$170
Engineer IV	$155
Engineer III	$135
Engineer II	$120
Engineer I	$110
Intern	$80
CAD Manager	$140
Senior CAD Designer	$120
CAD Designer I	$90
CAD Technician II	$85
CAD Technician I	$70

Survey Staff Rates

Director of Survey/SUE	$195
Survey Manager (Office Level)	$165
Senior R/PLS | Assistant Survey Manager	$150
R/PLS | Survey/SUE Team Leader	$140
Survey/SUE Project Manager	$130
Lead Survey Technician	$115
Senior Survey Technician/Senior CAD Technician	$100
Survey Technician /CAD Technician	$90
Survey Intern	$80
Professional Land Surveyor (R/PLS)	$125
Sr Survey/SUE Crew Chief	$100
Survey/SUE Crew Chief	$90
Sr Survey/SUE Technician	$80
Survey/SUE Technician	$70
Survey Crew (2-Person)	$160
Survey Crew (1-Person)	$145
UAS/UAV Photogrammetry Crew	$280
UAS/UAV LiDAR Crew	$285
Mobile Scan Crew	$250

Administrative Staff Rates

Admin	$60

Reimbursable Expenses

Mileage	GSA Rate
Materials Markup:	Cost plus 10%
Outside Services, Subcontractors, Miscellaneous Expenses	Cost plus 10%
Per Diem	$145/day
ATV Plus Trailer	$40/day

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement between **Town of Smyrna, TN** (Owner) and **Energy Land & Infrastructure, LLC** (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as **Rock Springs Road Sidewalk Improvements – Phase 2** (Project). Other terms used in this Agreement are defined in Article 7. Engineer's services under this Agreement are generally identified as **Survey and Design of roadway and sidewalk improvements on the north side of Rock Springs Road from Mason Tucker Drive to Old Nashville Highway. The project length is approximately 0.76 miles.**

Owner and Engineer further agree as follows:

ARTICLE 1—SERVICES OF ENGINEER

1.01 Scope

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

B. All phases of service will include Management of Engineering Services as shown in Exhibit A.

ARTICLE 2—OWNER'S RESPONSIBILITIES

2.01 Project Information

A. To the extent Owner has not already provided the following, or has new, additional, or revised information from that previously provided, Owner shall provide Engineer with information and data needed by Engineer in the performance of Basic and Additional Services, including Owner's:

1. design objectives and constraints;
2. space, capacity, and performance requirements;
3. flexibility and expandability needs;
4. design and construction standards;
5. budgetary limitations; and
6. any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.

B. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information as Additional Services. Such additional information or data may include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Surveys, topographic mapping, and utility documentation.

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4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretation of such information or data.

6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.

7. Data or consultations as required for the Project but not otherwise identified in this Agreement.

C. Owner shall examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

D. Owner shall furnish to Engineer data as to Owner's anticipated costs for services to be provided to Owner by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) so that Engineer may assist Owner in collating the various cost categories that comprise Total Project Costs.

E. Owner shall advise Engineer if any invention, design, process, product, or device that Owner has requested, required, or recommended for inclusion in the Drawings or Specifications will be subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights.

F. Owner shall inform Engineer as to whether Engineer's assistance is requested with respect to Owner's evaluation of the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.

G. Owner shall inform Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.

2.02 Owner's Instructions Regarding Bidding/Proposal and Front-End Construction Contract Documents

A. Owner shall give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable) and Owner's construction contract practices and requirements, and furnish to Engineer (or give specific directions requesting Engineer to use copies already in Engineer's possession) the following:

1. Owner's standard contract forms, general conditions (if other than the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract), supplementary conditions, text, and related documents and content for Engineer to include in the draft Bidding/Proposal Documents, and in draft Front-End Construction Contract Documents;

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2. insurance and bonding requirements;

3. protocols for electronic transmittals during bidding and construction;

4. Owner's safety and security programs applicable to Contractor and other Constructors;

5. diversity and other social responsibility requirements;

6. bidding and contract requirements of funding, financing, or regulatory entities;

7. other specific conditions applicable to the procurement of construction or contract documents;

8. any other information necessary for Engineer to assist Owner in preparing its Bidding/Proposal Documents and Front-End Construction Contract Documents.

B. Owner shall have responsibility for the final content of (1) such Bidding/Proposal Documents, and (2) such Front-End Construction Contract Documents, other than content furnished by Engineer concerning the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters.

1. Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.

C. If there will be an advertisement soliciting bids for construction, Owner shall place and pay for such advertisement.

2.03 Owner-Furnished Services

A. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, Owner shall obtain, as required for the Project:

1. Accounting, bond and financial advisory services (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.

2. Legal services, including attorney review of proposed Construction Contract Documents, legal services required by Owner, legal services needed as a result of issues raised by Contractor, and Project-related legal services reasonably requested by Engineer.

3. Auditing services, including those needed by Owner to ascertain how or for what purpose Contractor has used money paid to it.

B. Owner shall provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Owner shall provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.

C. Owner shall acquire or arrange for acquisition of the Site(s) and any temporary or permanent rights of access, easements, or property rights needed for the Project.

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D. With respect to the portions or phases of the Project designed or specified by Engineer, Owner shall provide, obtain, or arrange for:

1. all required reviews, approvals, consents, and permits from governmental authorities having jurisdiction, and

2. such reviews, approvals, and consents from others as may be necessary for completion of each portion or phase of the Project.

E. Owner may delegate to Contractor or others the responsibilities set forth in Paragraphs 2.03.C and D.

2.04 Owner's General Responsibilities

A. Owner shall inform Engineer of the policies, procedures, and requirements of Owner that are applicable to Engineer's performance of services under this Agreement.

B. Owner shall provide Engineer with Owner's budget for the Project, including type and source of funding to be used, and will promptly inform Engineer if the budget or funding sources change.

C. Owner shall inform Engineer in writing of any safety or security programs that are applicable to the personnel of Engineer, its Subconsultants, and Engineer's Subcontractors, as they visit the Site or otherwise perform services under this Agreement.

D. Owner shall arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under this Agreement.

E. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance of its services.

F. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

G. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:

1. any development that affects the scope or time of performance of Engineer's services;

2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

H. Owner shall advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

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I. If Owner designates a construction manager, site representative, or any individual or entity other than, or in addition to, Engineer to represent Owner at the Site, Owner shall define and set forth as an exhibit to this Agreement the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

J. Owner shall:

1. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

2. Primarily communicate with Engineer's Subcontractors and Subconsultants through the Engineer.

a. Promptly inform Engineer of the substance of any communications between Owner and Engineer's Subcontractors or Subconsultants.

b. Refrain from directing the services of Engineer's Subcontractors or Subconsultants.

3. Authorize Engineer to provide Additional Services as set forth in Article 2 of Exhibit A of the Agreement, as required.

2.05 Payment

A. Owner shall pay Engineer as set forth in Article 4 and Exhibit J.

B. Engineer's compensation is summarized as follows; if there is a conflict between the following summary and the contents of Exhibit J, then Exhibit J will prevail.

Description of Service		Amount	Basis of Compensation
1.	Basic Services (Described in Exhibit A)	$**179,660.00**	Hourly Rates

1. Compensation items and totals based in whole or in part on Hourly Rates, Direct Labor, or Percentage of Construction Cost are estimates only.

2. Lump sum amounts incorporate Engineer's labor, overhead, profit, and Engineer's Subcontractor and Subconsultants' charges.

ARTICLE 3—SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit B, and are hereby agreed to be reasonable.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed

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or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.

D. If Engineer fails, for reasons within control of Engineer, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages to the extent, if any, resulting from such failure by Engineer.

ARTICLE 4—INVOICES AND PAYMENTS

4.01 Invoices

A. Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices, the progress reporting and special invoicing requirements (if any) in Exhibit A Paragraph 1.01.A, and the terms of Exhibit J. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

A. Application to Interest and Principal: Payment will be credited first to any interest owed to Engineer and then to principal.

B. Disputed Invoices: If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so; may withhold only that portion so disputed; and must pay the undisputed portion, subject to the terms of Paragraph 4.01. After a disputed item has been resolved, Engineer shall include the agreed-upon amount on a new invoice.

C. Failure to Pay: If Owner fails to make any undisputed payment due Engineer within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and

2. Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement until Owner has paid in full amounts due. Owner waives any and all claims against Engineer for any such suspension.

D. Sales or Use Taxes: If after the Effective Date any governmental entity takes an action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement will be in addition to the compensation to which Engineer is entitled under the terms of Exhibit J.

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ARTICLE 5—OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. Engineer's opinions of probable Construction Cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 Opinions of Total Project Costs

A. The services, if any, of Engineer with respect to Total Project Costs will be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6—GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. Standard of Care: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

B. Technical Accuracy: Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. Engineer's Subcontractors and Subconsultants: Engineer may retain such Engineer's Subcontractors and Subconsultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. Reliance on Others: Subject to the standard of care set forth in Paragraph 6.01.A, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. Compliance with Laws and Regulations, and Policies and Procedures

1. Engineer and Owner shall comply with applicable Laws and Regulations.

2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in

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Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:

   a. changes after the Effective Date to Laws and Regulations,

   b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures, and

   c. changes after the Effective Date to Owner-provided written policies or procedures.

F. General Conditions of Construction Contract: The general conditions for any Construction Contract Documents prepared hereunder are to be the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract, prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise.

G. Copies of Drawings and Specifications: If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one complete electronic copy of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations, and one complete printed copy, duly signed and sealed.

H. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant conditions whose existence Engineer cannot ascertain within the authorized scope of Engineer's services. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to Engineer in any way contingent upon Engineer signing any such document.

I. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

J. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.

K. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer.

L. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

M. Engineer's services do not include providing legal advice or representation.

N. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and

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Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

O. While at the Site, Engineer, its Subconsultants, and Engineer's Subcontractors, and their employees and representatives will comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 Ownership and Use of Documents

A. All Documents are instruments of service, and Engineer owns the Documents, including all associated copyrights and the right of reuse at the discretion of the Engineer. Engineer shall continue to own the Documents and all associated rights whether or not the Project is completed.

1. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project.

2. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations:

a. Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;

b. any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Subconsultants;

c. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and

d. such limited license to Owner shall not create any rights in third parties.

B. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

C. Engineer shall inform Owner if Engineer is aware of any invention, design, process, product, or device specified in the Drawings, Specifications, or other Documents that is subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights. If Engineer's good-faith inclusion in the Drawings, Specifications, or other Documents of new, innovative, or non-standard technologies, for the benefit of Owner and the Project, results in third-party claims of infringement or violation of

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intellectual property rights, then Owner and Engineer shall share equally the costs of defending against, settling, or paying such claims.

D. Engineer will obtain Owner's consent, which will not be unreasonably withheld, prior to releasing any publicity, including news and press releases, promotional publications, award and prize competition submittals, and other advertising regarding the subject matter of this Agreement. Nothing herein will limit the Engineer's right to include information in statements of qualifications and proposals to others accurately describing its participation and participation of employees in the Project.

6.03 Electronic Transmittals

A. To the fullest extent practical, Owner and Engineer agree to transmit, and accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with Exhibit F, Electronic Documents Protocol (EDP).

1. Compliance with the EDP by Engineer shall be considered a Basic Service and no direct or separate compensation will be paid to Engineer for such compliance, unless provisions for separate compensation are expressly set forth in the EDP.

2. Engineer's costs directly attributable to changes in Engineer's Electronic Documents obligations, after the effective date of this Agreement, necessitated by revisions to Exhibit F, delayed adoption of Exhibit F, or implementation of other Electronic Documents protocols, will be compensated as Additional Services.

B. If this Agreement does not include Exhibit F or otherwise does not establish or include protocols for transmittal of Electronic Documents by Electronic Means, then Owner and Engineer may operate without specific protocols or may jointly develop such protocols at a later date.

C. Except as stated otherwise in Exhibit F (if included in this Agreement), when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents, or from those established in applicable protocols.

D. This Agreement (including the EDP) is not intended to create obligations for Owner or Engineer with respect to transmittals to or from third parties, except as expressly stated in the EDP.

6.04 Insurance

A. Engineer shall procure and maintain insurance as set forth in Exhibit G.

B. Additional Insureds: The Engineer's commercial general liability, automobile liability, and umbrella or excess liability policies, must:

1. include and list as additional insureds Owner, and any individuals or entities identified as additional insureds in Exhibit G;

2. include coverage for the respective officers, directors, members, partners, and employees of all such additional insureds;

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3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations); and

4. not seek contribution from insurance maintained by the additional insured.

C. Owner shall procure and maintain insurance as set forth in Exhibit G.

D. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer, its Subconsultants, and Engineer's Subcontractors to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project. Owner shall give Engineer access to any certificates of insurance and copies of endorsements and policies obtained by Owner from Contractor.

E. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates must be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

1. Upon request by Owner or any other insured, Engineer shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subconsultants and Engineer's Subcontractors. In any documentation furnished under this provision, Engineer may redact (a) any confidential premium or pricing information and (b) any wording specific to projects or jurisdictions other than those applicable to this Agreement.

F. All construction contracts entered into by Owner with respect to the Project must require builder's risk or similar property insurance.

G. All policies of property insurance relating to the Project, including but not limited to any builder's risk or similar policy, must allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer, its Subconsultants, or Engineer's Subcontractors. Owner and Engineer waive all rights against each other, Contractor, Engineer's Subcontractors and Subconsultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any such builder's risk or similar policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

H. All policies of insurance must contain a provision or endorsement that the coverage afforded will not be canceled, and that renewal will not be refused, until at least 10 days' prior written notice has been given to the primary insured. Upon receipt of such notice, the primary insured must promptly forward a copy of the notice to the other party to this Agreement and replace the coverage being cancelled or reduced to conform to the requirements of this Agreement.

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I. At any time, Owner may request that Engineer, or Engineer's Subcontractors or Subconsultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require Engineer's Subcontractors or Subconsultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 Suspension and Termination

A. Suspension

1. By Owner: Owner may suspend Engineer's services for up to 90 days upon 7 days' written notice to Engineer.

2. By Engineer: Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement:

a. if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraphs 4.02.B and 4.02.C;

b. in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.09.D; or

c. if persistent circumstances beyond the control of Engineer have prevented it from performing its obligations under this Agreement.

B. Termination for Cause

1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.

a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. In addition to its termination rights in Paragraph 6.05.B.1, Engineer may terminate this Agreement for cause upon 7 days' written notice:

a. if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional;

b. if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control; or

c. as the result of the presence at or adjacent to the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.09.E.

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3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.

C. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.

D. Extension of Effective Date of Termination: If Owner terminates the Agreement for cause or convenience, Owner may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Engineer shall be entitled to compensation for such tasks.

E. Payments Upon Termination: In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.02.A.

1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the Documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.

2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Subcontractors or Subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit J.

6.06 Successors, Assigns, and Beneficiaries

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.06.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

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1. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

2. Nothing in this Agreement will be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C will appear in the Construction Contract Documents.

6.07 Dispute Resolution

A. Unless otherwise required by Exhibit H, Owner and Engineer shall resolve all disputes in the following manner:

1. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice, prior to invoking mediation.

2. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process will be conducted on a confidential basis, and must be completed within 120 days.

3. If the parties fail to resolve a Dispute through negotiations under Paragraph 6.07.A.1 or mediation under Paragraph 6.07.A.2, then:

a. either or both may invoke the applicable dispute resolution procedures of Exhibit H for final resolution of Disputes.

b. If Exhibit H is not included, or if no final dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.08 Controlling Law; Venue

A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

B. Venue for any exercise of rights at law will be the state court having jurisdiction at the location of the Project; or at the choice of either party, and if federal jurisdictional requirements can be met, in federal court in the district in which the Project is located.

6.09 Environmental Condition of Site

A. Owner represents to Engineer that, as of the Effective Date, to the best of Owner's knowledge, no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.

B. Undisclosed Constituents of Concern: For purposes of this Paragraph 6.09, the presence at or adjacent to the Site of Constituents of Concern that were not disclosed to Engineer pursuant to Paragraph 6.09.A, in such quantities or circumstances that such Constituents of Concern may present a danger to persons or property exposed to them, will be referred to as "undisclosed" Constituents of Concern.

1. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained

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pursuant to industry practices, Laws and Regulations, and the requirements of this Agreement or the Construction Contract, are not undisclosed Constituents of Concern.

2. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under this Agreement are not undisclosed Constituents of Concern.

3. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under another professional services contract for Owner, or as part of the work under a construction or remediation contract, are not undisclosed Constituents of Concern if Engineer has been informed of the general scope of such contract.

C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate authorities having jurisdiction if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, or if encountered, uncovered, or revealed Constituents of Concern are present in substantially greater quantities or substantially different locations than disclosed or anticipated, or if investigative or remedial action, or other professional services, are necessary or required by applicable Laws and Regulations with respect to such Constituents of Concern, then Engineer may, at its option and without liability for direct, consequential, or any other damages, suspend performance of services on the portion of the Project adversely affected thereby until such portion of the Project is no longer so affected; and Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

E. If the presence at the Site of undisclosed Constituents of Concern, or of Constituents of Concern in substantially greater quantities or in substantially different locations than disclosed or anticipated, adversely affects the performance of Engineer's services under this Agreement, then:

1. if the adverse effects do not preclude Engineer from completing its Project services in general accordance with this Agreement on unaffected or marginally affected portions of the Project, Engineer may accept an equitable adjustment in its compensation or in the time of completion, or both; and the Agreement will be amended to reflect changes necessitated by the presence of such Constituents of Concern; or

2. if the adverse effects are of such materiality to the overall performance of Engineer that it cannot complete its services without significant changes to the scope of services, time of completion, and compensation, then Engineer may terminate this Agreement for cause on 7 days' written notice.

F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and will not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

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6.10 Indemnification and Mutual Waiver

A. Indemnification by Engineer: To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."

B. Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer, its Subconsultants, Engineer's Subcontractors, and their officers, directors, members, partners, agents, employees, and subconsultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that:

1. any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and

2. nothing in this paragraph obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

C. No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.

D. Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, will not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

E. Mutual Waiver: To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's officers, directors, members, partners, agents, employees, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes. Such excluded damages include but are not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and cost of capital.

6.11 Records Retention

A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, or such other period as required by Laws and Regulations, all

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Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.12 Miscellaneous Provisions

A. Notices: Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All such notices are effective upon the date of receipt.

B. Survival: Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Engineer.

D. No Waiver: A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.

E. Accrual of Claims: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

ARTICLE 7—DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. Addenda—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. Additional Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 2 of Exhibit A of this Agreement.

3. Agreement—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.

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5. Basic Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 1 of Exhibit A of this Agreement.

6. Bidding/Proposal Documents—Documents related to the selection of the Contractor, including advertisements or invitations to bid; requests for proposals; instructions to bidders or proposers, including any attachments such as lists of available Site-related documents; bid forms; bids; proposal forms; proposals; bidding requirements; and qualifications documents.

7. Change Order—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

8. Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

9. Constituents of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

10. Construction Contract—The entire and integrated written contract between Owner and Contractor concerning the Work.

11. Construction Contract Documents—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract. See also definition of "Front-End Construction Contract Documents" below.

12. Construction Contract Price—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

13. Construction Contract Times—The number of days or the dates by which Contractor must: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

14. Construction Cost—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

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15. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, or Subconsultants, or Engineer's Subcontractors), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, design-builders, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

16. Contractor—The entity or individual with which Owner enters into a Construction Contract.

17. Documents—All documents expressly identified as deliverables in this Agreement, whether in printed or Electronic Document form, required by this Agreement to be provided or furnished by Engineer to Owner. Such specifically required deliverables may include, by way of example, Drawings, Specifications, data, reports, building information models, and civil integrated management models.

18. Drawings—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. Effective Date—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

20. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

21. Electronic Means—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Agreement. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. Engineer—The individual or entity named as such in this Agreement.

23. Engineer's Subcontractor—An individual, firm, vendor, or other entity having a contract with Engineer to furnish general services, equipment, or materials with respect to the Project as an independent contractor.

24. Field Order—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

25. Front-End Construction Contract Documents—Those Construction Contract Documents whose primary purpose is to establish legal and contractual terms and conditions, typically including the Owner-Contractor agreement, bonds, general conditions, and supplementary conditions. The term excludes the Drawings and Specifications, and any

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Construction Contract Documents delivered or issued after the effective date of the Construction Contract.

26. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

27. Owner—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.

28. Project—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

29. Record Drawings—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

30. Resident Project Representative—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of the RPR.

31. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

32. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

33. Site—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

34. Specifications—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

35. Subconsultant—An individual, design firm, consultant, or other entity having a contract with Engineer to furnish professional services with respect to the Project as an independent contractor.

36. Subcontractor—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

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37. Submittal—A written or graphic document, prepared by or for Contractor, which the Construction Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Construction Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Construction Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

38. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

39. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

40. Total Project Costs—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties and private utilities (including relocation if not part of Construction Cost), Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

41. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

42. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all

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materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

43. Work Change Directive—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. Terminology

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8—EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits to Agreement

The following exhibits are incorporated by reference and included as part of this Agreement:

A. Exhibit A, Engineer's Services.

B. Exhibit B, Deliverables Schedule.

C. Exhibit C, Amendment to Owner-Engineer Agreement (form).

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. **(NOT USED)**

E. Exhibit E, EJCDC® C-626, Notice of Acceptability of Work (form). **(NOT USED)**

F. Exhibit F, Electronic Documents Protocol (EDP). **(NOT USED)**

G. Exhibit G, Insurance.

H. Exhibit H, Dispute Resolution.

I. Exhibit I, Limitations of Liability.

J. Exhibit J, Payments to Engineer for Services and Reimbursable Expenses.

8.02 Total Agreement

A. This Agreement (which includes the exhibits listed above) constitutes the entire contractual agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit C to this Agreement.

8.03 Designated Representatives

A. With the execution of this Agreement, Engineer and Owner shall each designate a specific individual to act as representative under this Agreement. Such an individual must have authority to transmit instructions, receive information, and render decisions with respect to this Agreement on behalf of the party that the individual represents.

8.04 Engineer's Certifications

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

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1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 Conflict of Interest

A. Nothing in this Agreement will be construed to create or impose any duty on the part of Engineer that would be in conflict with Engineer's paramount obligations to the public health, safety, and welfare under the professional practice requirements governing Engineer, its Subconsultants, and all licensed professionals employed by Engineer or its Subconsultants.

B. If during the term of this Agreement a potential or actual conflict of interest arises or is identified:

1. Engineer and Owner together will make reasonable, good faith efforts to avoid or eliminate the conflict of interest; to mitigate any adverse consequences of the conflict of interest; and, if necessary and feasible, to modify this Agreement to address the conflict of interest and its consequences, such that progress under the Agreement may continue.

2. Such efforts will be governed by applicable Laws and Regulations and by any pertinent Owner's policies, procedures, and requirements (including any conflict of interest resolution methodologies) provided to Engineer under Paragraph 2.04.A of this Agreement.

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This Agreement's Effective Date is 2/13/2024.

Owner:	Engineer:
Town of Smyrna, Tennessee (name of organization)	Energy Land & Infrastructure, LLC (name of organization)
By: Mary E. Reed (individual's signature)	By: DocuSigned by: 63918CE8FD3E4A9... (individual's signature)
Date: 2/13/2024 (date signed)	Date: 2/27/2024 (date signed)
Name: Mary Esther Reed (typed or printed)	Name: Timothy L. Haggard, PE, RLS (typed or printed)
Title: Mayor (typed or printed)	Title: Associate Vice President (typed or printed)
Attach evidence of authority to sign.	Attach evidence of authority to sign.
Attest: Amber Hobbs (individual's signature)	Attest: (individual's signature)
Title: Amber Hobbs (typed or printed)	Title: (typed or printed)
Address for giving notices: Town of Smyrna 315 S Lowry Street Smyrna, TN 37167	Address for giving notices: 745 South Church Street, Suite 801 Murfreesboro, TN 37130
Designated Representative:	Designated Representative:
Name: (typed or printed)	Name: John R. Gordon, PE (typed or printed)
Title: (typed or printed)	Title: Senior Engineer (typed or printed)
Address:	Address: 745 South Church Street, Suite 801 Murfreesboro, TN 37130
Phone:	Phone: (615) 878-3334
Email:	Email: John.gordon@eli-llc.com

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EXHIBITS TO AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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EXHIBIT F—ELECTRONIC DOCUMENTS PROTOCOL (EDP) **(NOT USED)**

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EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

APPENDIX 1: STANDARD HOURLY RATES AND REIMBURSABLE EXPENSES SCHEDULE

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EXHIBIT A—ENGINEER'S SERVICES

The Basic Services of ENGINEER and the responsibility of the OWNER as described in the Agreement are amended or supplemental as indicated below, and the time periods for the performance of certain services as indicated in Section 4 of the Agreement are as indicated below.

The Study and Report Phase services are not included in the Basic Services and have not been included in the Basic Services fee but are available as part of the Agreement should the OWNER request such services in writing, in accordance with paragraph 5.1.2.1.

Project Understanding

The work is generally described as survey, roadway design, right-of-way acquisition assistance, and contract documents for roadway and sidewalk improvements to Rock Springs Road from Mason Tucker Drive westward to Old Nashville Highway. (hereinafter called the Project). The improvements will include new sidewalk and curb and gutter along the north side of the road, with related storm drainage improvements. The Project Limits will generally be described from Mason Tucker Drive to Old Nashville Highway.

More specifically, the work will be subdivided into the following Scope Items:

Scope Item 1: Survey

1.1. Roadway Database Survey

1.1.1. ELI will perform a roadway database survey for engineering design and right-of-way acquisition for Rock Springs Road from Mason Tucker Drive to Old Nashville Highway, which is approximately 0.76 miles of mainline corridor length. The DTM width will be 80' and include the ROW as well as additional width on the north side. This will include 7 side roads that will extend 50 feet along the side roads from the edge of pavement of Rock Springs Road. ELI will employ traditional field-run ground survey methods to collect topographic and roadway features. Evidence of sub-surface utilities such valve boxes, manholes, pull boxes, meters, cabinets, and vaults along with any painted, flagged, or otherwise marked evidence of buried utility line locations as provided by TN811 or other owner provided utility locates will be collected. No quality level "A" or quality level "B" S.U.E. will be included under this scope of services. Right-of-way lines will be resolved throughout the survey limits along with the resolution of approximately 25 adjoining property tracts. Deliverables will include planimetrics, contours, and a digital terrain model. CAD deliverables will be in Bentley OpenRoads Designer (ORD) format per TDOT CADD standards. The utility model will be excluded from the delivery. Refer to the following pages for the survey limits.

1.2. Right-of-Way and Easement Acquisition Staking

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1.2.1. ELI will provide a one-time staking of the proposed right-of-way and/or easement acquisition parcels including iron pins at the primary corners of the property tracts. Staking is limited to an estimated 25 parcels located north of Rock Springs Road.

1.3. Right-of-Way and Easement Acquisition Parcel Exhibits and Descriptions

1.3.1. At the Owner's request, ELI will prepare Right-of-way and/or Easement Acquisition Exhibits and Descriptions for the affected parcels, limited to an estimated 25 tracts for budgeting purposes.

Scope Item 2: Roadway Design

ELI will prepare Roadway Design Plans in accordance with TDOT's Roadway Design Guidelines and current Town of Smyrna roadway design standards. The Roadway Design Plans will be prepared to generally conform to TDOT's current MicroStation and ORD CAD standards and will be delivered in three phases including Preliminary Plans, Right-of-way Plans, and Construction Plans. The list of plan sheets may vary depending on the need to provide more detail or the ability to combine information on similar sheets. Plans development can be more particularly described as follows:

2.1 Preliminary Plans:

2.1.1 Preliminary Plans are expected to include the following sheets:

- Title Sheet with Index
- Roadway Typical Sections
- Present Layout Sheets
- Proposed Layout Sheets
- Culvert Cross Sections
- Roadway Cross Sections

2.1.2 Preliminary Plans submittal and Review

ELI will submit Preliminary Plans (Electronic PDF Copy) to the Town for review and comment. ELI will meet with the Owner to discuss staff comments. Following this review meeting, ELI will revise the plans based on the comments received and direction from the review meeting. ELI will document the comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting.

2.1.3 Preliminary Engineer's Opinion of Probable Construction Costs

ELI will prepare a limited opinion of the probable construction cost of the proposed improvements. Given broad variability in factors that impact construction cost, ELI can only provide limited information based on recent historical cost of similar facilities constructed in the project area. Opinions made on the basis of experience and judgment do not guarantee that proposals, bids

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or actual costs will not vary from its opinions of cost. ELI may apply contingency at an amount desired by the Owner to opinions for probable cost.

2.2 Right-of-Way Plans

2.2.1 Following acceptance of the Preliminary Plans, ELI will begin preparation of the Right-of-Way Plans which are expected to include the following sheets:

- Title Sheet
- Index with Standard Drawings
- Typical Roadway Sections
- Detail Sheets
- Right-of-Way Notes
- Property Map and Right-of-Way Acquisition Table
- Present Layout
- Right-of-Way Layout
- Proposed Layout
- Mainline/Sideroad Profiles
- Culvert Cross Section
- Driveway Profiles
- Drainage Map
- Erosion Prevention and Sediment Control Plans
- Traffic Control Plan
- Signing and Marking Plan
- Roadway Cross Sections

2.2.2 Right-of-way Plans Submittal and Review

ELI will submit Right-of-Way Plans (Electronic PDF Copy) to the Owner for review and comment. ELI will meet with Town staff to discuss their comments. Following this review meeting, ELI will revise the plans based on the comments received and direction from the review meeting. ELI will document the comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting.

2.3 Construction Plans:

2.3.1 Following Owner concurrence and acceptance of the Right-of-Way Plans, ELI will begin preparation of the Construction Plans consisting of the following sheets:

- Title Sheet
- Index and Standard Drawings
- Estimated Roadway Quantities
- Estimated Bridge Quantities
- Roadway Typical Sections
- General Notes
- Special Notes

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- Detail Sheets
- Property Map and Right-of-Way Acquisition Table
- Present Layout
- Right-of-Way Layout
- Proposed Layout
- Mainline/Sideroad Profiles
- Culvert Cross Section(s)
- Driveway Profiles
- Drainage Map
- Erosion Prevention and Sediment Control Plans
- Traffic Control Plans
- Signing and Marking
- Roadway Cross Sections

2.3.2 Final Engineer's Opinion of Probable Construction Cost

ELI will prepare a limited opinion of the probable construction cost of the proposed improvements. Given broad variability in factors that impact construction cost, ELI can only provide limited information based on recent historical cost of similar facilities constructed in the project area. Opinions made on the basis of experience and judgment do not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. ELI may apply contingency at an amount desired by the Owner to opinions for probable cost.

2.3.3 Construction Plans Submittal and Review

ELI will submit Right-of-Way Plans (Electronic PDF Copy) to the Owner for review and comment. ELI will meet with Town staff to discuss their comments. Following this review meeting, ELI will revise the plans based on the comments received and direction from the review meeting. ELI will document the comments and decisions in meeting minutes that will be distributed to all attendees of the review meeting. The final Construction Plans will be signed and sealed by a State of Tennessee Licensed Professional Engineer.

Scope Item 3: Utility Coordination and Deconfliction

3.1. Preliminary Utility Coordination

3.1.1. Early Notification

Upon receiving Project notice to proceed, ELI will provide a notification to the potentially affected utility owners along the project corridor. The notification to each utility owner will consist of a project map and a letter requesting that the utility company review the project map to determine if they own facilities within the project limits. The letter will request a written response from each utility.

3.1.2.Preliminary Plan Distribution

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Upon completion of Preliminary Plans, ELI will distribute said plans to the identified utility owners within the project limits. The submittal to each utility owner will consist of an electronic set of plan drawings (PDF format) and a letter requesting that the utility company review the potential impacts of the proposed project on their existing facilities. The letter will request preliminary relocation plans from each utility and will also request that the utility company identify any private utility easements that fall within the project limits but are not shown on the Preliminary plans.

3.1.3. Utility Coordination Meeting

ELI will prepare for and host a utility coordination meeting as part of this task. Known impacted utility companies will be invited to attend a coordination meeting to discuss potential utility relocations within the project limits. ELI will document the discussions and decisions made during the meeting and distribute a copy to the meeting attendees. Utility Owners will be responsible for identifying utility conflicts within the project limits and the design and relocation of their facilities.

3.2. Final Utility Coordination

3.2.1. Right-of-Way Plan Distribution

Upon completion of Right-of-Way Plan preparation, ELI will distribute the approved Right-of-Way Plans to utility owners identified in task 3.1 above. The submittal to each utility owner will consist of an electronic set of plan drawings, information detailing any design changes made during Right-of-Way design, and a letter requesting that the utility company review the potential impacts of the proposed project to their facilities and prepare final utility relocation plans.

3.2.2. Final Plans Review Meeting

During the Construction Plans final design phase, if there are any changes made to the proposed design plans that will impact final utility relocation plans, ELI will submit the revised plans to the utility owners. Via this task, utility companies will also be invited to attend the Construction Plans review meeting. **ELI will not perform any utility relocation design services as part of this task**. It is understood that each utility owner will design, provide plans for, and construct their respective utility relocations.

Scope Item 4: Environmental Permitting

4.1 Storm Water Pollution Prevention Plan (SWPPP) Preparation

ELI will prepare and submit the Storm Water Pollution Prevention Plan (SWPPP) permit documents required by TDEC for the land disturbance activities associated with this project. The SWPPP will consist of drawings and a technical narrative describing erosion and sediment control measures that should be implemented during construction to reduce the negative downstream impacts due to pollutant run-off related to construction activities.

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ELI will submit the SWPPP document to TDEC for review. ELI will revise the SWPPP document in accordance with comments received from TDEC and will resubmit a final SWPPP document to TDEC for approval. The Town of Smyrna shall be responsible for all permitting and review fees associated with this task.

4.2 National Pollutant Discharge Elimination System (NPDES) Permit Application

Based on the assumed impact of the project improvements on the surrounding environment, it is assumed that an NPDES General Permit for Storm Water Discharges Associated with Construction Activity will be required for the project. ELI will prepare the NPDES General Permit application and will submit it to TDEC along with the approved SWPPP document for processing by TDEC.

Preparation of technical studies or applications for other project-specific environmental permits are not part of this task. If additional environmental permits are required by TDEC, USACE, or any other agency, those permits can be provided by ELI in accordance with Additional Services clause of this Agreement.

Scope Item 5: Bid Phase Services

5.1. Proposal Contract (Bid Book) Preparation

ELI will prepare a proposal contract in accordance with TDOT and Town of Smyrna standards. ELI will prepare technical specifications for those items that are not covered by TDOT or Town of Smyrna specifications. The remainder of the technical specifications will be based upon TDOT's Standard Specifications for Road and Bridge Construction or will be documented in the construction plans. The proposal contract will contain the Request for Proposals, the contract documents, bid forms, specifications, required special provisions, and an 11" x 17" plan set. The proposal contract will be submitted to the Town of Smyrna for approval. Upon authorization from the Town, ELI will proceed with bidding the project and will print and deliver 10 bound copies of the plans and Proposal Contract to the Town.

5.2. Bid Assistance

ELI will assist the Town with drafting the advertisement for bids and conduct one pre-bid meeting with potential bidders. ELI will be responsible for plans distribution during the bid phase. ELI assist the Town with requests for information (RFI) that arise during the bidding process and issue statements of clarification or bid addenda as appropriate. ELI will conduct the bid opening and meet with Town of Smyrna staff following the bid opening to assist with bid review. In addition, ELI will tabulate the bids received and evaluate the compliance of the bids with the bidding documents. ELI will prepare a written summary of this tabulation and evaluation. ELI will submit the bid tabulation and

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other required documentation to the Town for review and approval to award the contract to the lowest responsive bidder.

ELI Scope Item 5 Deliverables:

- Draft Proposal Contract (one electronic copy in Adobe PDF format) to the Town
- Final Proposal Contract (one electronic copy in Adobe PDF format) to the Town
- Plans Package and Proposal Contract copies for bidders (ten bound copies)
- Responses to bidder questions (one electronic copy in Adobe PDF format)
- Bid tabulation and recommendation of lowest responsive bidder submittal to the Town (one electronic copy in Adobe PDF format)

Scope Item 6: Construction Engineering & Inspection Services

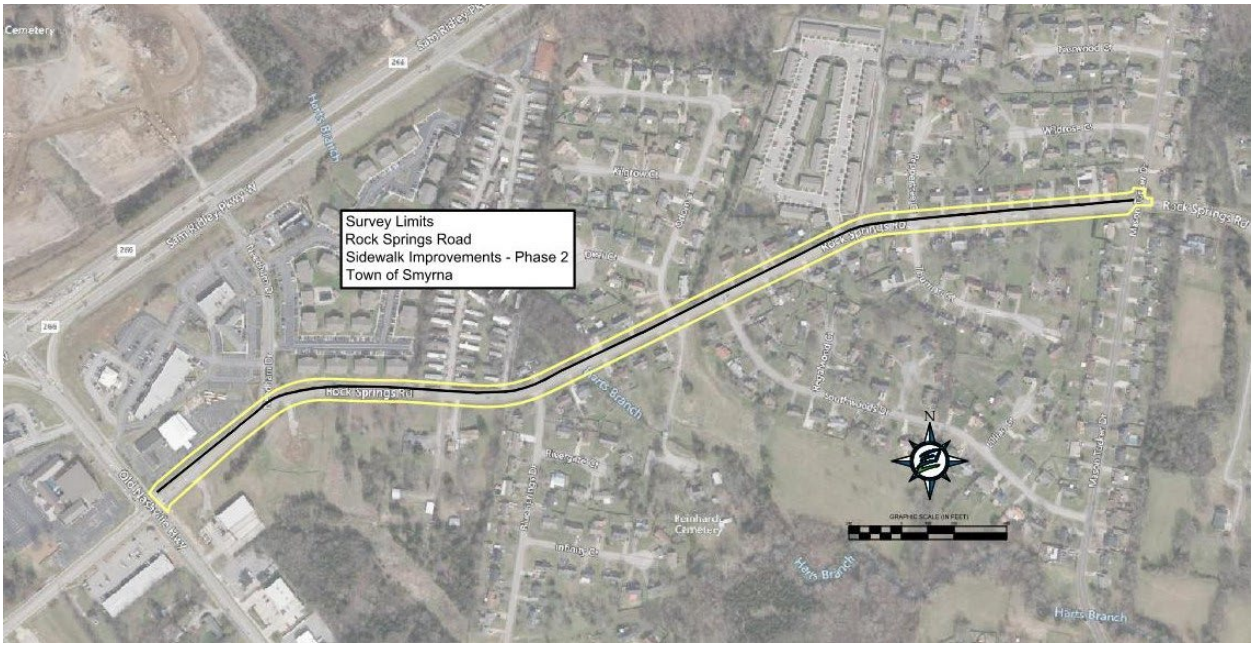
ELI will assist the Town with Construction Administration, and Construction Engineering and Inspection Services. This work is excluded from this Agreement until such time the Owner chooses to issue an Amendment to this Agreement to define the scope of work and fees for construction period services. Construction Engineering & Inspection Services can be added to this Agreement in accordance with the terms included herein and approval and execution of a completed AMENDMENT TO OWNER-ENGINEER AGREEMENT included as EXHIBIT C.

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EXHIBIT A—SURVEY EXTENTS

ELI will perform a roadway database survey for engineering design for the full length of the proposed improvements to Rock Springs Road from Mason Tucker Drive to Old Nashville Highway, which is approximately 0.76 miles of mainline corridor length.



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EXHIBIT B—DELIVERABLES SCHEDULE

ELI understands that the Owner desires to have ROW plans within 6 months, so that easements can be obtained in 2014. ELI will endeavor to complete the services described herein with efficiency according to the following preliminary milestone schedule:

Activity	Milestones
Notice To Proceed	Late January 2024
Survey Substantial Completion	Late March 2024
Preliminary Plans Submittal	late May 2024
Right-of-Way Plans Submittal	Late June 2024

The remainder of the Project schedule will depend on the required easement acquisition and the anticipated timeline for construction.

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AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. **[Enter Amendment Number]**

Owner: **[Name of Owner]**
Engineer: **[Name of Engineer]**
Project: **[Name of Project]**
Effective Date of Owner-Engineer Agreement: **[Effective Date of Agreement]**
Nature of Amendment: (Check those that apply)

☐ Additional Services to be performed by Engineer
☐ Modifications to services of Engineer
☐ Modifications to responsibilities of Owner
☐ Modifications of payment to Engineer
☐ Modifications to time(s) for rendering services
☐ Modifications to other terms and conditions of the Agreement

Description of Modifications:

[Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary. Include cost breakdown and documentation, if applicable.]

Agreement Summary:
Original agreement amount: $
Net change for prior amendments: $
This amendment amount: $
Adjusted Agreement amount: $
Change in time for services (days or date, as applicable):

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. The Effective Date of the Amendment is **[Enter Effective Date of Amendment]**.

Owner	Engineer
_____ (typed or printed name of organization)	_____ (typed or printed name of organization)
By: _____ (individual's signature)	By: _____ (individual's signature)
(Attach evidence of authority to sign.)	(Attach evidence of authority to sign.)
Date: _____ (date signed)	Date: _____ (date signed)
Name: _____ (typed or printed)	Name: _____ (typed or printed)
Title: _____ (typed or printed)	Title: _____ (typed or printed)

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EXHIBIT G—INSURANCE

ARTICLE 1—INSURANCE

Paragraph 6.04 of the Agreement, Insurance, is supplemented to include the following Exhibit G Paragraphs 1.01 and 1.02:

1.01 Insurance Policies and Limits

A. Commencing with the performance of the Services hereunder, and continuing until the termination of the Agreement including during the performance of any warranty services, Consultant (and any tier subcontractors) shall maintain or cause to be maintained occurrence form insurance policies as follows: (a) Workers' Compensation specific to the applicable statutory requirements for the Services to be performed; provided that Consultant (or its subcontractor(s)) must notify if exempt from the statutory Workers' Compensation requirements; (b) Employer's Liability Insurance of not less than $1,000,000 each accident/employee/disease; (c) Commercial General Liability Insurance having an available limit of at least $1,000,000 per occurrence/$2,000,000 in the annual aggregate for contractual liability, personal injury, bodily injury to or death of persons, and/or loss of use or damage to property, including but not limited to products and completed operations liability (which shall continue for at least three (3) years after completion), and premises and operations liability coverage (d) Commercial/Business Automobile Liability Insurance (including owned, non-owned or hired autos) having an available limit of at least $1,000,000 each accident for bodily injury, death, property damage, with any fellow employee exclusion removed, and contractual liability; (e) Umbrella/Excess Liability insurance with available limits of at least $4,000,000 per occurrence and follow form of the underlying Employer's Commercial General and Auto Liability insurance, and providing at least the same scope of coverages thereunder; (f) Professional Liability/Errors & Omissions (E&O) Insurance (claims-made form acceptable with reporting requirements of at least three (3) years after completion) with no resulting bodily injury or property damage exclusion with available limits of at least $1,000,000 each claim.

B. During the term of this Agreement the Engineer shall notify Owner of any other Subconsultant or Engineer's Subcontractor to be listed as an additional insured on Owner's and applicable Contractor's general liability policies of insurance.

C. The Owner must be listed on Engineer's general liability policy as provided in Paragraph 6.04.B.

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EXHIBIT H—DISPUTE RESOLUTION

Paragraph 6.07 of the Agreement, Dispute Resolution, is supplemented to include the following Exhibit H Paragraph 1.01:

1.01 Non-Binding Mediation. If a good faith effort to resolve a dispute on terms satisfactory to both parties is unsuccessful, Engineer and Owner shall submit the dispute to non-binding mediation unless the parties mutually agree otherwise. The mediation will be conducted by a mediator acceptable to Engineer and will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by the Construction Industry Mediation Procedures of the American Arbitration Association. Each party agrees to pay its own costs in connection with the mediation and its proportionate share of the fees and costs of the mediation. Any dispute not resolved within thirty days after submission to mediation may be resolved by litigation in a court of competent jurisdiction in the State of Tennessee. If Engineer's Services relate to a Project in a state that requires venue for any action related to the Project lie within the state where the Project is located, venue may also lie in a court of competent jurisdiction within that state.

1.02 Duty to Continue Performance. Each party shall continue to perform under this Agreement pending the final resolution of any dispute or disagreement between Engineer and Owner.

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EXHIBIT I—LIMITATIONS OF LIABILITY

ARTICLE 1—LIMITATIONS OF LIABILITY

Paragraph 6.10 of the Agreement is supplemented to include Exhibit I Paragraph(s) 1.01, Mutual Indemnification, and 1.02, Limitation of Engineer's Liability:

1.01 Mutual Indemnification

A. Indemnification by Owner: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants, and Engineer's Subcontractors, from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

1.02 Limitation of Engineer's Liability

A. Engineer's Liability Limited to Stated Amount, or Amount of Engineer's Compensation: To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's Subcontractors, officers, directors, members, partners, agents, employees, and Subconsultants, to Owner and anyone claiming by, through, or under Owner for any and all injuries, claims, losses, expenses, costs, or damages whatsoever (including but not limited to direct, indirect, special, incidental, punitive, exemplary, or consequential damages) arising out of, resulting from, or in any way related to the Project, to Engineer's or its Subconsultants' or Engineer's Subcontractor's services, or to this Agreement, from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Subconsultants, or Engineer's Subcontractors, will not exceed the total amount of $**250,000** or the total compensation received by Engineer under this Agreement, whichever is greater. Higher limits are available for an additional fee.

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EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

ARTICLE 1—STANDARD HOURLY RATES

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraphs 1.01, 1.02, and 1.03:

1.01 Compensation for Basic Services (other than Resident Project Representative)—Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A (except for Resident Project Representative services, if any) as follows:

1. An amount equal to the cumulative hours charged to the Project by Engineer's personnel times Standard Hourly Rates for the applicable billing class, plus Reimbursable Expenses, plus Engineer's Subcontractors' and Subconsultants' charges, if any.

2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer's services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer's Subcontractor's and Subconsultants' charges.

3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit J as Appendix 1

4. The total compensation for such services is estimated to be $**179,660.00** based on the following estimated distribution of compensation:

a.	Roadway Survey (Includes Right-of-way Staking)	$ 68,575.00
b.	Preliminary Plans Phase	$ 43,437.00
c.	Right-of-way Plans Phase	$ 39,433.00
e.	Construction Plans Phase	$ 28,215.00
f.	Construction Phase Services	TBD

5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but compensation will not exceed the total estimated compensation amount unless approved in writing by Owner. See also Exhibit J Paragraph 1.03.C.2 below.

6. The total estimated compensation for Engineer's services included in the breakdown by phases incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Subcontractor's and Subconsultants' charges.

7. The amounts billed for Engineer's services under Exhibit J Paragraph 1.01 will be based on the cumulative hours charged to the Project during the billing period by Engineer's employees times Standard Hourly Rates for the applicable billing class, plus Reimbursable Expenses and Engineer's Subcontractor's and Subconsultants' charges.

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1.02 Compensation for Reimbursable Expenses

A. Owner shall reimburse Engineer for Reimbursable Expenses directly related to the provision of Basic Services, using the rates set forth in Appendix 1 to this Exhibit J when applicable.

B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.

C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.10.

1.03 Other Provisions Concerning Payment

A. Whenever Engineer is entitled to compensation for the charges of Engineer's Subcontractors and Subconsultants, such compensation will be the amounts billed to Engineer by Engineer's Subconsultants times a factor of 1.10.

B. Factors: The external Reimbursable Expenses and Engineer's Subcontractors' and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. Estimated Compensation Amounts

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer will promptly review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer will be paid for all services rendered hereunder.

D. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.

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E. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

APPENDIX 1: STANDARD HOURLY RATES AND REIMBURSABLE EXPENSES SCHEDULE

A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit J and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

2. The Standard Hourly Rates apply only as specified in Exhibit J.

B. Reimbursable Expenses are subject to review and adjustment per Exhibit J.

Engineering Staff Rates

Senior Principal Engineer	$225
Program Manager/Principal Engineer	$210
Senior Project Manager	$210
Project Manager	$175
Assistant Project Manager	$155
Senior Engineer/Engineer V	$170
Engineer IV	$155
Engineer III	$135
Engineer II	$120
Engineer I	$110
Intern	$80
CAD Manager	$140
Senior CAD Designer	$120
CAD Designer I	$90
CAD Technician II	$85
CAD Technician I	$70

Survey Staff Rates

Director of Survey/SUE	$195
Survey Manager (Office Level)	$165
Senior R/PLS | Assistant Survey Manager	$150
R/PLS | Survey/SUE Team Leader	$140
Survey/SUE Project Manager	$130
Lead Survey Technician	$115
Senior Survey Technician/Senior CAD Technician	$100
Survey Technician /CAD Technician	$90
Survey Intern	$80

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Professional Land Surveyor (R/PLS)	$125
Sr Survey/SUE Crew Chief	$100
Survey/SUE Crew Chief	$90
Sr Survey/SUE Technician	$80
Survey/SUE Technician	$70
Survey Crew (4-Person)	$290
Survey Crew (3-Person)	$225
Survey Crew (2-Person)	$160
Survey Crew (1-Person)	$145
UAS/UAV Photogrammetry Crew	$280
UAS/UAV LiDar Crew	$285
Mobile Scan Crew	$250

Administrative Staff Rates

Senior Admin	$90
Admin	$60

Reimbursable Expenses

Mileage	GSA Rate
Materials Markup:	Cost plus 10%
Outside Services, Subcontractors, Miscellaneous Expenses	Cost plus 10%
Per Diem:	$145/day
ATV Plus Trailer	$40/day

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Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 6.
Department: Public Works
Date: August 28, 2025

Subject:
Approval of the terms of, and authorization for the Mayor to execute, a contract with Civil & Environmental Consultants, Inc. to perform stream monitoring.

Fiscal Impact:
Funding is provided under Storm Water Department's Line Item Budget fro Contractual Services. This line item was approved at $170,000.

Contract Type:

Contract Term (if applicable):
NA

Background:
The Town of Smyrna has been performing this investigation every 5-years per our permit with TDEC. Previously, the Town used the services of MTSU but found a less expensive option with CEC, Inc.

Summary:
TDEC requires coverage for storm water discharges from MS4s under our current permit. The permit requires the Town of Smyrna to monitor streams identified by TDEC as waters with unavailable parameters for saltation, nutrients, and/or pathogens on a five year cycle. These streams include Olive Branch, Harts Branch, Rock Springs Branch, and Stewart Creek.

Recommended Council Action:
The Public Works Department requests the Town Council to approve the Mayor to sign the contract.

Attachments:
1. 350-966_Smyrna Stream Monitoring Proposal

August 8, 2025

Mr. Bradly Jordan
Stormwater Coordinator
Town of Smyrna – Stormwater Division
315 S. Lowry Street
Smyrna, TN 37167

Dear Mr. Jordan:

Subject: Proposal for Professional Services
MS4 Permit Stream Monitoring
Town of Smyrna, Rutherford County, Tennessee
CEC Project 350-966

1.0 INTRODUCTION & BACKGROUND

The Tennessee Department of Environment and Conservation (TDEC) requires coverage for stormwater discharges from certain small municipal separate storm sewer systems (MS4s) under the Phase II NPDES permit - TNS000000 (Permit). The current Permit requires the Town of Smyrna (Town) to monitor streams identified by TDEC as waters with unavailable parameters for siltation, nutrients, and/or pathogens within the five-year permit cycle (Section 4.6.1.1.1). If provided the opportunity, Civil & Environmental Consultants, Inc. (CEC) will bring the benefits of our professional expertise and knowledge of the area to support the Town with their MS4 Permit compliance needs. CEC is pleased to provide the Town with this proposal to assist in performing analytical monitoring as required by the Permit. The proposed Scope of Services is provided below.

2.0 SCOPE OF SERVICES

Table 1 lists stream segments identified by TDEC as Waters with Unavailable Parameters for siltation/sedimentation, nutrients, and/or pathogens and their respective monitoring requirements within the Town (based on TDEC's 303(d) Water Quality Assessment (WQA) 2022 list).

CEC proposes the following stream monitoring plan of action and tentative schedule:

Table 1: Waters with Unavailable Parameters within the Town of Smyrna

Stream Name	Not Supporting*	Pollutant Source	MS4-Required Monitoring
Olive Branch Creek	SS	Site Clearance (Land Development)	Benthic
Harts Branch	SS; P; N	Municipal (Urbanized High Density)	Benthic and *E. coli*
Rock Spring Branch	SS	Site Clearance (Land Development)	Benthic
Stewarts Creek (1000)	SS; P; N	Municipal (Urbanized High Density); Sanitary Sewer Overflows; Municipal Point Source Discharges	Benthic and *E. coli*
Stewarts Creek (2000)	SS; P	Municipal (Urbanized High Density); Grazing in Riparian Zone	Benthic and *E. coli*
Additional Site TBD by Town	Unknown	Unknown	Benthic, *E.coli*

*SS = Sedimentation/Siltation; P = Pathogens; N = Nutrients

2.1 Task 0001 - *E. coli* Sampling

E. coli sampling will follow the methods described in TDEC's *Quality System Standard Operating Procedure for Chemical and Bacteriological Sampling of Surface Water*, Revised January 2022. CEC proposes to perform the required sampling for *E. coli* on the three streams listed as Not Supporting with *E. coli* as the cause: Harts Branch, Stewarts Creek (1000), and Stewarts Creek (2000). It is CEC's understanding that the Town desires to perform *E. coli* sampling at one additional site, to be determined at a later date. CEC will estimate flow, and record field parameters (pH, temperature, dissolved oxygen, and specific conductivity) as well as the latitude and longitude at each sample location.

The *E. coli* sampling will include collecting five samples within a 30-day period in order to determine a geometric mean for each stream. The samples must be collected at least 24 hours apart and between March and November. It is essential that all five sampling events yield *E. coli* results that are not above the detection limit of the test per the TDEC SOP. Therefore, CEC will take two samples at each sample location for the first sampling event in order to have the lab run two tests (no dilution and 1:10 dilution). CEC will use the results of this first sampling event to dictate the dilution for future sampling events.

Additionally, at the Town's request, CEC will collect surface water samples from the four *E. coli* sampling locations to be analyzed for nitrate, nitrite, total phosphate, and total suspended solids

(TSS). CEC proposed to use Pace Analytical Services in Mt. Juliet, Tennessee for laboratory analyses on this chemical sampling to match cost estimate table language.

Deliverable: *E. coli* sampling summary report with field data sheets, photos, and laboratory analytical results. Completed TDEC workbook, also known as Electronic Data Deliverable (EDD), shall be provided.

2.2 Task 0002 - Benthic Macroinvertebrate Sampling

CEC will perform benthic macroinvertebrate sampling for the selected streams listed in Table 1. It is CEC's understanding that the Town desires to have benthic sampling performed at one additional location, to be determined at a later date.

CEC's approach to performing and completing the benthic macroinvertebrate surveys will follow TDEC's *Quality System Standard Operating Procedure for Macroinvertebrate Surveys,* Revised December 2021. The macroinvertebrate samples will be collected using the semi-quantitative single habitat (SQSH) method as described in the 2021 TDEC SOP. Depending on field conditions and available habitat, the field sampling procedure will be further defined with a semi-quantitative single habitat kick (SQKICK) or semi-quantitative single habitat bank (SQBANK) sampling procedure, and for smaller streams a modified SQKICK procedure will be used.

Field collection efforts at each station will include completion of the appropriate habitat assessment forms for Middle Tennessee streams. Routine water quality parameters will be recorded at each station and will include water temperature, dissolved oxygen, pH, conductivity, and stream flow. The macroinvertebrate samples will be preserved upon collection and transferred to the laboratory for processing and enumeration. The report of results will include the list of metrics as required by the TDEC SOP.

Deliverable: Summary letter and sampling results will be provided for the sites including field data sheets and lab results. Completed TDEC workbook, also known as Electronic Data Deliverable (EDD), shall be provided.

3.0 SCHEDULE

CEC proposes to perform the bacteriologic and chemical monitoring during fall 2025 and the biological monitoring during winter/spring 2026. The Town will need to notify CEC of the additional site location to be monitored prior to each task initiation since field work will occur concurrently with the permit-required minimal monitoring efforts.

4.0 ESTIMATED COST

CEC proposes to complete the tasks outlined in Table 2 for the following estimated costs.

Table 2. Proposed Monitoring Costs by Task.

Task Number	Work Detail	Estimated Cost
0001	*E. coli*	$15,900
001A	Requested Chemical Sampling*	$2,600
0002	Benthic Sampling	$14,200
		Total: $32,700

*Chemical sampling as requested by the Town but not required by the Permit.

Invoicing of professional services will be in accordance with the rates indicated on the attached fee schedule. A Technology and Office Service Fee, equivalent to 3% of professional fees, will be added to each invoice for project expenses associated with software, computer technology, and incidental office expenses. Reimbursable expenses, including subcontracted services, will be invoiced at cost plus a 10% administrative fee. The costs shown above are based on CEC's 2025 Municipal Services Fee Schedule (attached). The 2025 Municipal Services Fee Schedule will be honored through the Town's 25-26 Fiscal Year.

5.0 CLOSING

CEC appreciates the opportunity to provide the Town with this proposal for stream monitoring. Please contact Lindsay Wilson-Kokes (lwilsonkokes@cecinc.com) or call 615-333-7797 should you have any questions regarding this proposal.

Sincerely,

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.

Lindsay Wilson-Kokes, TNQHP-IT
Project Manager

Janette L. Wolf, P.E., CPESC, CPSWQ, CESSWI
Vice President

Enclosures: Terms & Conditions
2025 Municipal Services Fee Schedule
Personnel Biographies

CEC's Schedule of Terms and Conditions, which governs the proposed work, is attached. CEC's proposal is valid for **thirty (30) days** from the date of the proposal, after which time the validity may only be extended with CEC's consent. CEC reserves the right to revise, adjust, or withdraw this proposal if not accepted by City within thirty (30) days of the date of the proposal. Your written acceptance below will form a binding contract pursuant to the attached Terms and Conditions. The individual signing below warrants that they have authority to sign and execute this Agreement on behalf of The Town of Smyrna.

CEC Project 350-966, dated August 8, 2025
ACCEPTED BY: Town of Smyrna

Signature: _____ Date: _____

Name: _____ Title: _____

1. AGREEMENT

The following terms and conditions ("TERMS") shall apply to and are an integral part of the attached proposal ("PROPOSAL") between Civil & Environmental Consultants, Inc. ("CEC") and the client ("CLIENT") named in the attached PROPOSAL. CLIENT's acceptance of the PROPOSAL includes acceptance of these TERMS and acceptance of this PROPOSAL shall form the entire agreement between the parties ("AGREEMENT"). In the event of a conflict or inconsistency between these TERMS and the PROPOSAL, these TERMS shall take precedence. Acceptance of the AGREEMENT by CLIENT will occur when CLIENT directs CEC, orally or in writing, to commence performance of its services.

2. STANDARD OF CARE

CEC shall perform its services consistent with the professional skill and care ordinarily provided by professionals, such as CEC, practicing in the same or similar locality under the same or similar circumstances and in effect at the time of performance. CEC provides no warranties or guarantees whether express or implied.

3. SITE ACCESS, SITE CONDITIONS AND SUBSURFACE FEATURES

CLIENT will grant or obtain free access to the site for all equipment and personnel for CEC to perform the services set forth in this AGREEMENT. CEC will take reasonable precautions to limit damage to the site, but it is understood by CLIENT that, in the normal course of the services, some damage may occur and the correction of such damage is not part of this AGREEMENT unless so specified in the PROPOSAL.

The CLIENT is responsible for the accuracy of locations for all subsurface structures and utilities. CEC will take reasonable precautions to avoid known subsurface structures, and the CLIENT waives any claim against CEC, and agrees to defend, indemnify, and hold CEC harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subsurface structures and utilities not identified or accurately located. In addition, CLIENT agrees to reimburse CEC for time and expenses incurred by CEC in defense of any such claim based upon CEC's current fee schedule and expense reimbursement policy.

CEC may, but is not required to, undertake an investigation to locate any utilities, structures or materials as CEC deems prudent. Such investigation by CEC shall not impose any additional obligation or liabilities on CEC and CLIENT agrees that such investigation, if undertaken, is for CEC's convenience only.

The CLIENT recognizes that subsurface conditions may vary from those observed at locations where borings, surveys, or explorations are made, and that site conditions may change with time. Data, interpretation, and recommendations by CEC will be based solely on information available to CEC. CEC is responsible for the data, interpretations, and recommendations based on its services, but will not be responsible for other parties' interpretations or use of the information developed.

4. BIOLOGICAL POLLUTANTS, HAZARDOUS MATERIALS AND HAZARDOUS CONDITIONS

CLIENT warrants that a reasonable effort to investigate and inform CEC of known or suspected Biological Pollutants, Hazardous Materials and hazardous conditions on or near the site has been made by the CLIENT. The term "Biological Pollutants" includes, but is not limited to, molds, fungi, spores, bacteria, and viruses, and the by-product of any such biological organisms. The term "Hazardous Materials" shall mean any toxic substances, chemicals, pollutants, or other materials, in whatever form or state, including but not limited to smoke, vapors, soot, fumes, acids, alkalis, minerals, toxic chemicals, liquids, gases or any other material, irritant, contaminant or pollutant, that is known or suspected to adversely affect the health and safety of humans or of animal or plant organisms, or which are known or suspected to impair the environment in any way whatsoever. Hazardous Materials shall also include, but not be limited to, those substances defined, designated, or listed in Section 404 of the Solid Waste Disposal Act (42 USC Subsection 6903); Section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act (42 USC Subsection 9601(14)); as listed or designated under Sections 1317 and 1321(b)(2)(a) of the Title 33 (33 USC Subsections 1317 and 1321(b)(2)(a)); or as defined, designated, or listed under any other federal, state, or local law, regulation or ordinance concerning hazardous wastes, toxic substances, or pollutants.

CEC and CLIENT agree that when unanticipated or suspected Biological Pollutants, Hazardous Materials and/or hazardous conditions are encountered it may be necessary for CEC to take immediate measures to protect health and safety. CEC agrees to immediately notify CLIENT when unanticipated or suspected Biological Pollutants, Hazardous Materials and/or hazardous conditions are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies. In the event the site is not owned by CLIENT, CLIENT recognizes that it is the CLIENT's responsibility to inform the property owner of the discovery of unanticipated or suspected Biological Pollutants, Hazardous Materials and/or hazardous conditions.

Notwithstanding any other provision of the AGREEMENT, CLIENT waives any claim against CEC, and to the maximum extent permitted by law, agrees to defend, indemnify, and hold CEC harmless from any claim, liability, and/or defense costs for injury or loss arising from CEC's discovery of unanticipated or suspected Biological Pollutants, Hazardous Materials and/or hazardous conditions. CLIENT will be responsible for ultimate disposal of any samples secured by CEC which are found to be contaminated with Biological Pollutants and/or Hazardous Materials.

Nothing contained in this AGREEMENT shall be construed or interpreted as requiring CEC to assume liability for the generation, transportation, treatment, storage and/or disposal of hazardous waste within the meaning of the Resource Conservation and Recovery Act of 1976, as amended, or within the meaning of any similar federal, state, or local regulation or law.

If during remediation and/or construction activities waste manifests are required, CLIENT shall provide an authorized person to sign manifests or will provide CEC with a written limited power of attorney or agency agreement to sign manifests on CLIENT'S behalf.

5. EVOLVING TECHNOLOGIES

Services such as those provided by CEC may involve technologies which are new or emerging and these technologies may supersede current techniques. In addition, standards for our services, including statutes and regulations, may change with time. CLIENT understands that CEC's recommendations and/or services must be based upon the current Standard of Care utilizing established technologies and standards excluding new or emerging technologies unless agreed to by both parties in writing.

6. SAMPLE DISPOSAL

CEC will provide storage for samples collected for sixty (60) days. Further storage or transfer of samples can be made at CLIENT's expense and upon prior written request.

7. SAFETY/CONSTRUCTION OBSERVATION

CLIENT, its contractor or other representatives shall be solely responsible for working conditions on the site, including compliance with OSHA regulations and safety of all persons and property during the performance of the work. CEC will not be responsible for means, methods, techniques, sequences or procedures of construction including, but not limited to safety.

If CEC is retained by the CLIENT to provide a site representative for the purpose of observing specific portions of any construction work as set forth in the PROPOSAL, CEC will report observations and professional opinions. CEC's presence on the site does not in any way guarantee the completion or quality of the performance of the work by any party retained by the CLIENT to provide construction related services. CEC does not have the duty to reject or stop work of CLIENT or its agents unless contractually obligated.

8. BILLING AND PAYMENTS

8.1. General: Invoices will be submitted in accordance with the provisions outlined in the PROPOSAL. Payment is due from CLIENT thirty (30) days from the invoice date. If a retainer or pre-payment is required by the PROPOSAL, payment must be received by CEC prior to commencement of services. Payment shall be made as follows:

Electronic Payment:
PNC Bank, Pittsburgh, PA 15222
PNC Bank Routing #043000096
CEC Account #2272405
SWIFT & BIC Code: PNCCUS33
Remittance Detail: accountsreceivable@cecinc.com

Lockbox (regular mail):

Civil & Environmental Consultants, Inc.
P.O. Box 644246
Pittsburgh, PA 15264-4246

Any retainer shall be applied to the final invoice and unused funds, if any, returned to CLIENT. In the event CLIENT fails to pay CEC within thirty (30) days of invoice, CLIENT agrees that CEC will have the right to suspend performance of services after written notice to CLIENT. CEC will be entitled to interest of one and one half percent (1.5%) per month for past due amounts. CEC will be entitled to collect for time and expenses (per CEC's current fee schedules), attorneys' fees and other costs incurred by CEC for collection of past due amounts.

Our PROPOSAL does not include gross receipts taxes, business or occupation taxes or assessments that the municipality where the project is located may assess upon CEC or its subcontractors. If such taxes are or become a liability of CEC, the CLIENT agrees to reimburse CEC at cost.

8.2. Reimbursable Expenses: Direct non-salary expenses (e.g. Travel, Equipment, Subcontractors/Vendors) will be billed according to the terms of our PROPOSAL.

8.3. Litigation Services: If litigation services are not part of the PROPOSAL to which these TERMS are attached and are requested by CLIENT, the scope and fee schedule for the requested litigation services will be identified in a separate PROPOSAL. CLIENT shall reimburse CEC for costs incurred in responding to subpoenas or other legal requests related to the services provided by CEC under this AGREEMENT.

8.4. Design Build: If CLIENT requests CEC to perform design-build services, such services will be performed in accordance with separate TERMS and a PROPOSAL for such design-build services.

9. CHANGES

9.1. Changes: Upon a change in CEC's scope of services or discovery of unforeseen conditions, or any direction or instruction outside of the PROPOSAL, CEC will provide CLIENT with the estimated cost of performing the change and any change in the AGREEMENT schedule. Prior to CEC being required to implement the change, CLIENT shall authorize the requested change either verbally or in writing amending the AGREEMENT price and schedule.

9.2. Unauthorized Changes: If changes are made in CEC work products by CLIENT or persons other than CEC, any and all liability against CEC arising out of such changes is waived and CLIENT assumes full responsibility for such changes unless CLIENT has given us prior notice and has received written consent from CEC for such changes.

10. DELAYS

Delays not due to CEC shall result in an extension of the schedule equivalent to the length of delay. If such delays result in additional costs to CEC, the AGREEMENT price shall be equitably adjusted by the amount of such additional costs.

11. INSURANCE

CEC will maintain Workmen's Compensation Insurance as required by state law, General Liability Insurance for bodily injury and property damage with a limit of $1,000,000 per occurrence and an aggregate limit of $2,000,000 and Automobile Liability with a limit of $1,000,000. Professional liability will be provided with a limit of $1,000,000 per claim and $1,000,000 in the aggregate, if applicable. CLIENT and/or the property owner will be listed as additional insured for General Liability Insurance upon CLIENT's written request.

12. ALLOCATION OF RISK

12.1. Limitation of Remedies: CLIENT agrees to limit CEC's liability for any claim arising from, or alleged to arise from any acts, errors or omissions in the performance of services under this AGREEMENT, whether such claim is based in negligence, breach of contract, or other legal theory to an aggregate limit of the amount of fees paid to CEC under this AGREEMENT, or $50,000, whichever is greater, except for CEC's willful misconduct or gross negligence.

12.2. Waiver of Consequential Damages: CEC and CLIENT agree to waive any claim against each other for consequential, incidental, special or punitive damages.

12.3. Indemnification: CEC shall indemnify and hold harmless CLIENT from and against any and all claims, damages, or liability to the extent caused by the negligent performance of services under this AGREEMENT by CEC, including injuries to employees of CEC.

13. TERMINATION

This AGREEMENT may be terminated by either party seven (7) days after written notice: i) in the event of breach of any provision of this AGREEMENT; ii) if the CLIENT suspends the work for more than three (3) months in the aggregate; or iii) for CLIENT or CEC's convenience. In the event of termination for suspension or convenience, CEC will be paid for services performed prior to the date of termination plus reasonable termination and demobilization expenses, including, but not limited to the cost of completing analyses, records and reports necessary to document job status at the time of termination.

14. GOVERNING LAW

The law of the Commonwealth of Pennsylvania will govern the validity of these TERMS and the AGREEMENT, their interpretation and performance. If any of the provisions contained in these TERMS and the AGREEMENT are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired.

15. DISPUTE RESOLUTION

15.1. Notice of Dispute: Within fifteen (15) days of the occurrence of any incident, act, or omission upon which a claim for relief may be based, the party seeking relief shall serve the other party with a written notice specifying the nature of the relief sought, the amount of relief sought, a description of the reason relief should be granted, and the provisions of this AGREEMENT that authorize the relief requested.

15.2. Meet and Confer: Within ten (10) days of receipt of the Notice of Dispute, the parties shall meet and confer in a good faith attempt to resolve the dispute. Participants in the meet and confer must have the authority to enter into a binding resolution on behalf of each party.

15.3. Jurisdiction and Venue: After completion of the meet and confer, either party may proceed to litigation. CEC and CLIENT agree that any court of record in Allegheny County, Pennsylvania, shall have the exclusive jurisdiction and venue over any claims relating to or arising under this AGREEMENT.

15.4. Waiver of Jury Trial: THE PARTIES AGREE AND IRREVOCABLY WAIVE THEIR RIGHT TO TRIAL BY JURY IN ANY ACTION, DISPUTE, PROCEEDING OR SUIT RELATING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR THE PROJECT.

16. ASSIGNMENT

CLIENT and CEC each binds itself and its successors and assigns to the other and its successors and assigns with respect to all covenants of this AGREEMENT. Neither CLIENT nor CEC shall assign, sublet or transfer any rights under or interest in this AGREEMENT without the prior written consent of the other party. This section shall not, however, apply to subrogation rights (if any) of any insurer of either party.

17. OWNERSHIP

CEC shall have title to all drawings, specifications or other documents ("WORK PRODUCT") furnished to CLIENT and intended for use in connection with projects under this AGREEMENT. CLIENT is granted a limited license to use and reproduce the WORK PRODUCT prepared by CEC for use in the execution of the project(s) under this AGREEMENT. The WORK PRODUCT is not to be used by CLIENT or other contractors, subcontractors, or material suppliers on other projects without the express written consent of CEC.

18. FILE RETENTION

Upon conclusion of the project, CEC's file on the project will be closed and may be sent offsite for storage. Unless CLIENT requests a longer retention period in writing, CEC reserves the right to destroy all file information seven (7) years after the project is closed.

19. SURVIVAL

In the event of termination, cancellation or avoidance of this AGREEMENT, the terms and conditions of Articles 3 (Site Access, Site Conditions and Subsurface Features), 4 (Biological Pollutants, Hazardous Materials and Hazardous Conditions), 5 (Evolving Technologies), 11 (Insurance), 12 (Allocation of Risk), 14(Governing Law), and 15 (Dispute Resolution) shall survive termination of the AGREEMENT.

END OF TERMS

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.
117 SEABOARD LANE • SUITE E-100
FRANKLIN, TENNESSEE 37067
PHONE: 615-333-7797 • www.cecinc.com/location/nashville-tn

Municipal Services Fee Schedule

January 1, 2025, through December 31, 2025

PROFESSIONAL SERVICES

Classification	Rate/Hour
Vice President	$285
Principal	$260
Senior Project Manager	$245
Project Manager III	$220
Project Manager II	$190
Project Manager I	$169
Assistant Project Manager	$152
Project Consultant	$132
Staff Consultant	$119
Project Scientist	$109
Staff Scientist	$ 86
CADD Manager	$171
Senior Designer	$170
Field Service Manager	$133
Senior Engineering Assistant	$126
Senior Technician	$126
Technician I	$ 70
Survey Technician IV	$130
Survey Technician III	$100
Survey Technician II	$ 85
Survey Technician I	$ 80
Administrative Manager	$100
Administrative Assistant	$ 81
Intern	$ 62

DIRECT EXPENSES

Automobile Mileage	Current IRS Rate
Technology and Office Service Fee	3% of professional fees
Survey Equipment Usage	$25/hour
In-House Equipment Usage	Per daily rates
Other Travel Related Expenses	Cost plus 10%
Printing and Reproduction	Cost plus 10%
Telephone and Shipping	Cost plus 10%
Miscellaneous Reimbursables	Cost plus 10%

SUBCONTRACT SERVICES

Services @ Cost Plus 10%

Janette L. Wolf, P.E., CPESC, CPSWQ

Vice President and Corporate Public Sector Market Lead



19 YEARS OF EXPERIENCE

EDUCATION

M.Eng., Environmental Engineering, Vanderbilt University, 2009

B.A., French, Virginia Polytechnic Institute & State University, 2006

B.S., Biological Systems Engineering, Virginia Polytechnic Institute & State University, 2006

REGISTRATIONS

Professional Engineer

- TN 00113590

CERTIFICATIONS

Level 1 Fundamentals of Erosion Prevention and Sediment Control, Tennessee Department of Environment & Conservation

Certified Professional in Erosion and Sediment Control, EnviroCert International, Inc.

Certified Professional in Storm Water Quality, EnviroCert International, Inc.

E1527 Standard Practice for Phase I Environmental Site Assessment, ASTM

Certified Erosion, Sediment, and Storm Water Inspector, EnviroCert International, Inc.

Janette is a Stormwater Compliance Specialist and Experienced Trainer with a primary focus in the public sector market. Her primary focus areas have included stormwater management, stormwater sampling, water quality permitting, erosion and sediment control, stormwater pollution prevention plan design and development and NPDES permit compliance. Janette has served CEC since 2006 and became the Corporate Public Sector Market Group Lead in 2024. Responsibilities for this role include research and distribution of information which may impact public sector clients such as new or reissued permits, rules and/or regulations, grant funding opportunities (including ARPA), and documentation and reporting deadlines. She earned her B.S. degree in Biological Systems Engineering from Virginia Tech and joined CEC in 2006. She is a P.E. in Civil Engineering and maintains CPESC, CPSWQ and CESSWI certifications.

PROJECT EXPERIENCE

Puckett Creek Threatened Stream Analysis, Stream Classification and Watershed Management Plan, SRWA, TN
Ms. Wolf performed a visual stream assessment utilizing principles of natural channel design in order to classify Puckett Creek based upon the Rosgen classification system. The assessment included two cross-sectional surveys and one longitudinal profile survey, pebble counts for each reach and cross-section, and geomorphological pattern characterization. Collected data was employed to aid in development of hydrological and hydraulic modeling of the watershed. A watershed Best Management Practices (BMPs) Plan was developed in order to determine the most effective BMPs for the stream in terms of enhancement, protection and mitigation. In addition, hydrological and hydraulic analysis was conducted to determine the stream's sensitivity to impacts and mitigation.

Williamson County Total Maximum Daily Load (TMDL) Monitoring and Visual Stream Assessment, City of Brentwood
Conducted pathogen stream sampling and visual stream surveys and impairment inventories of the Little Harpeth River in Williamson County, Tennessee. Sampling was conducted per the Tennessee Department of Conservation's (TDEC's) Quality System Standard Operating Procedure for Chemical and Bacteriological Sampling of Surface Water and the visual stream assessment per the Maryland Stream Corridor Assessment protocol.

Benthic Macro Invertebrate Sampling, VA*
Ms. Wolf performed benthic macro invertebrate sampling across southwest Virginia in coordination with National and Virginia Save Our Streams Program. Ms. Wolf developed the Save Our Streams monitoring database for the Virginia Tech Science Outreach Program and led water educational programs for surrounding community groups.

Lytle Creek Visual Stream Assessment and Watershed Assessment Plan
Employed the Maryland Stream Corridor Assessment protocol in performing a visual assessment on Lytle Creek in Rutherford County, Tennessee. Responsibilities involved documenting stream conditions and collecting GPS points along the stream to document future locations of areas of interest. The assessment focused on sediment loading mechanisms, in-stream and off-stream loadings, and habitat corridors along the stream channel. Data collected was used to develop a restoration plan for the Stones River Watershed Association. The goal of the plan was to identify potential restoration areas where best management

practices (BMPs) could be employed to enhance or potentially restore stream water quality. Site prioritization was conducted and included in the restoration plan. Recommended BMPs such as stream bank stabilization and riparian area plantings and cost estimates of such BMPs were also included in the restoration plan.

Stormwater Control Measure Field Evaluation & Characterization
Ms. Wolf led the field performance assessment of a proprietary stormwater filtration system installed as a post-construction flow-through water quality device designed to remove sediment and heavy metals. Our work for this project included initial site stormwater sampling to characterize influent stormwater runoff and progressed to include influent and effluent stormwater sampling. Field efforts include installation and operation of ISCO area velocity flow meters and samplers for flow-weighted automated sampling and Solinst pressure transducers for secondary confirmation of flow presence. Target pollutants were total suspended solids and total phosphorus. Work for this project included stormwater sampling, equipment monitoring and maintenance, product assessment and field recommendations, and interpretation of field data.

MS4 Compliance Services, Sumner County, Sumner County, Tennessee
Role: Project Manager
CEC provides on-call consulting and engineering services to the Sumner County Development Services office. Professional services revolve around MS4 compliance. Specifically, CEC has provided analytical and non-analytical monitoring, input mapping, GIS support and training, Erosion Prevention and Sediment Control (EPSC) and engineering plans review, EPSC field manual development and revisions, stormwater ordinance revision recommendations, and Operation & Maintenance (O&M) plan development. Ms. Wolf serves as the client contact and project manager responsible for staffing, coordination, scope development and invoicing.

MS4 Permit Compliance Support, City of Clarksville, Clarksville, Tennessee
Role: Principal-in-Charge
CEC prepared a gap analysis to review the City of Clarksville stormwater management program in comparison to TDEC's Small MS4 General Permit requirements. The gap analysis included a review of the City's governing documents including the Stormwater Management Manual, Stormwater Ordinance, Illicit Discharge Detection & Elimination Plan, Public Information & Education Plan and Enforcement Response Plan. In addition to the gap analysis, CEC assessed the City's readiness to become a Qualified Local Program (QLP) which included an overall assessment of the stormwater management program staffing and implementation. CEC provided recommendations for the number of staff for the current stormwater management program as is and also the number of staff if the City were to establish as a QLP. This process included researching other similarly sized MS4 staffing and stormwater programs, interviewing current staff, evaluating current staff certifications/qualifications, and a review of their site compliance inspection and documentation procedures.

MS4 Permit Compliance Support, Madison County, Madison County
Role: Principal-in-Charge
Janette serves as the Principal-in-Charge and primary client contact for MS4 permit compliance support to Madison County. Services include visual stream assessments, E.coli sampling, macroinvertebrate sampling, outfall mapping and operation and maintenance plan development. MS4 field compliance services are funded by a TDEC State Water Infrastructure Grant (SWIG) via the American Rescue Plan Act. Additional add-on services include corrective action plan development, MS4 permit document review and recommendations and TDEC coordination on behalf of the County to assist in responding to their MS4 notice of violation.

Small MS4 Permit Compliance Services & Engineering/Site Plan Review Services for Various Clients
Role: Principal-in-Charge
Ms. Wolf has performed small MS4 permit compliance services for various clients (e.g. City of Belle Meade, City of Berry Hill, City of Hendersonville, City of Goodlettsville, City of La Vergne, City of Brentwood, City of Clarksville, City of Mt. Juliet, and TDOT). The work has included preparation of the Notice of Intent (NOI), stormwater management ordinance revisions, construction site plan review services, oversight of compliance field services, assistance with identifying and prioritizing stormwater capital improvement projects, annual reporting, and other related services.

Phase II MS4 Monitoring, City of Jackson, Jackson, Tennessee
Role: Principal-in-Charge
Janette serves as the Principal-in-Charge for the Phase II MS4 permit-required monitoring for the City of Jackson. Services include visual stream assessments, E.coli sampling, and macroinvertebrate sampling. Work was performed in accordance with the TDEC MS4 General Permit, the current version of the "Quality System Standard Operating Procedure for Chemical and Bacteriological Sampling of Surface Water" and the current version of the "Quality System Standard Operating Procedure for Macroinvertebrate Stream Survey". Services were performed in support of the City's Corrective Action Plan issued in response to a Notice of Violation.

TRAINING

TDEC Level I – Fundamentals of Erosion and Sediment Control for Construction Sites

TDEC Level II – Design Principles for Erosion and Sediment Control for Construction Sites

OSHA Confined Space Entry

AWARDS

Outstanding Recent Alumna for the Department of Biological Systems Engineering, Virginia Tech for 2015-2016.

PROFESSIONAL AFFILIATIONS

International Erosion Control Association

PUBLICATIONS

Wolf, Janette. "Preparing, Conducting and Documenting BMP Inspections for Project Success", Environmental Connection April/May Edition, Volume 13, Issue 2. 2018

PRESENTATIONS

Wolf, Janette. “Stormwater Turbidity Sampling on TDOT Projects.” Tennessee Water Resources Symposium, Burns, TN, April 2, 2015.

Wolf, Janette. "Understanding Tennessee Stormwater Permit Requirements and Procedures.” Tennessee Stormwater Management 2014, Knoxville, TN, February 20, 2014.

"Implementation & Analysis of a Statewide Stormwater Monitoring Program on Linear Projects." International Erosion Control Association, (IECA) Annual Conference, San Antonio, TX, February 17 & 19, 2016.

Wolf, Janette "Effective BMP Inspection Methods: How to prepare, what to look for, what do we do now?" International Erosion Control Association (IECA) Annual Conference, Long Beach, CA, February 13, 2018.

Wilson-Kokes, Lindsay & Janette Wolf "Field Safety for Stormwater Professionals" Tennessee Stormwater Association (TNSA), Regional TNSA Talk, January 21, 2021.

Wolf, Janette. "TMSP Employee Training" Chattanooga Regional Manufacturers Association (CRMA), Chattanooga, TN, November 16, 2022.

Tim J. Nehus
Principal



38 YEARS OF EXPERIENCE

EDUCATION

B.S., Biology, Arkansas Technological University, 1987

M.S., Biology, Tennessee Technological University, 1995

CERTIFICATIONS

USFWS Section 10 Recovery Permit TE108548-7, U.S. Fish and Wildlife Service

TWRA Scientific Collection Permit 1487, Tennessee Wildlife Resources Agency

Mr. Nehus has more than 35 years experience as an ecologist on a multitude of environmental projects. He has extensive experience as a team member, contract manager, and contract administrator on numerous departments of transportation contracts. Mr. Nehus has managed multiple continuing contracts awarded by TDOT, ARDOT, and NCDOT. His technical experience includes regulatory compliance and permitting requirements of Section 404/401 of the Clean Water Act. Mr. Nehus has coordinated with state and federal regulatory agencies on a multitude of linear transportation projects and real estate developments. He has served as senior scientist on a number of projects for NPDES permit compliance monitoring including municipal sewage treatment plants, pulp paper mills, and military ordnance facilities. His areas of expertise include ecological field surveys (benthic macroinvertebrates, freshwater mussels, and fish), wetlands delineation, and critical habitat surveys for state and federally listed species. He has extensive experience in the taxonomy and systematics of aquatic invertebrates, freshwater mussels and fish used in training, and supervising other biologists and lab technicians.

PROJECT EXPERIENCE

Maury County Water System Improvements
Conducted field survey to determine the possible presence of critical habitat for state and federally listed plants and animals within the construction zone of proposed improvements to the water system of Maury County. Prepared Biological Assessment for the plants and animals listed by the U. S. Fish and Wildlife Service as threatened or endangered and known to occur in the area.

NPDES Compliance, Aerojet Ordnance Tennessee, Washington County, TN
Conducted benthic macroinvertebrate field collections and habitat assessment of Little Limestone Creek in Washington County, Tennessee. Interpreted data and prepared report in accordance with EPA's Rapid Bioassessment Protocols for use in Wadeable Streams and Rivers.

NPDES Compliance, Royal Oak Charcoal, Cumberland County, TN
Conducted benthic macroinvertebrate field collections and habitat assessment of Meadow Creek in Cumberland County, Tennessee. Interpreted data and prepared report in accordance with EPA's Rapid Bioassessment Protocols for use in Wadeable Streams and Rivers.

Seven Islands Wildlife Refuge: Pedestrian Bridge over French Broad River at RM 15.5; TDOT; Knox County
Mussel Sweep within the proposed footprint of temporary haul road and bridge piers across French Broad River to remove and relocate all mussels encountered. The sweep was necessitated by the possible presence of the endangered pink mucket. Twelve mussels representing three common species were found and identified, but none were endangered species. Work order totaled $9,982.45.

Project Blue Oval; SR-194EXT Connecting I-40 to State Routes 1, 59 and 222; PIN 132132.01
Project coordinator and QA/QC of environmental boundaries and SQT rapid assessments on approximately 15 miles of new alignment. Survey teams documented 48 streams (perennial, intermittent and ephemeral), 27 wetlands, and 51 upland drainage features. The SQT rapid assessments were conducted to determine mitigation potentially needed for impacts to approximately 38,500 feet of stream.

Peer Review of Fish and Benthic Analyses – TVA Cumberland and Allen CCR Sites - TDEC
Responsible for the peer review of fish and benthic data collection methods and analyses of data collected by consultants employed by TVA for CCR-impacted TVA facilities. Technical reviews were performed on the fish, benthic and surface water sections of the Environmental Assessment Report (EAR) and the various appendices associated with the preparation of the EAR.

Field Audit of Fish Tissue Methods - TVA Allen CCR Site - TDEC
Field audit of fish sampling methods employed by TVA for the collection and preparation of fish to be shipped for laboratory analyses. Target species were collected by electrofishing, weighed, measured and prepared for shipment to laboratory for analyses of compounds associated with CCR.

Campbell County, SR-63, From Near Frontier Rd./Woodsen Ln. to Near Claiborne Co. line; PIN 101407.02
Project coordinator and QA/QC of SQT rapid assessments on 5.25 miles of the proposed widening of SR-63. CEC provided results in a report that included the rapid assessment forms, BEHI forms, SQT debit tool spreadsheets, figures, and photo summary. TDOT requested benthic sampling results to be incorporated into the SQT in order to strengthen existing condition scores.

SR-35 (Newport Bypass), From SR-9 to St. Tide Hollow Rd.; PIN 101399.00
Project coordinator and QA/QC of environmental boundaries and SQT rapid assessments on 4.72 miles of new alignment. Survey teams documented ten streams, 20 wetlands and 4 wet weather conveyances. The SQT rapid assessments were conducted on nine streams.

TDOT I-65 Bridge over Duck River, Maury County, TN
Conducted preliminary field survey of freshwater mussels in the vicinity of the proposed I-65 bridge improvements. Prepared Biological Assessment for freshwater mussels listed by the U. S. Fish and Wildlife Service as threatened or endangered and known to occur in the area.

TDOT Bromley Road over Butler Creek, Wayne County, TN
Assisted TDOT biologists in a fish sweep and relocation on Butler Creek in Wayne County for the Bromley Road bridge replacement project. A fish survey was performed at the request of the Tennessee Wildlife Resource Agency for state listed fish and crayfish species. Backpack electrofishing units and large seines were used to sample the stream.

TDOT SR-317, Rare Plant Survey, Hamilton County, TN
Assisted botanists with a survey for the large-flowered skullcap (Scutellaria montana) in Chattanooga, Hamilton County, Tennessee. The survey was required by the USFWS for potential threats to the listed species for a new access road to serve the proposed Volkswagen plant.

TDOT Lick Creek Mussel Survey, Hickman County, TN
Performed survey of Lick Creek for potential mussel habitat and listed species. Lick Creek is a tributary to the Duck River in Hickman County, Tennessee. A cursory mussel survey was performed using view buckets and visual search for relic shells.

TDOT Ecological Assessments, Various Counties, TN
Served as in-house consultant conducting ecological assessments and field surveys, and preparing reports on numerous bridge replacements, roadway improvements and new alignments. Field surveys involved the identification and documentation of aquatic resources, wetlands, and threatened or endangered species and/or their critical habitat. Results were provided in the format requested by TDOT.

TDOT SR-15 Bridge over Elk River, Lincoln County, TN
Performed mussel dive and survey on the Elk River for the construction of State Route 15 bridge replacement in Lincoln County, Tennessee.

TDOT SR-106 Bridge over Duck River, Marshall County, TN
Performed mussel dive and survey at the SR-106 Bridge replacement project in Marshall/Maury County, Tennessee.

TDOT Sediment Assessments, Various Counties, TN
Projects included SR-32 (Claiborne County), SR-840 re-assessment (Dickson and Williamson Counties), and SR-385 (Shelby County). Conducted field surveys to determine sediment impacts to streams receiving runoff from roadway construction.

TDOT Ecological Assessments, Various Counties, TN
Conducted field surveys and prepared reports on numerous bridge replacements, roadway improvements, and new alignments. Field surveys involved the identification and documentation of aquatic resources, wetlands, and threatened or endangered species and/or their critical habitat. Results were provided in the format requested by TDOT (Ecology Report, Environmental Boundaries, Mitigation Form, Threatened and Endangered Species Form, or Biological Assessment).

TDOT SR-840 Fisheries Survey, Willliamson County, TN
Performed pre- and post-construction fisheries surveys for the State Route 840 project in Williamson County, Tennessee. Surveyed over 26 stations on 12 streams using backpack electrofishing units and seines.

Nashville Crayfish Surveys
TDOT, Land Developers, and Contractors within Davidson and Williamson Counties, Tennessee. Contracted to collect and relocate Nashville Crayfish (Orconectes shoupi) from Mill Creek and its tributaries. Collection and relocation methods were designed to meet the stipulations of ARAP permits as well as those of the U. S. Fish and Wildlife collection permit.

TDOT SR-53 Fish Sweep, Coffee County, TN
Parks Creek fish sweep for the state listed species Etheostoma luteovinctum (redband darter) and Hemitremia flammea (flame chub). The fish sweep was required by the Tennessee Wildlife Resources Agency due to a bridge replacement along State Route 53 in Coffee County, Tennessee.

NPDES Compliance, Bowater Newsprint, Bradley County, TN
Fish were collected from the Hiwassee River in Bradley County, Tennessee using electrofishing methods, and fish tissue samples were prepared in accordance with EPA's Guidance for Assessing Chemical Contaminant Data for use in Fish Advisories, Volume 1, Fish Sampling and Analysis.

TRAINING

Ohio Environmental Protection Agency (EPA), Physical Habitat Assessments (QHEI)

Ohio EPA, Fish Assessments (Headwater, Wading, Boat) - IBI, MIwb

US Army Corps of Engineers Wetland Delineation and Management

US Fish and Wildlife Service, Permit to Collect and relocate specific threatened and endangered species (mussels, fish, and crayfish) : Federal Fish and Wildlife Permit No. TE 108584-5

PUBLICATIONS

Layzer, J.B., T.J. Nehus, W.L. Pennington, J.A. Gore, and J.M. Nestler. 1989. Seasonal Composition of the Drift below a Peaking Hydroelectric Project. Regulated Rivers: Research and Management, 3:29-34.

Nehus, T.J., J.B. Layzer, and W.L. Pennington. 1989. Effects of Peaking Hydroelectric Generation on Macroinvertebrate Drift in the Caney Fork River. Bulletin of the North American Benthological Society G(1):112.

Nehus, T.J., J.B. Layzer, and W.L. Pennington. 1989. Importance of Reservoir Biota to Stream Drift in Center Hill Tailwater. The ASB Bulliten 36(2):109.

Lindsay M. Wilson-Kokes

Project Manager II



11 YEARS OF EXPERIENCE

EDUCATION

B.S., Biology, University of Tennessee, 2006

M.S., Soil Science, West Virginia University, 2013

CERTIFICATIONS

Heartsaver CPR AED, American Heart Association

10-hour Construction Safety, Occupational Safety & Health Administration

Level 1 Fundamentals of Erosion Prevention and Sediment Control, Tennessee Department of Environment & Conservation

Level 2, Design Principles for Erosion Prevention and Sediment Control for Construction Sites, Tennessee Department of Environment & Conservation

40-Hour OSHA HAZWOPER, Occupational Safety & Health Administration

Permit & Non-Permit Confined Space Entry, Occupational Safety & Health Administration

Tennessee Qualified Hydrologic Professional - In Training, Tennessee Department of Environment & Conservation

40-Hour Wetland Delineation Course, Richard Chinn

Lindsay Wilson-Kokes earned her B.S. degree in Biology from the University of Tennessee at Chattanooga and M.S. degree in Soil Science from West Virginia University. In 2015, she began work with Civil & Environmental Consultants, Inc. in the Bridgeport, WV office and later transferred to the Nashville, TN office. Ms. Wilson-Kokes currently works with the Water Resources practice group as an environmental scientist. Her focus areas are NPDES Stormwater Construction permit compliance, including erosion and sediment control (EPSC) inspections and Stormwater Pollution Prevention Plan (SWPPP) revisions; NPDES MS4 permit compliance, including visual stream assessment surveys, *E. coli* sampling, storm sewer system and outfall mapping, and MS4 data collection and management; and Environmental Boundaries surveys and hydrologic determinations.

Ms. Wilson-Kokes also has experience with SPCC inspections, soil sampling and testing, vegetation studies, and groundwater and sampling and monitoring.

PROJECT EXPERIENCE

MS4 Permit Compliance

MS4 Stream Monitoring, Various, Multiple Municipalities, TN

Role: Serving as Project Manager and Field Lead

Ms. Wilson-Kokes currently performs analytical and non-analytical stream monitoring on waters with unavailable parameters for siltation, nutrients and/or pathogens as well as MS4 outfall and input mapping as required by TDEC for coverage under the Phase II NPDES permit - TNS000000 (Permit). Ms. Wilson-Kokes has performed Visual Stream Assessments on more than 110 miles of streams within multiple MS4 jurisdictions throughout Middle and West Tennessee. Additionally, Ms. Wilson-Kokes provides the client (municipality) with a quality deliverable that includes the collected GIS field data, summary reports and MS4 outfall and input maps.

City of Brentwood MS4 Employee Education, City of Brentwood

Role: Project Manager

In 2022, Ms. Wilson-Kokes provided Stormwater Pollution Prevention Training for employees in three departments within the City of Brentwood: Public Works, Water Services, and Parks & Recreation. The training was conducted to satisfy Section 4.2.6 of the MS4 Phase II NPDES Permit that was effective at that time. Ms. Wilson-Kokes reviewed the City's Stormwater Pollution Prevention Plans and tailored each PowerPoint presentation to accommodate the specific needs of each of the aforementioned departments.

City of Brentwood Operations and Maintenance Plans, City of Brentwood

Role: Project Manager

In accordance with Section 4,2,6. of the 2016 MS4 permit that was effective in early 2022, Ms. Wilson-Kokes updated and/or wrote the City's Operations and Maintenance (O&M) plans for the Crockett Park Maintenance Facility, Fire Stations 1 - 5, the Police Station, and the Public Works Facility. Site visits were performed at each facility to access current site conditions and stormwater discharges. Additionally, the information collected during the site visits was used in the MS4 Employee Education training.

Input Mapping for MS4s, Various, Multiple Municipalities, TN
Role: Project Manager and Field Lead
Ms. Wilson-Kokes serves as the project manager for multiple MS4 projects that entail stormwater input mapping and data management. She has performed input mapping fieldwork and input data quality assurance and quality control for approximately 2,729 miles of roadways throughout municipalities in middle Tennessee since 2019. She has assisted many clients with their MS4 data management. Additionally, she trains and mentors entry level staff on input data collection to ensure that every MS4 client receives the same high quality data output.

Ecology
Wetland Delineations and Hydrologic Determinations, Various, TN
Role: TNQHP-IT
Conducted environmental boundary (EB) surveys for multiple clients in Middle and East Tennessee. The EB surveys involved wetland delineations on sites which were determined to have wetland related issues. Delineations were performed in accordance with the U.S. Army Corps of Engineers (USACE) 1987 delineation manual. Additionally, hydrologic determinations on streams within site boundaries were performed in accordance to Tennessee's Standard Operating Procedures (Tennessee Code Annotated, Section 69-3-105) for making stream and wet weather conveyance determinations.

PROFESSIONAL AFFILIATIONS

American Society of Mining and Reclamation

Soil Science Society of America

PUBLICATIONS

J. Skousen, T. Cook, L. Wilson-Kokes, E. Pena-Yewtukhiw. 2012. Survival and growth of chestnut backcross seeds and seedlings on surface mines. J. Environ. Qual. 42:690-695.

L. Wilson-Kokes, C. DeLong, C. Thomas, K. O'Dell, and J. Skousen. 2013. Hardwood tree growth on amended mine soils in West Virginia after six years. JEQ 42: 1363-1371

L. Wilson-Kokes, P. Emerson, C. DeLong, C. Thomas, and J. Skousen. 2013. Hardwood tree growth after eight years on brown and gray mine soils in West Virginia. JEQ 42: 1353-1362

Lindsay Wilson-Kokes and Jeffery Skousen. 2014. Nutrient concentrations in tree leaves on brown and gray reclaimed mine soils in West Virginia. Science of the Total Environment 481: 418-424

Christopher M. Cato-Ellis
Staff Scientist



7 YEARS OF EXPERIENCE

EDUCATION

B.A., Sociology , Western Kentucky University, 2020

CERTIFICATIONS

ANSI Class 7 Rough Terrain and Class 1, 4,5 Warehouse Forklift, Sunbelt Rentals

Confined Space Entry, OSHA

Hazardous Material Handling , OSHA

10-Hour OSHA Construction Safety (Occupational Safety & Health Administration), OSHA

Asphalt Roadway Certification, Tennessee Department of Transportation

Tennessee Erosion Prevention and Sediment Control Level I Certification, Tennessee Department of Environment & Conservation

CPR and AED, American Health & Safety Institute

Aggregate Certified Technician, Tennessee Department of Transportation

Concrete Field Certified Technician, Tennessee Department of Transportation

National Flagger Certification Training Course , ATSSA

Mr. Cato-Ellis earned his B.A. degree in Sociology with a Minor in Environmental Studies and Sustainability from Western Kentucky University in 2020. In 2023, he began work with Civil & Environmental Consultants, Inc. in the Nashville, TN office, where he currently works with the Water Resources practice group as an environmental scientist. His focus areas are NPDES Stormwater Construction permit compliance, including Erosion and Sediment Control (EPSC) inspections; NPDES MS4 permit compliance, including Visual Stream Assessment (VSA) surveys, E. coli sampling, storm sewer system and outfall mapping, MS4 data collection, and Construction and Engineering Inspection (CEI) services.

Mr. Cato-Ellis also has experience with invasive plant species control and studies, water treatment facility filter rehabilitation work, as well as groundwater sampling and monitoring.

PROJECT EXPERIENCE

MS4 Permit Compliance
City of Brentwood, Williamson County, TN
Role: Staff Scientist
Mr. Cato-Ellis serves as Staff Scientist responsible with helping the field portion for MS4 permit compliance support to the City of Brentwood. Services included visual stream assessments, *E.coli* sampling, and outfall mapping.

City of Dickson, Dickson County, TN
Role: Staff Scientist
Mr. Cato-Ellis performed stormwater input mapping for the City of Dickson. His duties included mapping stormwater structures that input into the City's storm sewer system and provided documentation of the current condition and flow direction of the input structure.

City of Spring Hill, Maury County, TN
Role: Staff Scientist
Mr. Cato-Ellis served as Staff Scientist responsible with helping the field portion for MS4 permit compliance support to the City of Spring Hill. Services include visual stream assessments and outfall mapping.

Wilson County, Tennessee
Role: Staff Scientist
Mr. Cato-Ellis served as Staff Scientist responsible with helping the field portion for MS4 permit compliance support to Wilson County. Services include visual stream assessments, *E. coli* sampling, and outfall mapping.

Christopher M. Cato-Ellis
Staff Scientist

City of Hendersonville, Sumner County, TN
Role: Staff Scientist
Mr. Cato-Ellis has performed stormwater input mapping for the City of Hendersonville as part of the City's MS4 permit compliance. His duties included mapping stormwater inlets / outlets structures, reviewing their structural condition, recording the flow direction, structure material, and collected a photo. The collected data was uploaded to ArcGIS Pro for review and use by the client.

City of Jackson, Madison County, TN
Role: Staff Scientist
Mr. Cato-Ellis performed the Phase II MS4 permit-required stream monitoring for the City of Jackson. Services include visual stream assessments, *E. coli* sampling, and macroinvertebrate sampling and habitat assessment. Work was performed in accordance with the TDEC MS4 General Permit. TDEC's current version of the "Quality System Standard Operating Procedure for Chemical and Bacteriological Sampling of Surface Water" and the "Quality System Standard Operating Procedure for Macroinvertebrate Stream Survey" were followed. Services were performed in support of the City's Corrective Action Plan issued in response to a Notice of Violation. Additionally, Mr. Cato-Ellis coordinated with the City's Stormwater Coordinator during field assessments.

Madison County, TN
Role: Staff Scientist
Mr. Cato-Ellis served as field lead for Madison County's permit-required stream monitoring. Services included visual stream assessments, *E. coli* sampling, and MS4 outfall mapping. MS4 field compliance services are funded by a TDEC State Water Infrastructure Grant (SWIG) via the American Rescue Plan Act.

City of La Vergne, Rutherford County, TN
Role: Staff Scientist
Mr. Cato-Ellis served as Staff Scientist responsible with helping the field portion for MS4 permit compliance support to the City of La Vergne. Services included visual stream assessments, *E. coli* sampling, and outfall mapping.

Sumner County, TN
Role: Staff Scientist
Mr. Cato-Ellis serves as Staff Scientist responsible with helping the field portion for MS4 permit compliance support to Sumner County. Services include visual stream assessments, *E. coli* sampling, and outfall mapping.

Mammoth Cave National Park Internship
Exploring the Role of the Ranger, Mammoth Cave National Park, Western Kentucky University , Mammoth Cave, KY*
Role: Law Enforcement Intern
The definition of "Ranger" has gone through a variety of views in the public's eye since the National Park Service's (NPS) establishment in 1916. Park Rangers' have many roles in their divisions, including but not limited to: wildland fire fighters, law enforcement officers, biologists, and trail guides. This wide scope has led to many conflicts between the Rangers and park visitors due to a misunderstanding of the authority they have, in and out of park grounds. Through research, interviews, and surveys, Mr. Cato-Ellis presented data showing the connection of conflict between Rangers and park visitors and the death of NPS Park Rangers, with the public's misinterpretation of the Ranger's role. If the societal view was to become more aware of the fact that not every Park Ranger is just a trail guide, and how some Park Ranger divisions have authority to uphold laws and carry out arrests, then there could possibly be a decrease in the mortality rate of NPS Park Rangers.
* *Work performed prior to joining CEC*

Jedidiah F. Scott
Assistant Project Manager



7 YEARS OF EXPERIENCE

EDUCATION

B.S., Environmental Science, Tennessee Technological University, 2018

EXPERTISE

ArcGIS Map, ArcGIS Pro, ArcGIS Enterprise

Jurisdictional Determinations of Natural Resources

CERTIFICATIONS

40-Hour Wetland Delineation Course, Richard Chinn

Tennessee Qualified Hydrologic Professional, Tennessee Department of Environment & Conservation

Jedidiah Scott is a Qualified Hydrologic Professional (TN-QHP #1241-TN24) with more than 5 years' experience conducting natural resource and endangered species surveys for clients. He effectively assists them to complete environmental due diligence that is primarily associated with NEPA studies and 404/401 permitting required for property acquisition and development. He has conducted wetland determinations and delineations and assessed the quality of wetlands with the use of the TN Rapid Assessment Method (TRAM). His other tasks focus on the collection of high-quality data conducting jurisdictional determinations on streams and wet weather conveyances all over the state of TN. He then assists in the preparation of reports using ArcPRO. He also frequently submits Hydrologic Determinations (HD) reports to TDEC and the USACE for concurrence of jurisdictional determinations. Other tasks he conducts include: collection of data using the TN stream quantification tool (SQT), benthic macroinvertebrate sampling, groundwater quality sampling, input mapping stormwater systems, environmental supervision during construction, well installations at wetland mitigation banks, and wetland mitigation bank monitoring. Additional skills include proficient use of ArcPRO, ArcGIS enterprise, Survey123, and various Trimble GPS units (Geo7x, DA2, and the R1).

PROJECT EXPERIENCE

Stormwater Input Mapping, Various Counties and Cities, TN
Mr. Scott conducted field data collection for county and city stormwater systems. He used an iPad and Trimble (GPS) device to mark locations and collect data focusing on culvert, pipe, headwall, and channel conditions.

Visual Stream Assessments Various Counties, TN
Mr. Scott has experience conducting Visual Stream Assessments along several miles of streams across the state of TN. Assessments include identifying environmental problems, marking the location using a GPS, photographing the problem, and then rating the inadequacy's on a scale using severity, accessibility,and access.

Endangered Species/ Mist Net and Acoustic Bat Surveys, Various Counties, TDOT
Mr. Scott assisted with mist net surveys for various new alignment and road widening projects for TDOT in numerous counties throughout Tennessee. He also assisted with acoustic bat surveys data collection and analysis.

TRAINING

40 Hour Richard Chinn Army Corps Of Engineers Wetland Delineation Training

TDEC Soil Sampling and Testing Training

TDEC Hydrologic Determination Training

TDOT ESPC Level I Training

Stuart K. Miller
Project Scientist



8 YEARS OF EXPERIENCE

EDUCATION

B.S., Environmental Sciences, University of Tennessee at Chattanooga, 2015

CERTIFICATIONS

Tennessee Erosion Prevention and Sediment Control Level I Certification, Tennessee Department of Environment & Conservation

40-Hour OSHA HAZWOPER, Occupational Safety & Health Administration

Mr. Miller has over 7 years combined experience working in multiple disciplines including Solid Waste, Water Resources, Ecology, Environmental, Wildlife & Fisheries, Water Treatment, and Equipment Operations. Mr. Miller graduated from the University of Tennessee at Chattanooga in 2015 with a degree in Environmental Science concentrated in Biology. While attending school he volunteered with Tennessee Tech University, TWRA, and other state agencies where he participated in electrofishing surveys for the Caney Fork River, tagged and relocated lake sturgeon for the Tennessee Sturgeon Project, and relocated brood fish for spawning in Hot Springs, Arkansas. During his time at UTC, he completed two internships with Littlejohn Engineers and BDY Environmental where he gained experience in field work associated with wetland delineation, Phase 1 investigation/reports, soil sampling, storm water collection, and endangered species investigations and relocation. Mr. Miller's work experience prior to working at CEC includes being a plant operator at the Stones River Water Plant, an automated dispensing specialist/equipment operator for an industrial supply company, and a carpenter's assistant.

PROJECT EXPERIENCE

***E. coli* Sampling**

***E. coli* Sampling, Multiple, Various**

Role: Project Scientist

Mr. Miller collected samples for various clients throughout Tennessee including City of La Vergne, City of Jackson, Madison County, Wilson County, and the City of Brentwood. Mr. Miller performed tests and utilized equipment to ensure quality data was submitted.

MS4 Permitting Support

Input Mapping, City of Dickson, Dickson, Dickson County, TN

Role: Staff Scientist

Assisted City of Dickson in the collection of stormwater input mapping by providing high quality field data.

Wilson County Outfall Mapping, Wilson County, Wilson County, TN

Role: Staff Scientist

Assisted Wilson County in the collection of stormwater input mapping by providing high quality field data.

Hendersonville Input Mapping, City of Hendersonville, Hendersonville, TN

Role: Project Scientist

Assisted City of Hendersonville in the collection of stormwater input mapping by providing high quality field data.

Stuart K. Miller
Project Scientist

Visual Stream Assessments

Brentwood VSA, City of Brentwood, TN

Role: Staff Scientist

Mr. Miller has experience conducting Visual Stream Assessments. Assessments include identifying environmental problems, marking the location using a GPS, photographing the location, and then rating the area of interest using a scale based on the severity and accessibility of the area.

Jackson VSA, City of Jackson, TN

Role: Project Scientist

Mr. Miller has experience conducting Visual Stream Assessments. Assessments include identifying environmental problems, marking the location using a GPS, photographing the location, and then rating the area of interest using a scale based on the severity and accessibility of the area.

Madison County VSA, Madison County, TN

Role: Project Scientist

Mr. Miller has experience conducting Visual Stream Assessments. Assessments include identifying environmental problems, marking the location using a GPS, photographing the location, and then rating the area of interest using a scale based on the severity and accessibility of the area.

Sumner County VSA, Sumner County, TN

Role: Project Scientist

Mr. Miller has experience conducting Visual Stream Assessments. Assessments include identifying environmental problems, marking the location using a GPS, photographing the location, and then rating the area of interest using a scale based on the severity and accessibility of the area.

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 7.
Department: Parks
Date: August 28, 2025

Subject:
Approval of the terms of, and authorization for the Mayor to execute, an agreement with Rain Drop Products, LLC for improvements to the SplashTown water slides.

Fiscal Impact:
SplashTown Slide Restoration - 320-44700-977 capital improvements
The SplashTown Aquatic Complex accounts for approximately $200,000 per year in revenues. The water slides are among the main attractions of the aquatic complex, and they are also the most visible component of the complex.

Total Order $82,500.00
Less discount at a rate of 39.98% -$32,985.15
Net Order $49,514.85

Contract Type:
Original Contract

Contract Term (if applicable):

Background:
The water slides were part of the original SOAC and Pool Improvement Project, which the Town of Smyrna funded with a $900,000 Christy Houston Grant. The slides were installed in 2016, and the complex opened in May 2017. This is the first major improvement to the slides since they were installed.

Summary:
Staff coordinated the proposal through Rain Drop Products, LLC via the Sourcewell purchasing cooperative. Rain Drop plans to work with Safe Slide Restoration staff to complete the project. The existing water slides need to be repainted (entire exterior) and repaired in certain areas. The paint on the slides has faded due to the western sun and the aquatic elements. Thousands of visitors enjoy the slides annually, and it is essential to keep them safe and presentable. The goal is to have the work performed between seasons to minimize any downtime. This type of work is specialized; therefore, we consulted with the original manufacturer, who recommended that we work with this company.

Recommended Council Action:
Staff recommends approval of the relative agreement.

Attachments:
1. SplashTown Slide Restoration
2. SplashTown slide quote
3. Slide Pictures 2025

STANDARD ADDENDUM TO AGREEMENT

This standard contract addendum is executed on the 4 day of 7, 20___ by and between **THE TOWN OF SMYRNA, TENNESSEE,** a municipal corporation in the State of Tennessee, herein further referenced and identified as ("The Town") and Rain Drop Products LLC herein further referenced and identified as ("Vendor") in order to amend the terms of the Agreement, including all attachments, exhibits, or any actual or virtual documents or writing, including, but not limited to, all any "clickwrap," "clickthrough" or "click and accept" agreement or other Terms of Service scheduled for presentation to the Town Council for approval on the ___ day of_____, 20___.

WITNESSETH

WHEREAS, the parties wish to execute this addendum to the Agreement for the purposes of substituting, clarifying or inserting certain terms of or into their original

Agreement executed on the ____ day of_____, 20____, and

WHEREAS, the terms of this addendum to the Agreement shall take precedence over all other terms, conditions or language to the contrary or in conflict with the language contained in the Agreement; however, any term or clause not modified by the provisions herein shall be governed by the original agreement. The parties agree that this addendum shall not be construed to create any ambiguity, it being the expressed intent of the parties that this addendum shall control;

THEREFORE, In consideration of using Vendor's form Agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Vendor the parties hereto agree to the following:

1. VENUE: The parties agree that venue for any legal or other dispute arising under the terms of the original agreement or this addendum to agreement shall lie exclusively in the courts of Rutherford County, Tennessee or the United States District Court, for the Middle District of Tennessee. The parties hereby waive their right to a jury trial;

2. CHOICE OF LAW: The Agreement shall be deemed to be entered into under Tennessee law, and the rights and obligation of the parties are governed by the laws of the State of Tennessee, without regard to its conflict of laws principles, and all obligations of the parties are performable in Smyrna, Tennessee.

3. INDEMNIFICATION: The parties hereto agree that Vendor shall indemnify The Town for any and all claims of negligence, tortious conduct or otherwise unlawful acts committed by Vendor in the performance of their obligations under the terms of the original agreement or this addendum to agreement and Vendor agrees to pay any and all costs associated with the enforcement of the terms of this indemnity agreement by The Town, including but not limited to, court costs, civil judgments, assessments or any other reasonable fees associated therewith. In addition, Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private or public entities and, therefore, prohibits an agreement by the Town to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring the Town to indemnify or hold harmless Vendor or any other person or entity or any limitation of liability in favor of Vendor shall be deemed null, void and unenforceable against the Town under any and all circumstances.

4. NON-APPROPRIATION: Vendor acknowledges that the Town is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event the Town fails to appropriate funds or make monies available for any fiscal year covered by

the term of the Agreement for services to be provided, the Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to the Town, and such termination shall not be a breach of the Agreement, and any unused payment made to Vendor shall be returned to the Town.

5. TAX EXEMPTION: As a tax-exempt entity, the Town shall not be responsible for sales or use taxes incurred for products or services. The Town shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of the Town's tax exemption certificate and Vendor shall assume all liability for such taxes, if any, that should be incurred.

6. NO ATTORNEY'S FEES: The parties hereto agree that The Town shall be in no event liable for any attorney's fees which Vendor may incur due to breach of the original agreement or this addendum agreement by either party; and further, The Town shall not acquiesce to any term of the original contract/agreement that indicates or infers The Town may or shall be responsible for the fees of another party or the Vendor's attorney fees.

7. MEDIATION: The Town may, at its option, require the attempted resolution of any dispute arising under the original contract or this addendum to agreement by mediation prior to the filing of any lawsuit or other claim. Should any dispute arise, Vendor shall provide the Town notice of any intent to file suit by certified mail. The Town shall notify the Vendor of its intent to exercise its right to mediation within thirty (30) days of receiving such notice. If the Town does not exercise its right to mediation, Vendor may file suit. Any mediator selected under this clause shall be agreed upon by the parties and the costs of such mediation shall be divided and paid equally between the parties.

8. FAILURE TO PERFORM: The parties agree, in the event Vendor fails to perform any obligation, other than with regards to the date of delivery, set out in the Agreement/Contract, the Town shall be reimbursed

by Vendor for any and all expenses associated with having to obtain a new provider to finish out the contracted term, including, but in no way limited to, any charges/fees, which are above and beyond the amount the Town would have paid to Vendor to complete the same task; provided, however, that if the failure, by its nature, is one that can be cured, the Vendor shall have fifteen (15) business days after receipt of written notice from the Town to cure said failure to perform. The parties hereby agree, unless a specific date of delivery is provided in the Agreement/Contract all deliveries shall be made to the Town no later than ninety (90) days from the date of the Agreement/Contract. The parties further agree that if Vendor, in good faith, is not able to meet this ninety (90) day deadline of delivery due to forces beyond his, her or its control, that were unforeseeable at the time of signing the Agreement/Contract, then the entire Agreement/Contract shall be voidable at the sole discretion of the Town. Should the Town elect to void the Agreement/Contract due to Vendor's good faith inability, due to forces beyond his, her or its control, and which were unforeseeable at the time of signing the Agreement/Contract to meet the delivery deadline, then neither party shall be deemed to have breached the Agreement/Contract, and Vendor shall return all monies, within seven (7) business days, paid by the Town for the products/items that could not be delivered in the allotted time. This provision shall take propriety over any Force Majeure Clause contained within the Agreement/Contract.

9. USE OF TOWN's LOGO OR NAME: Vendor shall not use the Town's name or any logo in marketing or publicity materials or for marketing or publicity purposes without the prior written authorization from the Town. Vendor shall not issue, publish, or divulge any materials developed or used in the performance of this Agreement or make any statement to the media relating to this Agreement without the prior written consent of the Town.

10. WARRANTY: Vendor warrants that the product(s) herein, when used in accordance with the documentation, shall operate and conform in all material respects in conformity with this Agreement and the written representations of Vendor, including applicable user manuals and guides supplied by Vendor or with Vendor's Software. If it does not perform as warranted, Vendor shall use all commercially reasonable efforts to correct the product(s) so that it operates in all material respects in conformity with the written representations of Vendor. If Vendor cannot correct the product(s) within a reasonable period of time, Vendor shall refund the purchase price of the product(s).

11. SOFTWARE DEADLINE, TESTING AND ACCEPTANCE: If applicable to the Agreement, software provided by Vendor shall be installed for the purposes of testing, as stated herein below, no later than one hundred twenty (120) days from the effective date of the Agreement and this Addendum thereto, unless the Agreement states a specific date which is before or after said deadline. In Addition, software provided by Vendor to the Town is subject to inspection and testing to verify that the software conforms to its written specifications and to ensure it meets the Town's needs. The Town shall have seven (7) business days after the software is installed to perform testing of the software using the Town's data. The Town shall provide Vendor with written notice of acceptance or rejection of the software five (5) business days or less after the end of the testing period. If the Town does not provide timely written notice of acceptance or rejection to Vendor, the software shall be deemed to be accepted by the Town. If the software is rejected, the Town may, at its sole discretion, either (1) return the software and receive a refund of all fees paid with respect thereto, or (2) allow Vendor to repair or replace the software, without charge, in a timely manner. In the event the Town elects to allow the Vendor to repair or replace the software, the Town shall have an

additional (7) business days in which to accept or reject the software as laid out hereinabove.

12. NO AUTOMATIC RENEWAL: The term of the Agreement shall not be renewed or extended beyond the initial term and any provision providing for automatic or continuing renewal of the Agreement is not applicable.

13. UNILATERAL MODIFICATION OF AGREEMENT NOT PERMITTED: Vendor may make unilateral changes to its Privacy Policy, provided any such changes are subject to the provisions of this Addendum, shall not alter this Addendum, and shall not materially alter the use of the service or reduce the level of protection provided to the Town at the time of the execution of this Agreement. Except as provided in the preceding sentence, notwithstanding anything in the Agreement to the contrary, any change to the Agreement made by Vendor that is not in writing and that is not properly executed by the signatures of authorized representatives of the parties hereto, including attestation by the Town's Clerk and approved as to form by the Town Attorney are subject to the terms and conditions of this Addendum, and shall not alter this Addendum and shall not materially alter the use of the service or reduce the level of protection provided to the Town at the time of the execution of this Agreement.

14. CHANGES TO TERMS. Except as provided in Paragraph No. 13 above pertaining to Vendor's Privacy Policy, Vendor shall provide the Town written notice, sent in care of Town Attorney's Office, Smyrna, Tennessee, 315 South Lowry Street, Tennessee 37167, of any proposed change to the Agreement at least ninety (90) days prior to being effective to the Town. The Town shall have thirty (30) days after receiving the written notice to terminate this Agreement, and such cancellation shall not be a breach of this Agreement. Vendor will refund to the Town any payment made by the Town to Vendor equal to the difference between the number of

months the payment was intended for and the number of months remaining on Agreement that the fee was intended to cover.

15. PRICE ASSURANCE: Unless specifically stated in the Agreement, the price shall be valid for the full term of the Agreement. If Vendor, specifically states, in the Agreement that he, she or it cannot honor the price for the full term of the Agreement; the Agreement is voidable at the sole discretion of the Town, if at any time during the full term of the Agreement, Vendor requests to raise the contract price. If the Town elects to void the Agreement, at its sole discretion, it shall not be deemed to be a breach of the contract by either party.

16. CONFIDENTIALITY: The Town, as a Tennessee Municipal Corporation is subject to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq; therefore, this Addendum, the Agreement and all documents or materials, in any format, including, but not limited to paper, electronic or virtual, that are public records pursuant to law, are not confidential and are subject to disclosure, without regard to any provision contained in the Agreement declaring information confidential. The Town will respond to all proper Open Records Requests in the time allowed by law, without any requirement to disclose such request to Vendor or provide Vendor with notice or the time to obtain a protective order. The Town does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 16 serves to meet such burden and authorization of disclosure.

17. BOYCOTT OF ISRAEL: The Vendor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-127.

18. NO PRESUMPTION AGAINST DRAFTER: The parties are both business entities having substantial experience with the subject matter of this addendum, and each has fully participated in the negotiation and

drafting of this addendum. Accordingly, this addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed addendum differs in any respect from any previous draft hereof.

19. SURVIVAL: This entire addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference and shall remain in full force and effect until the expiration of any applicable statute of limitation.

20. EFFECTIVE DATE: This addendum shall be deemed to have the same effective date of the Agreement.

IN WITNESS WHEREOF, the parties hereto warrant and represent that the individual who has signed this addendum on behalf of such party is duly authorized by all necessary and appropriate corporate action to sign this addendum.

CEO/President

VENDOR OR AGENT

VENDOR OR AGENT

MAYOR OF SMYRNA,
TENNESSEE

PROPOSAL

Reference: 1962011
Project Name: SPLASHTOWN
Salesperson: Rain Drop Products, LLC

Date: 7/23/2025

To: MARTY SMITH
Purchaser: TOWN OF SMYRNA-TN
Billing Address: 700 SAM RIDLEY PKWY E
Smyrna, TN 37167

First Shipment Address:
TOWN OF SMYRNA-TN
700 SAM RIDLEY PKWY E
Smyrna, TN 37167

Quantity	Item # *Click on item # to view cut sheet*	Item Description	GPM (Ea) *(If Applicable)*	Unit Price	Extended Amt
1.00	/RESTORATION-LEVEL 4-1962011	RESTORATION LEVEL 4-1962011		$82,500.00	$82,500.00

SLIDE DESCRIPTION:
-Open Flume Body Slide – Blue and White
-Closed Flume Body Slide – Yellow
-Closed Flume Drop Slide – Red
-Open Flume Kiddie Slide – Green
*

WORK DESCRIPTION:
PAINT-EXTERIOR:
-Remove failing clear coat
-Wash exterior of slides with internally formulated cleaner
-Prime-coat bare areas as needed
-Paint exterior with one coat of Poly - Siloxane Paint
-Paint RAL color: _____ INIT: _____
-Note: Lift costs are not included in this cost, they can be added upon request
*

POLISH AND WAX-START TUBS AND OPEN FLUME SECTIONS:
-Clean start tubs and all open flume sections
-Polish start tubs and all open flume sections
-Wax start tubs and all open flume sections
*

COMMON FIBERGLASS REPAIRS:
-Repair all common fiberglass repairs in ride path (i.e. a chip or gouge with a sharp edge)*
-All repairs will be done with vinyl-ester resin
-Recaulk seams as needed (recaulking is not a guarantee to stop leaking seams) **
-Seams will be sealed with premium caulk
*

CHEMICAL WASH-CLOSED FLUME SECTIONS:
-Clean interior of closed flume sections
-Apply chemicals to closed flume sections
-Hand agitate, as needed and perform final rinse
-Spray wax closed flume sections
-Note: Foaming will occur because of the chemicals
-Anti-Foam Products are needed to control foaming
Note: Safe Slide will purchase and ship the product, but it is SplashTown's responsibility to administer it

PROPOSAL

Reference: 1962011
Project Name: SPLASHTOWN
Salesperson: Rain Drop Products, LLC

*

PAYMENT TERMS: 50% DUE PRIOR TO MOBILIZATION AND 50% DUE UPON COMPLETION
NOTE: THESE PAYMENT TERMS MAY BE NEGOTIABLE, PLEASE CONNECT WITH YOUR CUSTOMER REPRESENTATIVE IF YOU NEED ALTERNATE OPTIONS FOR YOUR BUDGET/NEEDS.
AFTER 30 DAYS, AN ADDITIONAL 5% WILL BE ADDED TO THE UNPAID AMOUNT, AND EVERY 30 DAYS THEREAFTER THAT THE PAYMENT IS LATE. THE PARK IS RESPONSIBLE FOR ANY LEGAL FEES NECESSARY TO COLLECT PAYMENT.
SOURCEWELL CONTRACT #010521-RDP

Quote Duration-60 Days

Total Order	$82,500.00
Less discount at a rate of 39.98%	-$32,985.15
Freight to Smyrna, TN	$0.00
Taxes - See General Terms, Conditions and Warranty	$0.00
Net Order	$49,514.85

Contract #-010521-RDP

Inquire about our nationwide cooperative purchasing programs!

Payment Terms: 50% PRIOR MOBILIZED,50% NET30

Estimated Delivery Date upon placement of Order:

See the following pages for General Terms, Conditions and Warranty related to this Proposal

Reference:	1962011
Project Name:	SPLASHTOWN
Salesperson:	Rain Drop Products, LLC

Warranty Details Click Here

GENERAL TERMS AND CONDITIONS

1) **Purchase:** By executing this proposal (the "Proposal"), or submitting a purchase order pursuant to this Proposal (which shall incorporate the terms of this Proposal into such purchase order specifically by reference) which is accepted by Rain Drop Products, LLC ("Rain Drop") the purchaser identified above ("you" or the "Purchaser") agrees to purchase the products as detailed in this Proposal (the "Products"), or in the purchase order accepted by Rain Drop, for use by Purchaser or for installation by Purchaser on behalf of a third-party who will be the ultimate owner of the features and/or equipment (the ultimate owner of the features and/or equipment, whether Purchaser or a third-party, being the "Owner").

2) **Proposal:** The above proposal is valid for sixty days from the date first set forth above. After sixty days Rain Drop reserves the right to increase prices due to the rise in costs of raw material, fuel or other cost increases.

3) **Short Ship Claims:** Purchaser has fifteen days from receipt of the Products to file a short ship report in writing to its sales representative. Rain Drop will not honor claims made after this time.

4) **Standard Exclusions:** Unless specifically included and detailed in this Proposal , this Proposal does not include, and Rain Drop will not provide services, labor or materials for any of the following work: (a) removal or disposal of any materials containing asbestos or any hazardous materials as defined by the EPA; (b) moving Owner's property around the installation site; (c) repair or replacement of any materials supplied by Purchaser or Owner; (d) repair of concealed underground utilities not located on prints, supplied to Rain Drop by Owner during the bidding process, or physically staked out by Owner, and which are damaged during construction; or (e) repair of damage to existing surfaces that could occur when construction equipment and vehicles are being used in the normal course of construction.

5) **Bonding Guidelines:** If Purchaser uses or provides the Products for an Owner other than Purchaser (including, without limitation, as a subcontractor of Purchaser), Purchaser will include the following statement in Purchaser's contract with Owner: "The manufacturer's warranty for the Rain Drop Products brand water components is a separate document between Rain Drop Products, LLC and the ultimate owner of the Rain Drop brand water components, which will be provided to the ultimate owner at the time of final shipment for products manufactured by Rain Drop . Due to surety requirements, any performance and/or payment bond will cover only the first year of Rain Drop Products, LLC warranty."

6) **Insurance Requirements:** Rain Drop will not provide any insurance coverage in excess of its standard insurance, a copy of which is available for your review prior to acceptance of this Proposal.

7) **Payment:** Terms of payment are defined in the "Payment Terms" section of this Proposal and are specific to this contract.. All payments must be made to Rain Drop Products, LLC, 2121 Cottage Street, Ashland, Ohio 44805. If the Purchaser or Owner fails or delays in making any scheduled milestone payments, Rain Drop may cease continued



Reference: 1962011
Project Name: SPLASHTOWN
Salesperson: Rain Drop Products, LLC

manufacturing until such payments with penalties are made, or Rain Drop may be relieved of its obligations hereunder if payment is more than sixty days past due. Rain Drop shall be entitled to certain payments previously made as liquidated damages. Rain Drop may use all remedies available to it under current laws, including but not limited to filing of liens against the property and using a collection agency or the courts to secure the collection of the outstanding debt. All payments made pursuant to the installment payment process shall not be available to be recovered by Purchaser so long as Rain Drop Products is not in default under the agreement. Transactions over $5,000 paid via credit card will be subject to a 3% surcharge.

8) **Taxes:** Unless otherwise specifically included and detailed in this Proposal, prices do not include any taxes, including sales, use or excise taxes. It is the Purchaser's responsibility to furnish evidence of any sales tax exemption in the appropriate states and have compliance documents, where applicable, on file at Rain Drop.

9) **Lien Releases:** Upon request by Owner, Rain Drop will issue appropriate partial lien releases as corresponding payments are received from Purchaser, but prior to receiving final payment from Purchaser or Owner. Rain Drop will provide a full release of liens upon receipt of final payment. In accordance with state laws, Rain Drop reserves the right to place a lien on the property if final payment has not been received ten days prior to the filing deadline for liens.

10) **Site-plan Approval, Permit/s, Permit Fees, Plans, Engineering Drawings and Surveying:** Site-plan approval, permits, permit fees, plans, engineering drawings and surveying are specifically excluded from this Proposal unless specifically detailed herein. Rain Drop does not in any way warrant or represent that a permit or site plan approval for construction will be obtained.

11) **Manufacturing & Delivery:** Manufacturing lead-time from Rain Drop's receipt of this Proposal executed by Purchaser, or submittal by Purchaser of a purchase order pursuant to this Proposal (which shall incorporate the terms of this Proposal specifically by reference) which is accepted by Rain Drop is approximately twelve (12) to sixteen (16) weeks depending on the size and complexity of the components ordered.

12) **Changes in the Work:** During the course of this project, Purchaser may order changes consisting of additions and deductions in the work. The cost of these changes will be determined by Rain Drop, and a change order form must be completed and signed by both Purchaser and Rain Drop , which will detail the scope of the change order. Should any change order be essential to the completion of the project, and the Purchaser refuses to authorize such change order, then Rain Drop will be deemed to have performed its part of the project, and the project will be terminated. Upon such termination, Rain Drop will submit a final billing to Purchaser for payment, less a labor allowance for work not performed but including additional charges incurred due to the stoppage. No credit will be allowed for materials sold and supplied, which will remain the property of Purchaser.

13) **Restocking Fee** **There will be a 30% restocking fee applied to all Products returned by Purchaser. Prior approval must be obtained from Rain Drop before any product is to be returned. All returns are at Rain Drop's discretion.**

14) **Indemnification:** To the fullest extent permitted by law, Purchaser shall indemnify, defend and hold harmless Rain Drop and its consultants, agents and employees or any of them from and against claims, damages, losses and



Reference: 1962011
Project Name: SPLASHTOWN
Salesperson: Rain Drop Products, LLC

expenses, including but not limited to attorneys' fees, related to the installation of products manufactured and supplied by Rain Drop , provided that such claim, damage, loss or expense is attributable to bodily injury to, sickness, disease or death of a person or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Purchaser or its agents, employees, or subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section..

15) **Intellectual Property Rights** Purchaser acknowledges and agrees that Rain Drop will remain the owner of any and all intellectual property rights, including, but not limited to, copyrights, service marks, and trademarks in, on or to the Products.

16) **Assembly/Installation:** Rain Drop does not provide installation services. If requested and specifically detailed in this Proposal, construction site services are intended to imply supervision and consulting services only. All labor required for the assembly, construction or removal of Products manufactured and supplied by Rain Drop will be the Purchaser's and/or Owner's responsibility.

17) **Site/Use Review by Purchaser:** Rain Drop relies on the Purchaser to determine that the Products are appropriate and safe for the Owner's installation site and/or intended use.

18) **Dispute Resolution:** Any controversy or claim arising out of or related to this Proposal must be settled by binding arbitration administered in Ashland, Ohio by a single arbitrator selected by the parties or by the American Arbitration Association, and conducted in accordance with the construction industry arbitration rules. Judgment upon the award may be entered in any court having jurisdiction thereof.

19) **Entire Agreement; No Reliance:** This Proposal, if accepted by Purchaser, represents and contains the entire agreement between the parties. Prior discussion or verbal representations by the parties that are not contained in this Proposal are not part of this Proposal. Purchaser hereby acknowledges that it has not received or relied upon any statements or representations by Rain Drop or its agents which are not expressly stipulated herein, including. without limitation any statements as to the Products, warranties provided hereunder.

20) **No Third-Party Beneficiaries:** This Proposal, if accepted by Purchaser, creates no third party rights or obligations between Rain Drop and any other person, including any Owner who is not also a purchaser. It is understood and agreed that the parties do not intend that any third party should be a beneficiary of this Proposal.

21) **Governing Law:** The Proposal will be construed and enforced in accordance with the laws of the State of Ohio. Notwithstanding any other law or venue available in any country or jurisdiction, the parties specifically reject all other venues and jurisdictions other than the United States of America, State of Ohio.

22) **Assignment:** Purchaser may not assign this Proposal, by operation of law or otherwise, without the prior written consent of Rain Drop. The Proposal, if accepted by Purchaser, shall be binding upon and inure to the benefit of Rain



Reference: 1962011
Project Name: SPLASHTOWN
Salesperson: Rain Drop Products, LLC

Drop and the Purchaser, and their successors and permitted assigns.

23) **Miscellaneous:** Rain Drop objects to the inclusion of any different or additional terms in Purchaser's acceptance of this Proposal and if such terms are included in Purchaser's acceptance, Purchaser agrees that a contract of sale will nevertheless result only on the original terms stated in this Proposal. If any portion of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. This Agreement may be executed in one or more counterparts, either of which may be deemed an original, but all of which shall constitute one and the same document. Each person executing this Agreement for and on behalf of Purchaser represents and warrants that that person has the authority to execute this Agreement and all corporate action necessary to authorize the execution delivery of this Agreement.

PROPOSAL

Reference:	1962011
Project Name:	SPLASHTOWN
Salesperson:	Rain Drop Products, LLC
Order Amount:	$ 49,514.85

Executed to be effective as of the date executed by the Company:

PURCHASER:

Signature: _____

By: (Print Name) _____

Title: _____

Date: _____


CAUTION









Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 8.
Department: Parks
Date: August 28, 2025

Subject:
Approval of the terms of, and authorization for the Mayor to execute, an agreement with Kimley-Horn to update the five-year Parks and Recreation Master Plan.

Fiscal Impact:
Agreement Cost = $37,500
The project is included in the Parks and Recreation Capital Improvements Budget of $40,000
320-44700-965

Contract Type:
Original Contract

Contract Term (if applicable):

Background:
The second major Parks and Recreation Master Plan spanned from 2006 to 2020. In 2021, the Master Plan was updated from 2021 through 2026.

Summary:
Staff is recommending the consulting firm of Kimley-Horn to update the five-year master plan. Updating the plan will keep the department eligible for multiple grants, including the Local Parks and Recreation Fund Grant (LPRF) and other relevant funding opportunities.

The plan will address existing needs, new needs, and emerging recreational trends. LPRF grant applications are typically due in April of each year; therefore, we felt it was necessary to move forward with this project. The last master plan was completed in the summer of 2021 and played a crucial role in securing the grant for the Cedar Stone Park tennis and pickleball project. The planning process will include citizens, the Smyrna Parks Advisory Board, selected Town Staff, and the Smyrna Town Council. The planning process includes public meetings, surveys, stakeholder interviews, and attendance at selected events.

Kimley-Horn is being recommended based on their performance in the 2021 master

plan and the recent completion of the town's Major Thoroughfare Plan and Bike/Pedestrian Plan. The detailed scope of work is outlined in the agreement document, which includes examples such as assessing needs and evaluating existing park facilities, including the golf course.

Recommended Council Action:
Staff recommends approval of the Professional Services Agreement with Kimley-Horn.

Attachments:
1. Kimley-Horn Agreement 5 yr. P&R Master Plan update 2025
2. Smyrna Parks Master Plan Update Contract 20250811

STANDARD ADDENDUM TO AGREEMENT

This standard contract addendum is executed on the _____ day of _____, 20_____ by and between **THE TOWN OF SMYRNA, TENNESSEE,** a municipal corporation in the State of Tennessee, herein further referenced and identified as ("The Town") and KIMLEY-HORN AND ASSOCIATES, INC. herein further referenced and identified as ("Vendor") in order to amend the terms of the Agreement, including all attachments, exhibits, or any actual or virtual documents or writing, including, but not limited to, all any "clickwrap," "clickthrough" or "click and accept" agreement or other Terms of Service scheduled for presentation to the Town Council for approval on the ____ day of , 20_____.

WITNESSETH

WHEREAS, the parties wish to execute this addendum to the Agreement for the purposes of substituting, clarifying or inserting certain terms of or into their original Agreement executed on the _____ day of_____ , 20_____; and

WHEREAS, the terms of this addendum to the Agreement shall take precedence over all other terms, conditions or language to the contrary or in conflict with the language contained in the Agreement; however, any term or clause not modified by the provisions herein shall be governed by the original agreement. The parties agree that this addendum shall not be construed to create any ambiguity, it being the expressed intent of the parties that this addendum shall control;

THEREFORE, In consideration of using Vendor's form Agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Vendor the parties hereto agree to the following:

1. VENUE: The parties agree that venue for any legal or other dispute arising under the terms of the original agreement or this addendum to agreement shall lie exclusively in the courts of Rutherford County, Tennessee or the United States District Court, for the Middle District of Tennessee. The parties hereby waive their right to a jury trial;

2. CHOICE OF LAW: The Agreement shall be deemed to be entered into under Tennessee law, and the rights and obligation of the parties are governed by the laws of the State of Tennessee, without regard to its conflict of laws principles, and all obligations of the parties are performable in Smyrna, Tennessee.

3. INDEMNIFICATION: The parties hereto agree that Vendor shall indemnify The Town ~~for any and all claims of~~to the extent caused by negligence, tortious conduct or otherwise unlawful acts committed by Vendor in the performance of their obligations under the terms of the original agreement or this addendum to agreement and Vendor agrees to pay any and all costs associated with the enforcement of the terms of this indemnity agreement by The Town, including but not limited to, court costs, civil judgments, assessments or any other reasonable fees associated therewith. In addition, Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private or public entities and, therefore, prohibits an agreement by the Town to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring the Town to indemnify or hold harmless Vendor or any other person or entity or any limitation of liability in favor of Vendor shall be deemed null, void and unenforceable against the Town under any and all circumstances.

4. NON-APPROPRIATION: Vendor acknowledges that the Town is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event the Town fails to appropriate funds or make monies available for any fiscal year covered by the term of the Agreement for services to be provided, the Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to the Town, and such termination shall not be a breach of the Agreement, and any unused payment made to Vendor shall be returned to the Town. In the event of such termination, the Vendor shall be paid for all services performed up to the effective date of the termination.

5. TAX EXEMPTION: As a tax-exempt entity, the Town shall not be responsible for sales or use taxes incurred for products or services. The Town shall

supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of the Town's tax exemption certificate and Vendor shall assume all liability for such taxes, if any, that should be incurred.

6. NO ATTORNEY'S FEES: The parties hereto agree that The Town shall be in no event liable for any attorney's fees which Vendor may incur due to breach of the original agreement or this addendum agreement by either party; and further, The Town shall not acquiesce to any term of the original contract/agreement that indicates or infers The Town may or shall be responsible for the fees of another party or the Vendor's attorney fees.

7. MEDIATION: The Town may, at its option, require the attempted resolution of any dispute arising under the original contract or this addendum to agreement by mediation prior to the filing of any lawsuit or other claim. Should any dispute arise, Vendor shall provide the Town notice of any intent to file suit by certified mail. The Town shall notify the Vendor of its intent to exercise its right to mediation within thirty (30) days of receiving such notice. If the Town does not exercise its right to mediation, Vendor may file suit. Any mediator selected under this clause shall be agreed upon by the parties and the costs of such mediation shall be divided and paid equally between the parties.

8. FAILURE TO PERFORM: The parties agree, in the event Vendor fails to perform any obligation, other than with regards to the date of delivery, set out in the Agreement/Contract, the Town shall be reimbursed by Vendor for any and all expenses associated with having to obtain a new provider to finish out the contracted term, including, but in no way limited to, any charges/fees, which are above and beyond the amount the Town would have paid to Vendor to complete the same task; provided, however, that if the failure, by its nature, is one that can be cured, the Vendor shall have fifteen (15) business days after receipt of written notice from the Town to cure said failure to perform. ~~The parties hereby agree, unless a specific date of delivery is provided in the Agreement/Contract all deliveries shall be made to the Town no later than ninety (90) days from the date of the Agreement/Contract. The parties further~~

~~agree that if Vendor, in good faith, is not able to meet this ninety (90) day deadline of delivery due to forces beyond his, her or its control, that were unforeseeable at the time of signing the Agreement/Contract, then the entire Agreement/Contract shall be voidable at the sole discretion of the Town. Should the Town elect to void the Agreement/Contract due to Vendor's good faith inability, due to forces beyond his, her or its control, and which were unforeseeable at the time of signing the Agreement/Contract to meet the delivery deadline, then neither party shall be deemed to have breached the Agreement/Contract, and Vendor shall return all monies, within seven (7) business days, paid by the Town for the products/items that could not be delivered in the allotted time. This provision shall take propriety over any Force Majeure Clause contained within the Agreement/Contract.~~

9. USE OF TOWN's LOGO OR NAME: Vendor shall not use the Town's name or any logo in marketing or publicity materials or for marketing or publicity purposes without the prior written authorization from the Town. Vendor shall not issue, publish, or divulge any materials developed or used in the performance of this Agreement or make any statement to the media relating to this Agreement without the prior written consent of the Town.

10. WARRANTY: ~~Vendor warrants that the product(s) herein, when used in accordance with the documentation, shall operate and conform in all material respects in conformity with this Agreement and the written representations of Vendor, including applicable user manuals and guides supplied by Vendor or with Vendor's Software. If it does not perform as warranted, Vendor shall use all commercially reasonable efforts to correct the product(s) so that it operates in all material respects in conformity with the written representations of Vendor. If Vendor cannot correct the product(s) within a reasonable period of time, Vendor shall refund the purchase price of the product(s).~~In performing its professional services, the Vendor will the degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided.

~~**11. SOFTWARE DEADLINE, TESTING AND ACCEPTANCE:** If applicable to the Agreement, software provided by Vendor shall be installed for the purposes of~~

~~testing, as stated herein below, no later than one hundred twenty (120) days from the effective date of the Agreement and this Addendum thereto, unless the Agreement states a specific date which is before or after said deadline. In Addition, software provided by Vendor to the Town is subject to inspection and testing to verify that the software conforms to its written specifications and to ensure it meets the Town's needs. The Town shall have seven (7) business days after the software is installed to perform testing of the software using the Town's data. The Town shall provide Vendor with written notice of acceptance or rejection of the software five (5) business days or less after the end of the testing period. If the Town does not provide timely written notice of acceptance or rejection to Vendor, the software shall be deemed to be accepted by the Town. If the software is rejected, the Town may, at its sole discretion, either (1) return the software and receive a refund of all fees paid with respect thereto, or (2) allow Vendor to repair or replace the software, without charge, in a timely manner. In the event the Town elects to allow the Vendor to repair or replace the software, the Town shall have an additional (7) business days in which to accept or reject the software as laid out hereinabove.~~

~~**12. NO AUTOMATIC RENEWAL:** The term of the Agreement shall not be renewed or extended beyond the initial term and any provision providing for automatic or continuing renewal of the Agreement is not applicable.~~

~~**13. UNILATERAL MODIFICATION OF AGREEMENT NOT PERMITTED:** Vendor may make unilateral changes to its Privacy Policy, provided any such changes are subject to the provisions of this Addendum, shall not alter this Addendum, and shall not materially alter the use of the service or reduce the level of protection provided to the Town at the time of the execution of this Agreement. Except as provided in the preceding sentence, notwithstanding anything in the Agreement to the contrary, any change to the Agreement made by Vendor that is not in writing and that is not properly executed by the signatures of authorized representatives of the parties hereto, including attestation by the Town's Clerk and approved as to form by the Town Attorney are subject to the terms and conditions of this Addendum, and shall not~~

~~alter this Addendum and shall not materially alter the use of the service or reduce the level of protection provided to the Town at the time of the execution of this Agreement.~~

~~**14. CHANGES TO TERMS.** Except as provided in Paragraph No. 13 above pertaining to Vendor's Privacy Policy, Vendor shall provide the Town written notice, sent in care of Town Attorney's Office, Smyrna, Tennessee, 315 South Lowry Street, Tennessee 37167, of any proposed change to the Agreement at least ninety (90) days prior to being effective to the Town. The Town shall have thirty (30) days after receiving the written notice to terminate this Agreement, and such cancellation shall not be a breach of this Agreement. Vendor will refund to the Town any payment made by the Town to Vendor equal to the difference between the number of months the payment was intended for and the number of months remaining on Agreement that the fee was intended to cover.~~

~~**15. PRICE ASSURANCE:** Unless specifically stated in the Agreement, the price shall be valid for the full term of the Agreement. If Vendor, specifically states, in the Agreement that he, she or it cannot honor the price for the full term of the Agreement; the Agreement is voidable at the sole discretion of the Town, if at any time during the full term of the Agreement, Vendor requests to raise the contract price. If the Town elects to void the Agreement, at its sole discretion, it shall not be deemed to be a breach of the contract by either party.~~

~~**16.**~~**11. CONFIDENTIALITY**: The Town, as a Tennessee Municipal Corporation is subject to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq; therefore, this Addendum, the Agreement and all documents or materials, in any format, including, but not limited to paper, electronic or virtual, that are public records pursuant to law, are not confidential and are subject to disclosure, without regard to any provision contained in the Agreement declaring information confidential. The Town will respond to all proper Open Records Requests in the time allowed by law, without any requirement to disclose such request to Vendor or provide Vendor with notice or the time to obtain a protective order. The Town does not have the burden of establishing that information is not confidential information or that its release is

authorized to release the records. This section ~~16~~ 11 serves to meet such burden and authorization of disclosure.

~~17.~~12. **BOYCOTT OF ISRAEL:** The Vendor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-127.

~~18.~~13. **NO PRESUMPTION AGAINST DRAFTER:** The parties are both business entities having substantial experience with the subject matter of this addendum, and each has fully participated in the negotiation and drafting of this addendum. Accordingly, this addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed addendum differs in any respect from any previous draft hereof.

~~19.~~14. **SURVIVAL:** This entire addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference and shall remain in full force and effect until the expiration of any applicable statute of limitation.

~~20.~~15. **EFFECTIVE DATE:** This addendum shall be deemed to have the same effective date of the Agreement.

IN WITNESS WHEREOF, the parties hereto warrant and represent that the individual who has signed this addendum on behalf of such party is duly authorized by all necessary and appropriate corporate action to sign this addendum.

_____ _____

_____



MAYOR OF SMYRNA, TENNESSEE

VENDOR OR AGENT

VENDOR OR AGENT

KIMLEY-HORN AND ASSOCIATES, INC.

BRETT CREASMAN, VICE PRESIDENT

8/13/25

August 10, 2025

Mike Moss
Director, Smyrna Parks & Recreation
100 Sam Ridley Pkwy East
Smyrna, TN 37167

Re: Professional Services Agreement
Smyrna Parks and Recreation Master Plan Update

Dear Mr. Moss:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter agreement (the "Agreement") to the Town of Smyrna, Tennessee ("Client") for providing professional consulting services for the above referenced project.

Project Understanding

The Smyrna Parks and Recreation Department desires to provide a five (5) year update their systemwide parks and recreation master plan document, the Smyrna Parks and Recreation Master Plan, originally adopted June 2021. This updated master plan will provide guidance for the department over the next five (5) years and will meet the minimum requirements set by TDEC.

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

Task 1 – Project Management and Meetings

This task will consist of general project management, administrative, and accounting activities for the project. Coordination activities will consist of preparing and distributing project correspondence, scheduling of meetings, and discussion of project elements with the Client throughout the process.

Task 1.1 – Trip One

Kimley-Horn will make an initial trip to Smyrna in order to visit the Town's existing facilities listed in Task 2.2 below to document existing facilities and conditions. Written notes and photographs will document the existing facilities.

Task 1.2 – Trip Two

Kimley-Horn will make a second trip to Smyrna in order to complete staff interviews and the SWOT Workshop. Kimley-Horn will facilitate up to five (5) small group interviews as well as one (1) meeting with the Smyrna Parks Advisory Board in the same day to collect their input on the strengths, weaknesses, opportunities, and threats of the Town's park system. This will meet TDEC's requirement for the Strengths Weakness Opportunities Threat (SWOT) Analysis.

Task 1.3 – Trip Three

Kimley-Horn will make a third trip to Smyrna in order to facilitate one (1) public engagement meeting to gather input on the final draft of the plan as required by TDEC.

Task 2 – Existing Conditions and Needs Assessment

Task 2.1 – Needs Assessment Survey

Kimley-Horn will create a needs assessment survey that will consist of up to twenty (20) questions for citizens to provide public input for this project. This survey will be provided in an online format via Survey Monkey. Kimley-Horn will provide one (1) social media graphic to be used by the Town for advertising the public survey. Techniques utilized for administration of the survey will consist of website and social media posting by the Town. A final digital report of the results will be provided to the Town.

Kimley-Horn will provide an executive summary of the survey methodology, a description of major findings, and charts to depict highlights of the results as a section in the Master Plan report.

Task 2.2 – Evaluate Existing Park Facilities

Kimley-Horn will visit up to twenty (20) existing facilities listed below. Facility assessments will consist of facility name, list of amenities, condition of amenities, and recommendations listed in short and long-term needs. Facility assessments will be provided for the following facilities:

- Assembly Hall
- Bark Springs Park
- Captain Jeff Kuss USMC Memorial
- Cedar Stone Park
- Downtown Train Depot
- Gregory Mill Park
- Hilltop-Rosenwald Park
- J.J. McWilliams Old Rock School Park
- Lee Victory Recreation Park
- Outdoor Adventure Center with SplashTown Pool
- Paul Johns Neighborhood Park
- Pioneer Park
- Rosenwald Community Center
- Rotary Soccer Park
- Sharp Springs Park
- Smyrna Golf Course
- Todd Lane Baseball Complex
- Volunteer Park
- Westfork Neighborhood Park
- Zama Park

Task 3 – Program Assessment

Kimley-Horn will review a consolidated list of the Town's existing programs and events provided by Town staff. Kimley-Horn will analyze the age segment distribution and lifecycle analysis as required by TDEC. This data will be provided in the final Master Plan report.

Task 4 – Implementation Plan

Kimley-Horn will refine and organize the needs identified in the tasks above into a list of actionable recommendations that will be organized into short, mid, and long-term goals.

Task 5 – Master Plan Report

Kimley-Horn will prepare a summary master plan report detailing the findings and recommendations of the project and compile the important documents and deliverables from the tasks above. The report will consist of graphics, tabular formats where feasible, and summary text that documents the process of the plan development.

A draft plan document will be submitted to Town staff for review and comment for a thirty (30) day review period. Once a consolidated set of comments are received from the Town, Kimley-Horn will address these comments and revise the document. The final document will then be submitted to the Town in digital PDF format.

Task 6 – Additional Services

Any services not specifically provided for in the above scope, as well as any changes in the scope the Town requests, will be considered Additional Services and will be performed at our then current hourly rates. Additional Services Kimley-Horn can provide include, but are not limited to, the following:

- Additional meetings beyond those outlined in the above scope
- Additional trips beyond those outlined in the above scope
- Additional analysis beyond the scope that is outlined above
- Additional design beyond the scope that is outlined above
- Additional site visits beyond those outlined in the above scope
- Executive Summary
- Others as requested by the Client

Schedule

We will provide our services as expeditiously as practicable.

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1-5 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

Project Total **$ 37,200**

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Kimley-Horn" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to Town of Smyrna.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in a PDF. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

____ Please email all invoices to _____

____ Please copy _____

To proceed with the services, please have an authorized person sign this Agreement below and return to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on this project.

We appreciate the opportunity to provide these services. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Alisha Eley, PLA
Project Manager

Agreed to this _____ day of _____, 2025.

TOWN OF SMYRNA, TENNESSEE

SIGNED: _____

PRINTED NAME: _____

TITLE:_____

DATE: _____

Client's Federal Tax ID: _____
Client's Business License No.: _____
Client's Street Address: _____
_____

Attachment – Standard Provisions

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

2) **Client's Responsibilities**. In addition to other responsibilities herein or imposed by law, the Client shall:
   a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
   b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
   c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
   d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
   e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
   f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
   g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
   h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.

3) **Period of Services**. Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.

4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
   a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
   b. The Client will remit all payments electronically to:
      Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
      Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
      Account Number: 2073089159554
      ABA#: 121000248
   c. The Client will send the project number, invoice number and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.
   d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
   e. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
   f. If Kimley-Horn initiates legal proceedings to collect payment, it shall recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings.

Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.

g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.

5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the deliverables prepared by Kimley-Horn, the hardcopy shall govern.

6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at https://www.kimley-horn.com/khts-software-license-agreement ("the License Agreement") which terms are incorporated herein by reference.

7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.

9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.

10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims,

losses, costs, attorneys' fees, or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or $50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.

11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.

14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

15) Hazardous Substances and Conditions. Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.

16) Construction Phase Services.

a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.

17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance

of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.

19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 9.
Department: Utilities
Date: August 28, 2025

Subject:
Approval of the terms of, and authorization for the Mayor to execute, an agreement with Boozer & Associates for easement appraisals for the Highland Avenue Phase I water model project.

Fiscal Impact:
The total cost of obtaining the appraisals for the Imperial Blvd water model project is $15,200.

Contract Type:
Original Contract

Contract Term (if applicable):

Background:
There are four (4) easements required to construct and tie in the new water main on Imperial Blvd for the Highland Avenue Phase I water model project.

Summary:
Approval of this agreement will allow the town to obtain the appraisals for four (4) required easements on the Imperial Blvd water line project to allow the previously council-approved construction project to start. This project will run from the CSX crossing completed in N Lowry Phase I project, down Imperial Blvd and tying in at Rock Springs and Front Street. This will assist with fire flow in the area.

Recommended Council Action:
Staff recommends approval of the agreement with Boozer & Associates for easement appraisals.

Attachments:
1. Proposal for Smyrna - Imperial Blvd Waterline Project

August 7, 2025

Mr. Mark Parker
Utilities Assistant Director
Town of Smyrna
315 South Lowry Street
Smyrna, TN 37167

RE: Proposal for Real Estate Appraisal Services:
Proposed Waterline Easements
Imperial Boulevard
+/-4 Tracts
Smyrna, Rutherford County, Tennessee

Dear Mark,

Per your request, I respectfully submit this formal proposal for ***Boozer & Company, P.C.*** to conduct Appraisal Reports regarding the above-referenced waterline project, as outlined below.

The purpose of the appraisals will be to estimate the "Total Amount Due Owner" as a result of the proposed waterline easements & temporary construction easements needed for the Imperial Boulevard waterline project in Smyrna, TN. The reports will be completed in accordance with the *Uniform Standards of Professional Appraisal Practice.* The intended use of the appraisals will be to establish a basis of value for the acquisition of the easements. The intended user of the appraisal reports will be the Town of Smyrna, and/or assigns.

Fee: The fee for the appraisal reports will be **$3,800 per tract, payable upon completion of the reports.** Any and all updates to the appraisal reports, meetings/depositions/testimony/conferences regarding litigation of the property, shall be billed at a rate of **$350 per hour.**

Timing: The assignment can be completed **60 days** after the date we are authorized to proceed by receiving a signed copy of this letter, and after receiving all necessary plans, exhibits, legal descriptions, and other items necessary to properly identify the proposed acquisitions.

Thank you for allowing *Boozer & Company, P.C.* the opportunity to submit this proposal. We will proceed with the preparation of the appraisals upon receipt of a signed copy of this letter. If you have any questions, please feel free to contact me at 615-591-4422 ext. 203. I look forward to working with you on this assignment.

Sincerely,



Ted A. Boozer, MAI, CG-973
State Certified General Real Estate Appraiser

Engagement Letter Accepted Date

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 10.
Department: Utilities
Date: August 28, 2025

Subject:
Approval of the terms of, and authorization for the Mayor to execute, a Professional Services Agreement with Jones Fortuna LP for the water storage reallocation study.

Fiscal Impact:
The total cost is unable to be determined at this time, due to factors such as length of time, depth of study, etc. Smyrna will only pay 20% of the cost per the terms of the agreement.

Contract Type:
Original Contract

Contract Term (if applicable):

Background:
Smyrna, CUD and Murfreesboro have approached the USACE requesting a water storage reallocation study to determine available capacity. This will be a joint representation for the Town of Smyrna, Tennessee (“Smyrna”), Consolidated Utility District (“CUD”) of Rutherford County and the City of Murfreesboro, Tennessee (“Murfreesboro”), collectively the "group". Jones Fortuna will work at the Group’s direction on such tasks as the Group may direct related to the Group’s efforts to obtain additional water storage in J. Percy Priest Lake from the U.S. Army Corps of Engineers. This is a joint representation in which Jones Fortuna will represent each entity both individually and jointly with other members of the Group.

Summary:
Jones Fortuna to represent the interests of Smyrna, CUD and Murfreesboro in a water reallocation study with the USACE.

Recommended Council Action:
Staff recommends approval of this agreement with Jones Fortuna.

Attachments:
1. 20250810 - CUD-Murfreesboro-Smyrna Joint Engagement - CUD 3

Jones Fortuna LP
111 New Street, Suite A
Decatur, GA 30030
404-282-4725

Lewis B. Jones
D: 404.850.6138
M: 404.862.3234 (preferred)
lbjones@jonesfortuna.com

John L. Fortuna
D: 404.850.3835
M: 404.858.4797
jfortuna@jonesfortuna.com

Privileged Attorney-Client Communication

DRAFT

August 11, 2025

VIA U.S. MAIL

Roger Goodson, General Manager
Consolidated Utility District of Rutherford County
709 New Salem Highway
P O Box 249
Murfreesboro, TN 37133-0249

Valerie H. Smith, PE, Director
Murfreesboro Water Resources Department
316 Robert Rose
Murfreesboro, TN 37129

Mike Strange, Director of Utilities
Town of Smyrna, Tennessee
315 South Lowry Street
Smyrna, TN 37167

Re: Joint Representation in Reallocation at J. Percy Priest Reservoir

Dear Roger, Valerie, and Mike:

We are pleased you have engaged Jones Fortuna LP to assist in your water supply planning efforts. This letter will confirm our discussions about this engagement and the basis on which we will provide legal services.

Client and Scope of Representation. This will be a joint representation in which we represent Consolidated Utility District ("CUD") of Rutherford County, the City of Murfreesboro, Tennessee ("Murfreesboro"), and the Town of Smyrna, Tennessee ("Smyrna") (collectively, the "Group"). We will work at the Group's direction on such tasks as the Group may direct related to the Group's efforts to obtain additional water storage in J. Percy Priest Lake from the U.S. Army Corps of Engineers. The Group may limit or expand the scope of this matter, but we must agree to any substantial expansion in advance.

Fees and Expenses. The firm's fees are based primarily on the hourly billing rate for each attorney devoting time to a matter. This matter will be handled primarily by Lewis Jones and John Fortuna at the rate of $525 per hour. Where appropriate, and to limit your costs, we may also utilize associate attorneys and paralegals, whose rates range from $110 per hour to $450 per hour. These rates may be adjusted periodically consistent with prevailing market rates for similar services.

We understand the three of you have agreed to share these costs based on the following allocation: CUD 55%, Murfreesboro 25%, and Smyrna 20%. Our invoices will reflect this division.

We do not charge for secretarial time, time spent preparing invoices, responding to audit letters, or other administrative tasks. We also do not charge for most routine or flat-rate costs, such as flat-rate online legal research (e.g., Westlaw or Lexis-Nexis), postage, telephone calls, routine office copying, or similar expenses. We will charge separately, however, for out-of-pocket expenses that we incur to perform our services for you, such as travel expenses, off-site or non-routine scanning or photocopying or data hosting, messenger services, filing and witness fees, transcript fees, and the fees of experts and consultants. These expenses will be passed through to you at cost, and without markup, and invoices will be attached to our bill. We will pay third-party vendors and consultants after receiving payment from you.

Invoices will normally be rendered monthly for work performed and for expenses posted the previous month. Payment is generally due within 30 days of your receipt of our invoice. If an invoice remains unpaid for an unreasonable length of time, the firm may cease performing services for you or withdraw from the engagement unless satisfactory arrangements are made to pay outstanding invoices and future fees and expenses. We reserve the right charge interest at a rate of 1.5% per month if a balance remains unpaid for an excessive period of time.

Joint Representation. This is a joint representation in which we will represent you both individually and jointly with other members of the Group. We need to explain and obtain your consent to certain important aspects of the joint representation.

In a joint representation, we owe our duties and obligations to all jointly represented clients equally. The attorney-client privilege and client confidentiality, if otherwise applicable, will protect all jointly represented clients' communications against compelled disclosure by those outside the Group. Within the Group, however, we will be obliged to share all privileged and confidential communications within the scope of the joint representation with all members of the Group. In the event of a dispute or transaction between joint clients, each client may use privileged advice and confidential information from the joint representation for its own benefit and the other joint client's disadvantage.

Notwithstanding these limitations, joint representation also provides many benefits, including our ability to present a unified front on matters of interest to the entire Group. The rules of professional conduct prohibit us from representing multiple clients in a matter in which their interests are actually or potentially adverse unless all the jointly represented clients have consented to the joint representation after being advised of the possible consequences. Except as discussed below, we do not now see, and you have advised us that you do not see, differing interests among CUD, Murfreesboro, and Smyrna; and we have concluded that we can adequately represent the interests of all members of the Group in this matter.

The one exception is the potential for conflicts to develop regarding the allocation of limited water storage space available at J. Percy Priest, in the event sufficient storage is not available to satisfy the needs of all members of the Group and the members of the Group cannot agree amongst themselves regarding the allocation. Because we believe, and you agree, such a potential conflict amongst members of the Group is unlikely, we have determined that we can adequately represent the interests of all members of the Group, as a Group, in their dealings with the U.S. Army Corps of Engineers. If that perception changes on either end, we will each tell each other promptly so that we can assess the possible need to change the joint representation going forward. In addition, if we conclude that it would adversely affect our representation to continue the joint representation, we may decide in our judgment that one or more joint clients must withdraw from the joint representation group and retain a separate law firm, or that we must withdraw from representing one or more joint clients further.

In this regard, Smyrna is aware that Jones Fortuna LP and its attorneys have a long-standing relationship with Murfreesboro and CUD, having represented them individually and collectively before and after the creation of Jones Fortuna LP, including in connection with the last reallocation at J. Percy Priest. Should it become necessary for Smyrna to obtain separate representation for any reason, Smyrna agrees that Jones Fortuna LP may continue to represent CUD and Murfreesboro individually or collectively to the extent allowed by the Rules of Professional Conduct, including with respect to the allocation of storage space in the project.

Term of Engagement. You may terminate this engagement at any time, subject to any applicable requirements for withdrawal of counsel imposed by a tribunal. We also may withdraw from this representation at any time for any reason permitted by the applicable rules of professional conduct, including failure to make timely payment of fees or other costs, described above. If we terminate the engagement, we will take appropriate and reasonably practicable steps to protect your interests in the matter and will suggest possible successor counsel at your request.

Records Retention Policy. Our record retention policy provides for client files to be kept for ten (10) years after a matter has been closed. At the conclusion of the retention period, the file may be destroyed unless you request alternative arrangements. Upon request, we will return any original documents furnished to us in the course of our representation as soon as the matter is closed.

Our Agreement. This letter sets out all of the terms of our engagement agreement with you. We thank you for this opportunity to work with you and appreciate that you have entrusted this matter to us.

We are available to discuss any questions or comments now and throughout the course of our representation. If you are satisfied that this letter correctly sets out our agreement, please return a countersigned copy to us as soon as possible; however, these terms will be binding on both of us when we begin work even if not countersigned or returned.

Very truly yours,

Lewis B. Jones
Jones Fortuna LP

John L. Fortuna
Jones Fortuna LP

AGREED TO AND ACCEPTED BY:

Consolidated Utilities District

By: _____

Position:

Date: _____

City of Murfreesboro

By: _____

Position: _____

Date: _____

Town of Smyrna

By: _____

Position: _____

Date: _____

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 11.
Department: Probation
Date: August 28, 2025

Subject:
Approval of the terms of, and authorization for the Mayor to execute, an agreement with Tyler Technologies, Inc. for case management software for the probation department.

Fiscal Impact:
48,920.00

Contract Type:
Original Contract

Contract Term (if applicable):

Background:
The probation department currently uses Correctional Software Solutions, while the court clerk's office uses Tyler Technology for case management.

Summary:
By transitioning to Tyler Technology for its corrections' software, the probation department will align with the court clerk's system, resulting in fully synchronized processes.

Recommended Council Action:
Staff recommends that the council grant Mayor Reed permission to sign the contract with Tyler Technologies, Inc. related to the purchase of case management software for the probation department.

Attachments:
1. Tyler Technologies Signed Agreement

SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement is made between Tyler Technologies, Inc. and Client.

WHEREAS, Client selected Tyler to provide certain products and services set forth in the Investment Summary, including providing Client with access to Tyler's proprietary software products, and Tyler desires to provide such products and services under the terms of this Agreement;

WHEREAS, Client is a member of Sourcewell (formerly known as National Joint Powers Alliance) ("Sourcewell") under member number 38503.

WHEREAS, Tyler participated in the competitive bid process in response to Sourcewell RFP #060624 by submitting a proposal, on which Sourcewell awarded Tyler a Sourcewell contract, numbered 060624-TTI (hereinafter, the "Sourcewell Contract");

WHEREAS, documentation of the Sourcewell competitive bid process, as well as Tyler's contract with and pricing information for Sourcewell is available at https://www.sourcewell-mn.gov/cooperative-purchasing/; and

WHEREAS, Client desires to purchase off the Sourcewell Contract to procure Enterprise Supervision software functionality from Tyler, which Tyler agrees to deliver pursuant to the Sourcewell Contract and under the terms and conditions set forth below;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

SECTION A –DEFINITIONS

- **"Agreement"** means this Software as a Service Agreement.
- **"Business Travel Policy"** means our business travel policy. A copy of our current Business Travel Policy is attached as Schedule 1 to Exhibit B.
- **"Client**" means Smyrna, Tennessee.
- **"Data"** means your data necessary to utilize the Tyler Software.
- **"Data Storage Capacity"** means the contracted amount of storage capacity for your Data identified in the Investment Summary.
- **"Defect"** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent, based on a condition within our reasonable control. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **"Developer"** means a third party who owns the intellectual property rights to Third Party Software.

- **"Documentation"** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **"Effective Date"** means the last signature date set forth in the signature block.
- **"Force Majeure"** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **"Investment Summary"** means the agreed upon cost proposal for the products and services attached as Exhibit A.
- **"Invoicing and Payment Policy"** means the invoicing and payment policy. A copy of our current Invoicing and Payment Policy is attached as Exhibit B.
- **"Order Form"** means an ordering document that includes a quote or investment summary and specifying the items to be provided by Tyler to the Client, including any addenda and supplements thereto.
- **"SaaS Fees"** means the fees for the SaaS Services identified in the Investment Summary.
- **"SaaS Services"** means software as a service consisting of system administration, system management, and system monitoring activities that Tyler performs for the Tyler Software, and includes the right to access and use the Tyler Software, receive maintenance and support on the Tyler Software, including Downtime resolution under the terms of the SLA, and Data storage and archiving. SaaS Services do not include support of an operating system or hardware, support outside of our normal business hours, or training, consulting or other professional services.
- **"SLA"** means the service level agreement. A copy of our current SLA is attached hereto as Exhibit C.
- **"Statement of Work"** means the industry standard implementation plan describing how our professional services will be provided to implement the Tyler Software, and outlining your and our roles and responsibilities in connection with that implementation. The Statement of Work is attached as Exhibit D.
- **"Support Call Process"** means the support call process applicable to all of our customers who have licensed the Tyler Software. A copy of our current Support Call Process is attached as Schedule 1 to Exhibit C.
- **"Third Party Hardware"** means the third party hardware, if any, identified in the Investment Summary.
- **"Third Party Products"** means the Third Party Software and Third Party Hardware.
- **"Third Party SaaS Services"** means software as a service provided by a third party, if any, identified in the Investment Summary.
- **"Third Party Software"** means the third party software, if any, identified in the Investment Summary and not embedded in the Tyler Software.
- **"Third Party Terms"** means, if any, the end user license agreement(s) or similar terms, as applicable.
- **"Tyler"** means Tyler Technologies, Inc., a Delaware corporation.
- **"Tyler Software"** means our proprietary software, including any integrations, custom modifications, and/or other related interfaces identified in the Investment Summary and licensed by us to you through this Agreement. The Tyler Software also includes embedded third-party software that we are licensed to embed in our proprietary software and sub-license to you.
- **"we", "us", "our"** and similar terms mean Tyler.
- **"you"** and similar terms mean Client.

SECTION B – SAAS SERVICES

1. Rights Granted. We grant to you the non-exclusive, non-assignable limited right to use the SaaS Services solely for your internal business purposes. The Tyler Software will be made available to you according to the terms of the SLA. You acknowledge that we have no delivery obligations and we will not ship copies of the Tyler Software as part of the SaaS Services. You may use the SaaS Services to access updates and enhancements to the Tyler Software, as further described in Section C(9).

2. SaaS Fees. You agree to pay us the SaaS Fees. Those amounts are payable in accordance with our Invoicing and Payment Policy. The SaaS Fees are based on the amount of Data Storage Capacity. You may add additional data storage capacity on the terms set forth in Section H(1). In the event you regularly and/or meaningfully exceed the Data Storage Capacity, we reserve the right to charge you additional fees commensurate with the overage(s).

3. Ownership.

   3.1 We retain all ownership and intellectual property rights to the SaaS Services, the Tyler Software, and anything developed by us under this Agreement. You do not acquire under this Agreement any license to use the Tyler Software in excess of the scope and/or duration of the SaaS Services.

   3.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.

   3.3 You retain all ownership and intellectual property rights to the Data. You expressly recognize that except to the extent necessary to carry out our obligations contained in this Agreement, we do not create or endorse any Data used in connection with the SaaS Services.

4. Restrictions. You may not: (a) make the Tyler Software or Documentation resulting from the SaaS Services available in any manner to any third party for use in the third party's business operations; (b) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the SaaS Services; (c) access or use the SaaS Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to us; or (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the SaaS Services, Tyler Software, or Documentation available to any third party other than as expressly permitted by this Agreement.

5. Software Warranty. We warrant that the Tyler Software will perform without Defects during the term of this Agreement. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the maintenance and support process set forth in Section C(9), below, the SLA and our then current Support Call Process or to provide you with a functional equivalent. For the avoidance of doubt, to the extent any third-party software is embedded in the Tyler Software, your limited warranty rights are limited to our Defect resolution obligations set forth above; you do not have separate rights against the developer of the embedded third-party software.

6. SaaS Services.

6.1 Our SaaS Services are audited at least yearly in accordance with the AICPA's Statement on Standards for Attestation Engagements ("SSAE") No. 21. We have attained, and will maintain, SOC 1 and SOC 2 compliance, or its equivalent, for so long as you are timely paying for SaaS Services. The scope of audit coverage varies for some Tyler Software solutions. Upon execution of a mutually agreeable Non-Disclosure Agreement ("NDA"), we will provide you with a summary of our compliance report(s) or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which you make a written request, we will provide that same information. If our SaaS Services are provided using a third-party data center, we will provide available compliance reports for that data center.

6.2 You will be hosted on shared hardware in a Tyler data center or in a third-party data center. In either event, databases containing your Data will be dedicated to you and inaccessible to our other customers.

6.3 Our Tyler data centers have fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Tyler Software in the event of a disaster or component failure. In the event of a disruption of SaaS Services from the data center hosting your data, we reserve the right to employ our disaster recovery plan for resumption of the SaaS Services. In that event, we commit to a Recovery Point Objective ("RPO") of 24 hours and a Recovery Time Objective ("RTO") of 24 hours. RPO represents the maximum duration of time between the most recent recoverable copy of your hosted Data and subsequent unavailability of SaaS Services from the data center hosting your data. RTO represents the maximum duration of time following disruption of the SaaS Services within which your access to the Tyler Software must be restored.

6.4 We conduct annual penetration testing of either the production network and/or web application to be performed. We will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. We will provide you with a written or electronic record of the actions taken by us in the event that any unauthorized access to your database(s) is detected as a result of our security protocols. You may not attempt to bypass or subvert security restrictions in the SaaS Services or environments related to the Tyler Software. Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of our network and systems (hosted or otherwise) is prohibited without the prior written approval of our IT Security Officer.

6.5 We test our disaster recovery plan on an annual basis and mitigate any findings in accordance with industry standards.

6.6 We will be responsible for importing back-up and verifying that you can log-in. You will be responsible for running reports and testing critical processes to verify the returned Data.

6.7 We provide secure Data transmission paths between each of your workstations and our servers.

6.8 Tyler data centers are accessible only by authorized personnel with a unique key entry. All other visitors to Tyler data centers must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure

no unauthorized access.

SECTION C – OTHER PROFESSIONAL SERVICES

1. Other Professional Services. We will provide you the various implementation-related services itemized in the Investment Summary and described in the Statement of Work.

2. Professional Services Fees. You agree to pay us the professional services fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.

3. Additional Services. The Investment Summary contains, and the Statement of Work describes, the scope of services and related costs (including programming and/or interface estimates) required for the project based on the documented scope of the project as of the Effective Date. If additional work is required, or if you use or request additional services, we will provide you with an addendum or change order, as applicable, outlining the costs for the additional work. The price quotes in the addendum or change order will be valid for thirty (30) days from the date of the quote.

4. Cancellation. If you cancel services less than **four (4) weeks** in advance (other than for Force Majeure or breach by us), you will be liable for all (a) daily fees associated with cancelled professional services if we are unable to reassign our personnel and (b) any non-refundable travel expenses already incurred by us on your behalf. We will make all reasonable efforts to reassign personnel in the event you cancel within four (4) weeks of scheduled commitments.

5. Services Warranty. We will perform the services in a professional, workmanlike manner, consistent with industry standards. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.

6. Site Access and Requirements. At no cost to us, you agree to provide us with full and free access to your personnel, facilities, and equipment as may be reasonably necessary for us to provide implementation services, subject to any reasonable security protocols or other written policies provided to us as of the Effective Date, and thereafter as mutually agreed to by you and us. You agree that it is your responsibility to ensure that you satisfy the then-current system requirements, if any, minimally required to run the Tyler Software.

7. Client Assistance. You acknowledge that the implementation of the Tyler Software, and the ability to meet project deadlines and other milestones, is a cooperative effort requiring the time and resources of your personnel, as well as ours. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with us to schedule the implementation-related services outlined in this Agreement.

8. Background Checks. For at least the past twelve (12) years, all of our employees have undergone criminal background checks prior to hire. All employees sign our confidentiality agreement and security policies.

9. Maintenance and Support. For so long as you timely pay your SaaS Fees according to the Invoicing and Payment Policy, then in addition to the terms set forth in the SLA and the Support Call Process, we will:

   9.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects in the Tyler Software (subject to any applicable release life cycle policy);

   9.2 provide support during our established support hours;

   9.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;

   9.4 make available to you all releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and

   9.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with any applicable release life cycle policy.

We will use all reasonable efforts to perform support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as well as GotoAssist by Citrix. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require performing remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain your VPN for backup connectivity purposes.

For the avoidance of doubt, SaaS Fees do not include the following services: (a) onsite support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (b) application design; (c) other consulting services; or (d) support outside our normal business hours as listed in our then-current Support Call Process. Requested services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) week's advance notice.

10. Legislative Change Support. For county customers, we make available legislative change support as follows:

    10.1 We will provide you with refinements, enhancements, or other modifications to the Tyler Software as necessary to comply with enacted statewide legislation or administrative regulation applicable to all our clients in your state pertaining to: (a) existing reports, exports, or data exchanges; (b) new reports; (c) new data entry fields for state reporting; (d) new fee calculations;

(e) new disposition templates; (f) new sentence templates; or (g) new citation templates.

10.2 We will use commercially reasonable efforts to implement such changes within the time frames set in the applicable legislation or regulation, but in any event within the next version release of the Tyler Software.

10.3 For county customers, our responsibility for legislative change support in each annual term is limited to the number of hours of analysis, post-release data migration, and testing services, at our then-current hourly rates, equal to 20% of the total annual maintenance and support fees or 8% of the total annual SaaS fees paid by all customers within your state during that term.

10.4 You are responsible for any fees in excess of the applicable limits under Section 10.3 above, as well as the cost of any other services required to implement such changes, including, without limitation, training, configuration, project management, or data conversion from external sources. Prior to performing any services under this Section that would result in fees to you, we will provide you with a change order or addendum.

10.5 Business process changes, including usage of optional or new features and data fields, may be required to meet the needs of legislative changes. Tyler will document intended utilization of such new features or new fields, but it is the client's responsibility to enact process changes for compliance with new requirements.

10.6 Our legislative change support obligations do not apply to services required to support new duties or responsibilities that expand upon the scope of your internal business purposes disclosed to us as of the Effective Date.

SECTION D – THIRD PARTY PRODUCTS

To the extent there are any Third Party Products identified in the Investment Summary, the Third Party Terms will apply. You acknowledge that we may have embedded third-party functionality in the Tyler Software that is not separately identified in the Investment Summary. If that third-party functionality is not separately identified in the Investment Summary, the limited warranty applicable to the Tyler Software applies, and we further warrant that the appropriate Developer has granted us the necessary license to (i) embed the unidentified third-party functionality in the Tyler Software; and (ii) sub-license it to you through our license grant to the Tyler Software. You may receive maintenance and support on such embedded third-party software under the Maintenance and Support Agreement.

SECTION E – INVOICING AND PAYMENT; INVOICE DISPUTES

1. Invoicing and Payment. We will invoice you the SaaS Fees and fees for other professional services in the Investment Summary per our Invoicing and Payment Policy, subject to Section E(2).

2. Invoice Disputes. If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps

to be taken by each of us to resolve any issues presented in your notice. You may withhold payment of the amount(s) actually in dispute, and only those amounts, until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will remit full payment of the invoice. We reserve the right to suspend delivery of all SaaS Services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within fifteen (15) days of notice of our intent to do so.

SECTION F – TERM AND TERMINATION

1. Term. The initial term of this Agreement is three (3) years, commencing on July 1, 2025, unless earlier terminated as set forth below. Upon expiration of the initial term, this Agreement may be renewed for successive one (1) year renewal terms by mutual agreement of the parties at our then-current SaaS Fees. Client may indicate its agreement to renewal terms by timely payment of a Tyler invoice of annual fees for the renewal term. Your right to access or use the Tyler Software and the SaaS Services will terminate at the end of this Agreement.

2. Termination. This Agreement may be terminated as set forth below. In the event of termination, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. Disputed fees and expenses in all terminations other than your termination for cause must have been submitted as invoice disputes in accordance with Section E(2).

   2.1 Failure to Pay SaaS Fees. You acknowledge that continued access to the SaaS Services is contingent upon your timely payment of SaaS Fees. If you fail to timely pay the SaaS Fees, we may discontinue the SaaS Services and deny your access to the Tyler Software. We may also terminate this Agreement if you don't cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate.

   2.2 For Cause. If you believe we have materially breached this Agreement, you will invoke the Dispute Resolution clause set forth in Section H(3). You may terminate this Agreement for cause in the event we do not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section H(3).

   2.3 Force Majeure. Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of the SaaS Services for a period of forty-five (45) days or more.

   2.4 Lack of Appropriations. If you should not appropriate or otherwise make available funds sufficient to utilize the SaaS Services, you may unilaterally terminate this Agreement upon thirty (30) days written notice to us. You will not be entitled to a refund or offset of previously paid, but unused SaaS Fees. You agree not to use termination for lack of appropriations as a substitute for termination for convenience.

SECTION G – INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

1. Intellectual Property Infringement Indemnification.

   1.1 We will defend you against any third party claim(s) that the Tyler Software or Documentation

infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

1.2 Our obligations under this Section G(1) will not apply to the extent the claim or adverse final judgment is based on your use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties, or your willful infringement.

1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you may continue to use the Tyler Software consistent with the terms of this Agreement.

1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent. We will pursue those options in the order listed herein. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

2. General Indemnification.

2.1 We will defend, indemnify, and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by our negligence or willful misconduct; or (b) our violation of a law applicable to our performance under this Agreement. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

3. DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT UNDERSTANDS AND AGREES THAT TYLER DISCLAIMS ANY LIABILITY FOR ERRORS THAT RELATE TO USER ERROR.

4. LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (A) DURING THE INITIAL TERM, AS SET FORTH IN SECTION F(1), TOTAL FEES PAID AS OF THE TIME OF THE CLAIM; OR (B) DURING ANY RENEWAL TERM, THE THEN-CURRENT ANNUAL SAAS FEES PAYABLE IN THAT RENEWAL TERM. THE PARTIES

ACKNOWLEDGE AND AGREE THAT THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, THE EXCLUSION OF CERTAIN DAMAGES, AND EACH SHALL APPLY REGARDLESS OF THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY REMEDY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS G(1) AND G(2).

5. **EXCLUSION OF CERTAIN DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

6. Insurance. During the course of performing services under this Agreement, we agree to maintain the following levels of insurance: (a) Commercial General Liability of at least $1,000,000; (b) Automobile Liability of at least $1,000,000; (c) Professional Liability of at least $1,000,000; (d) Workers Compensation complying with applicable statutory requirements; and (e) Excess/Umbrella Liability of at least $5,000,000. We will add you as an additional insured to our Commercial General Liability and Automobile Liability policies, which will automatically add you as an additional insured to our Excess/Umbrella Liability policy as well. We will provide you with copies of certificates of insurance upon your written request.

SECTION H – GENERAL TERMS AND CONDITIONS

1. Additional Products and Services. You may purchase additional Tyler products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date by executing a mutually agreed addendum or Tyler purchase order. If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional Tyler products and services at our then-current list price, also by executing a mutually agreed addendum or Tyler purchase order. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum or Tyler purchase order.

2. Optional Items. Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.

3. Dispute Resolution. You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, then the parties shall participate in non-binding mediation in an effort to resolve the dispute. If the dispute remains unresolved after mediation, then either of us may assert our respective rights and remedies in a court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.

4. Taxes. The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse

us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.

5. Nondiscrimination. We will not discriminate against any person employed or applying for employment concerning the performance of our responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. We will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.

6. E-Verify. We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.

7. Subcontractors. We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.

8. Binding Effect; No Assignment. This Agreement shall be binding on, and shall be for the benefit of, either your or our successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not required for an assignment by us as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.

9. Force Majeure. Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.

10. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement. This provision does not affect the rights of third parties under any Third Party Terms.

11. Entire Agreement; Amendment. This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Purchase orders submitted by you, if any, are for your internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force or effect. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.

12. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.

13. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.

14. Independent Contractor. We are an independent contractor for all purposes under this Agreement.

15. Notices. All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.

16. Client Lists. You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.

17. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (*e.g.*, social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. To the extent Client engages independent contractors to fulfill its obligations under this Agreement, Client shall enter into a written agreement with said independent contractors that contains confidentiality covenants at least as restrictive as the confidentiality covenants contained herein. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:

    (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents; or
    (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure; or
    (c) a party receives from a third party who has a right to disclose it to the receiving party; or
    (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement, or a subpoena; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.

18. Business License. In the event a local business license is required for us to perform services hereunder,

you will promptly notify us and provide us with the necessary paperwork and/or contact information so that we may timely obtain such license.

19. Governing Law. This Agreement will be governed by and construed in accordance with the laws of your state of domicile, without regard to its rules on conflicts of law.

20. Multiple Originals and Authorized Signatures. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.

21. Cooperative Procurement. To the maximum extent permitted by applicable law, we agree that this Agreement may be used as a cooperative procurement vehicle by eligible jurisdictions. We reserve the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, to the scope and circumstances of that cooperative procurement.

22. Data & Insights Solution Terms. Your use of certain Tyler solutions includes Tyler's Data & Insights data platform. Your rights, and the rights of any of your end users, to use Tyler's Data & Insights data platform is subject to the Data & Insights SaaS Services Terms of Service, available at https://www.tylertech.com/terms/data-insights-saas-services-terms-of-service. By signing a Tyler Agreement or Order Form, or accessing, installing, or using any of the Tyler solutions listed at the linked terms, you certify that you have reviewed, understand, and agree to said terms.

23. Twilio Acceptable Use Policy and Terms of Service. Your use of the Tyler Software may include functionality provided by a Third Party Developer, Twilio. Your rights, and the rights of any of your end users, to use said functionality are subject to the terms of the Twilio Acceptable Use Policy, available at http://www.twilio.com/legal/aup, and to applicable provisions found in the current Twilio Terms of Service, available at https://www.twilio.com/legal/tos. By signing a Tyler Agreement or accessing, installing, or using any such Tyler solution, you certify that you have reviewed, understand and agree to said terms. Tyler hereby disclaims any and all liability related to your or your end user's failure to abide by the terms of the Twilio Acceptable Use Policy or Terms of Service. Any liability for failure to abide by said terms shall rest solely with the person or entity whose conduct violated said terms.

24. Contract Documents. This Agreement includes the following exhibits:

Exhibit A	Investment Summary
Exhibit B	Invoicing and Payment Policy
	Schedule 1: Business Travel Policy
Exhibit C	Service Level Agreement
	Schedule 1: Support Call Process
Exhibit D	Statement of Work
Exhibit E	Smyrna, Tennessee Addendum to Agreement

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.

By: Sherry Clark

Name: Sherry Clark

Title: Group General Counsel

Date: 08/19/2025

Address for Notices:
Tyler Technologies, Inc.
One Tyler Drive
Yarmouth, ME 04096
Attention: Chief Legal Officer

With a copy to:
Tyler Technologies, Inc.
5101 Tennyson Parkway
Plano, TX 75024
Attention: Legal Department

Smyrna, Tennessee

By: _____

Name: _____

Title: _____

Date: _____

Address for Notices:
Smyrna, Tennessee
_____
_____
Attention: _____

Exhibit A
Investment Summary

The following Investment Summary details the software and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

Software Fees		
Annual SaaS Fees Payments	**Year 1**	
Total Annual SaaS Fee Payments	**$13,000**	
Sourcewell Discount	***($1,300)***	
Total SaaS Fee Payments	**$11,700**	
**SaaS fees escalate at 5% annually.*		
Software (SaaS)		**Annual SaaS Fees**
Enterprise Supervision – Adult Probation		**$13,000**
	Total Annual SaaS Fees (Year 1)	**$13,000**
Implementation Services		
Enterprise Supervision Professional Services (Fixed Costs)	**Cost**	
Project Management		**$7,800**
Setup & Configuration Consulting		**$22,200**
Data Conversion (Not in Scope)		**N/A**
Current & Future State Analysis		**$1,480**
Deployment		**$1,480**
Go-Live Assistance		**$2,960**
Training		**Included**
Tyler Alliance Setup & Configuration Consulting		**Included**
	Total Fixed Professional Services Cost	**$35,920**
Travel Expenses		
Estimated Travel Costs		N/A
It is assumed that there will be no on-site project activities, however, should the Client request on-site services, Travel Expenses will be billed as incurred according to Tyler's standard business travel policy.		

Service/License Payment Milestone Billing Schedule			Smyrna, TN Adult Pretrial and Probation		
WBS	**Deliverable/Activity**	**Description**	**Amount**	**Stage Total**	**Comments**
		Prepare Solution			
Initial System Deployment		Initial System Deployment [*licensed software installed on servers*]	8,980.00	**26,940.00**	
Prepare Solution		Configuration Complete	8,980.00		
Training		End-User Training Complete	8,980.00		
		Production			
Go-Live		Go-Live in Production Complete	8,980.00	**8,980.00**	
		Milestone Total	**35,920.00**	**35,920.00**	
		Implementation Services Grand Total		**35,920.00**	

Exhibit B
Invoicing and Payment Policy

We will provide you with the software and services set forth in the Investment Summary of the Agreement. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

Invoicing: We will invoice you for the applicable software and services in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in the Agreement.

1. SaaS Fees. SaaS Fees are invoiced on an annual basis, beginning on the commencement of the initial term as set forth in Section F(1) of this Agreement. Your annual SaaS fees for the initial term are set forth in the Investment Summary; provided, however, the SaaS Fees shall increase by 5% year over year beginning in Year 2. Upon expiration of the initial term, your annual SaaS fees will be at our then-current rates.

2. Other Tyler Software and Services.

   2.1 Implementation and other professional services (including training) are billed and invoiced in accordance with the milestone billing schedule set forth in the Investment Summary.

3. Third Party Products.

   3.1 *Third Party Software License Fees*: License fees for Third Party Software, if any, are invoiced when we make it available to you for downloading.

   3.2 *Third Party Software Maintenance*: The first year maintenance for the Third Party Software, if any, is invoiced when we make it available to you for downloading.

   3.3 *Third Party Hardware*: Third Party Hardware costs, if any, are invoiced upon delivery.

   3.4 *Third Party SaaS:* Third Party SaaS Services fees, if any, are invoiced annually, in advance, commencing with availability of the respective Third Party SaaS Services. Pricing for the first year of Third Party SaaS Services is indicated in the Investment Summary. Pricing for subsequent years will be at the respective third party's then-current rates.

   3.5 *Third Party Services:* Fees for Third Party Services, if any, are invoiced as delivered, along with applicable expenses, at the rates set forth in the Investment Summary.

4. Expenses. The service rates in the Investment Summary include travel expenses. Expenses will be billed as incurred and only in accordance with our then-current Business Travel Policy. Our current

Business Travel Policy is attached to this Exhibit B at Schedule 1. Copies of receipts will be provided upon request; we reserve the right to charge you an administrative fee depending on the extent of your requests. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.

Payment. Payment for undisputed invoices is due within forty-five (45) days of the invoice date. We prefer to receive payments electronically. Our electronic payment information is available by contacting AR@tylertech.com.

Exhibit B
Schedule 1
Business Travel Policy

1. Air Travel

   A. Reservations & Tickets

   The Travel Management Company (TMC) used by Tyler will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within $100 (each way) of the lowest logical fare. If a net savings of $200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

   Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven (7) day advance booking requirement is mandatory. When booking less than seven (7) days in advance, management approval will be required.

   Except in the case of international travel where a segment of continuous air travel is six (6) or more consecutive hours in length, only economy or coach class seating is reimbursable. Employees shall not be reimbursed for "Basic Economy Fares" because these fares are non-refundable and have many restrictions that outweigh the cost-savings.

   B. Baggage Fees

   Reimbursement of personal baggage charges are based on trip duration as follows:

   - Up to five (5) days = one (1) checked bag
   - Six (6) or more days = two (2) checked bags

   Baggage fees for sports equipment are not reimbursable.

2. Ground Transportation

   A. Private Automobile

   Mileage Allowance – Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations.

Employees who have been designated a home office should calculate miles from their home.

B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a “mid-size” or “intermediate” car. “Full” size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; except for employees traveling to Alaska and internationally (excluding Canada), additional insurance on the rental agreement should be declined.

C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

3. Lodging

Tyler’s TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

“No shows” or cancellation fees are not reimbursable if the employee does not comply with the hotel’s cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

Employees are not authorized to reserve non-traditional short-term lodging, such as Airbnb, VRBO, and HomeAway. Employees who elect to make such reservations shall not be reimbursed.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status within the continental U.S. are in accordance with the federal per diem rates published by the General Services Administration.

Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at www.gsa.gov/perdiem.

Per diem for Alaska, Hawaii, U.S. protectorates and international destinations are provided separately by the Department of State and will be determined as required.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00 p.m.*	Breakfast, lunch and dinner

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

Breakfast	15%
Lunch	25%
Dinner	60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.*

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

5. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to $10.00 per day. Charges for internet access at airports are not reimbursable.

6. International Travel

All international flights with the exception of flights between the U.S. and Canada should be reserved through TMC using the "lowest practical coach fare" with the exception of flights that are six (6) or more consecutive hours in length. In such event, the next available seating class above coach shall be reimbursed.

When required to travel internationally for business, employees shall be reimbursed for photo fees, application fees, and execution fees when obtaining a new passport book, but fees related to passport renewals are not reimbursable. Visa application and legal fees, entry taxes and departure taxes are reimbursable.

The cost of vaccinations that are either required for travel to specific countries or suggested by the U.S. Department of Health & Human Services for travel to specific countries, is reimbursable.

Section 4, Meals & Incidental Expenses, and Section 2.b., Rental Car, shall apply to this section.

Exhibit C
Service Level Agreement

I. Agreement Overview

This SLA operates in conjunction with, and does not supersede or replace any part of, the Agreement. It outlines the information technology service levels that we will provide to you to ensure the availability of the application services that you have requested us to provide. This SLA does not apply to any Third Party SaaS Services. All other support services are documented in the Support Call Process.

II. Definitions. Except as defined below, all defined terms have the meaning set forth in the Agreement.

Actual Attainment: The percentage of time the Tyler Software is available during a calendar quarter, calculated as follows: (Service Availability – Downtime) ÷ Service Availability.

Client Error Incident: Any service unavailability resulting from your applications, content or equipment, or the acts or omissions of any of your service users or third-party providers over whom we exercise no control.

Downtime: Those minutes during Service Availability, as defined below, when all users cannot launch, login, search or save primary data in the Tyler Software. Downtime does not include those instances in which only a Defect is present.

Emergency Maintenance: (1) maintenance that is required to patch a critical security vulnerability; (2) maintenance that is required to prevent an imminent outage of Service Availability; or (3) maintenance that is mutually agreed upon in writing by Tyler and the Client.

Planned Downtime: Downtime that occurs during a Standard or Emergency Maintenance window.

Service Availability: The total number of minutes in a calendar quarter that the Tyler Software is capable of receiving, processing, and responding to requests, excluding Planned Downtime, Client Error Incidents, denial of service attacks and Force Majeure.

Standard Maintenance: Routine maintenance to the Tyler Software and infrastructure. Standard Maintenance is limited to five (5) hours per week.

III. Service Availability

a. Your Responsibilities

Whenever you experience Downtime, you must make a support call according to the procedures outlined in the Support Call Process. You will receive a support case number.

b. Our Responsibilities

When our support team receives a call from you that Downtime has occurred or is occurring, we will work

with you to identify the cause of the Downtime (including whether it may be the result of Planned Downtime, a Client Error Incident, Denial of Service attack or Force Majeure). We will also work with you to resume normal operations.

c. Client Relief

Our targeted Attainment Goal is 100%. You may be entitled to credits as indicated in the Client Relief Schedule found below. Your relief credit is calculated as a percentage of the SaaS fees paid for the calendar quarter.

In order to receive relief credits, you must submit a request through one of the channels listed in our Support Call Process within fifteen days (15) of the end of the applicable quarter. We will respond to your relief request within thirty (30) day(s) of receipt.

The total credits confirmed by us will be applied to the SaaS Fee for the next billing cycle. Issuing of such credit does not relieve us of our obligations under the Agreement to correct the problem which created the service interruption.

Client Relief Schedule	
Actual Attainment	**Client Relief**
99.99% - 98.00%	Remedial action will be taken
97.99% - 95.00%	4%
Below 95.00%	5%

IV. Maintenance Notifications

We perform Standard Maintenance during limited windows that are historically known to be reliably low-traffic times. If and when maintenance is predicted to occur during periods of higher traffic, we will provide advance notice of those windows and will coordinate to the greatest extent possible with you.

Not all maintenance activities will cause application unavailability. However, if Tyler anticipates that activities during a Standard or Emergency Maintenance window may make the Tyler Software unavailable, we will provide advance notice, as reasonably practicable that the Tyler Software will be unavailable during the maintenance window.

Exhibit C
Schedule 1
Support Call Process

Support Channels

Tyler Technologies, Inc. provides the following channels of software support for authorized users*:

(1) On-line submission (portal) – for less urgent and functionality-based questions, users may create support incidents through the Tyler Customer Portal available at the Tyler Technologies website. A built-in Answer Panel provides users with resolutions to most "how-to" and configuration-based questions through a simplified search interface with machine learning, potentially eliminating the need to submit the support case.
(2) Email – for less urgent situations, users may submit emails directly to the software support group.
(3) Telephone – for urgent or complex questions, users receive toll-free, telephone software support.

** Channel availability may be limited for certain applications.*

Support Resources

A number of additional resources are available to provide a comprehensive and complete support experience:

(1) Tyler Website – www.tylertech.com – for accessing client tools, documentation, and other information including support contact information.
(2) Tyler Search – a knowledge based search engine that lets you search multiple sources simultaneously to find the answers you need, 24x7.
(3) Tyler Community – provides a venue for all Tyler clients with current maintenance agreements to collaborate with one another, share best practices and resources, and access documentation.
(4) Tyler University – online training courses on Tyler products.

Support Availability

Tyler Technologies support is available during the local business hours of 8 AM to 5 PM (Monday –Friday) across four US time zones (Pacific, Mountain, Central and Eastern). Tyler's holiday schedule is outlined below. There will be no support coverage on these days.

New Year's Day	Labor Day
Martin Luther King, Jr. Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day

For support teams that provide after-hours service, we will provide you with procedures for contacting support staff after normal business hours for reporting Priority Level 1 Defects only. Upon receipt of such a Defect notification, we will use commercially reasonable efforts to meet the resolution targets set forth below.

We will also make commercially reasonable efforts to be available for one pre-scheduled Saturday of each month to assist your IT staff with applying patches and release upgrades, as well as consulting with them on server maintenance and configuration of the Tyler Software environment.

Incident Handling

Incident Tracking

Every support incident is logged into Tyler's Customer Relationship Management System and given a unique case number. This system tracks the history of each incident. The case number is used to track and reference open issues when clients contact support. Clients may track incidents, using the case number, through Tyler's Customer Portal or by calling software support directly.

Incident Priority

Each incident is assigned a priority level, which corresponds to the Client's needs. Tyler and the Client will reasonably set the priority of the incident per the chart below. This chart is not intended to address every type of support incident, and certain "characteristics" may or may not apply depending on whether the Tyler software has been deployed on customer infrastructure or the Tyler cloud. The goal is to help guide the Client towards clearly understanding and communicating the importance of the issue and to describe generally expected response and resolution targets in the production environment only.

References to a "confirmed support incident" mean that Tyler and the Client have successfully validated the reported Defect/support incident.

Priority Level	Characteristics of Support Incident	Resolution Targets*
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client's remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within ten (10) business days. For non-hosted customers, Tyler's responsibility for loss or corrupted data is limited to assisting the Client in restoring its last available database.

Priority Level	Characteristics of Support Incident	Resolution Targets*
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack, which shall occur at least quarterly. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.
4 Non-critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

**Response and Resolution Targets may differ by product or business need*

Incident Escalation

If Tyler is unable to resolve any priority level 1 or 2 defect as listed above or the priority of an issue has elevated since initiation, you may escalate the incident to the appropriate resource, as outlined by each product support team. The corresponding resource will meet with you and any Tyler staff to establish a mutually agreeable plan for addressing the defect.

Remote Support Tool

Some support calls may require further analysis of the Client's database, processes or setup to diagnose a problem or to assist with a question. Tyler will, at its discretion, use an industry-standard remote support tool. Tyler's support team must have the ability to quickly connect to the Client's system and view the site's setup, diagnose problems, or assist with screen navigation. More information about the remote support tool Tyler uses is available upon request.

Exhibit D
Statement of Work

Smyrna, Tennessee

SOW from Tyler Technologies, Inc.

6/11/2025

Presented to:

400 Enon Springs Road
Smyrna, Tennessee 37167

Contact:
Matt Whitecar
Email: Matt.Whitecar@TylerTech.com
5101 Tennyson Parkway, Plano, TX 75024

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Part 1: Executive Summary

1. Project Overview

1.1 Introduction

Tyler Technologies ("Tyler") is the largest and most established provider of integrated software and technology services focused solely on the public sector. Tyler's end-to-end solutions empower public sector entities including local, state, provincial and federal government, to operate more efficiently and connect more transparently with their constituents and with each other. By connecting data and processes across disparate systems, Tyler's solutions transform how clients gain actionable insights that solve problems in their communities.

1.2 Project Goals

This Statement of Work ("SOW") documents the methodology, implementation stages, activities, and roles and responsibilities, and project scope listed in the Investment Summary of the Agreement between Tyler and the Smyrna (collectively the "Project").

The overall goals of the project are to:

- Successfully implement the contracted scope on time and on budget
- Increase operational efficiencies and empower users to be more productive
- Improve accessibility and responsiveness to external and internal customer needs
- Overcome current challenges and meet future goals
- Providing a single, comprehensive, and integrated solution to manage business functions
- Streamline business processes through automation, integration, and workflows
- Provide a user-friendly user interface to promote system use and productivity
- Eliminate redundant data entry

1.3 Methodology

This is accomplished by the Smyrna and Tyler working as a partnership and Tyler utilizing its depth of implementation experience. While each Project is unique, all will follow Tyler's six-stage methodology. Each of the six stages is comprised of multiple work packages, and each work package includes a narrative description, objectives, tasks, inputs, outputs/deliverables, assumptions, and a responsibility matrix.

Tailored specifically for Tyler's public sector clients, the project methodology contains Stage Acceptance Control Points throughout each Phase to ensure adherence to scope, budget, timeline controls, effective communications, and quality standards. Clearly defined, the project methodology repeats consistently across Phases, and is scaled to meet the Smyrna's complexity and organizational needs.



The methodology adapts to both single-phase and multiple-phase projects.

To achieve Project success, it is imperative that both the Smyrna and Tyler commit to including the necessary leadership and governance. During each stage of the Project, it is expected that the Smyrna and Tyler Project teams work collaboratively to complete tasks. An underlying principle of Tyler's Implementation process is to employ an iterative model where the Smyrna's business processes are assessed, configured, validated, and refined cyclically in line with the project budget. This approach is used in multiple stages and work packages as illustrated in the graphic below.



The delivery approach is systematic, which reduces variability and mitigates risks to ensure Project success. As illustrated, some stages, along with work packages and tasks, are intended to be overlapping by nature to complete the Project efficiently and effectively.

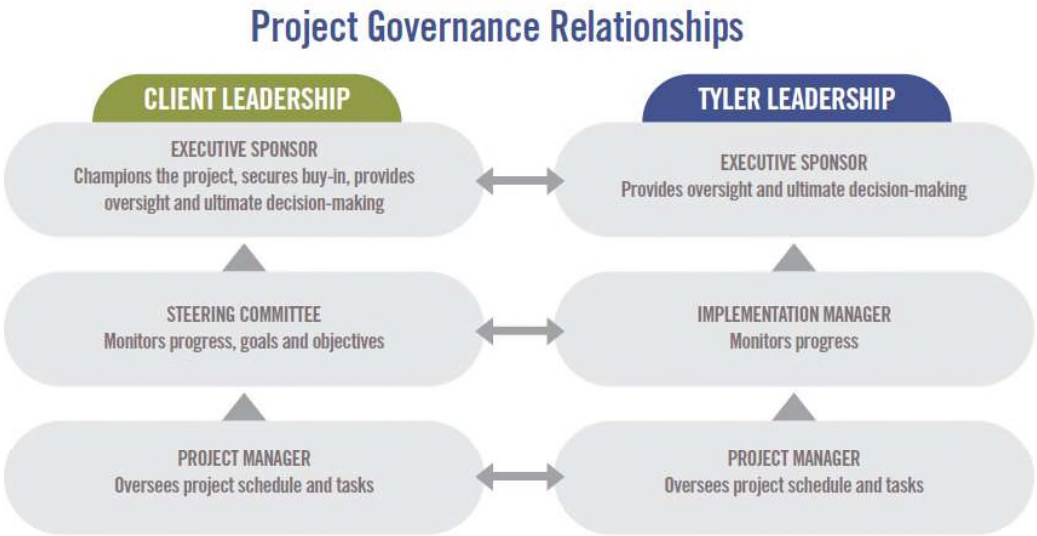
Part 2: Project Foundation

2. Project Governance

Project governance is the management framework within which Project decisions are made. The role of Project governance is to provide a decision-making approach that is logical, robust, and repeatable. This allows organizations to have a structured approach for conducting its daily business in addition to project related activities.

This section outlines the resources required to meet the business needs, objectives, and priorities for the Project, communicate the goals to other Project participants, and provide support and guidance to accomplish these goals. Project governance defines the structure for escalation of issues and risks, Change Control review and authority, and Organizational Change Management activities. Throughout the Statement of Work Tyler has provided RACI Matrices for activities to be completed throughout the implementation which will further outline responsibilities of different roles in each stage. Further refinement of the governance structure, related processes, and specific roles and responsibilities occurs during the Initiate & Plan Stage.

The chart below illustrates an overall team perspective where Tyler and the Smyrna collaborate to resolve Project challenges according to defined escalation paths. If project managers do not possess authority to determine a solution, resolve an issue, or mitigate a risk, Tyler implementation management and the Smyrna Steering Committee become the escalation points to triage responses prior to escalation to the Smyrna and Tyler executive sponsors. As part of the escalation process, each Project governance tier presents recommendations and supporting information to facilitate knowledge transfer and issue resolution. The Smyrna and Tyler executive sponsors serve as the final escalation point.



3. Project Scope Control

3.1 Managing Scope and Project Change

Project Management governance principles contend that there are three connected constraints on a Project: budget, timeline, and scope. These constraints, known as the "triple constraints" or project management triangle, define budget in terms of financial cost, labor costs, and other resource costs. Scope is defined as the work performed to deliver a product, service or result with the specified features and functions, while time is simply defined as the schedule. The Triple Constraint theory states that if you change one side of the triangle, the other two sides must be correspondingly adjusted. For example, if the scope of the Project is increased, cost and time to complete will also need to increase. The Project and executive teams will need to remain cognizant of these constraints when making impactful decisions to the Project. A simple illustration of this triangle is included here, showing the connection of each item and their relational impact to the overall Scope.



A pillar of any successful project is the ability to properly manage scope while allowing the appropriate level of flexibility to incorporate approved changes. Scope and changes within the project will be managed using the change control process outlined in the following section.

3.2 Change Control

It may become necessary to change the scope of this Project due to unforeseeable circumstances (e.g., new constraints or opportunities are discovered). This Project is being undertaken with the understanding that Project scope, schedule, and/or cost may need to change to produce optimal results for stakeholders. Changes to contractual requirements will follow the change control process specified in the final contract, and as described below.

3.3 Change Request Management

Should the need for a change to Project scope, schedule, and/or cost be identified during the Project, the change will be brought to the attention of the Steering Committee and an assessment of the change will occur. While such changes may result in additional costs and delays relative to the schedule, some changes may result in less cost to the Smyrna; for example, the Smyrna may decide it no longer needs a deliverable originally defined in the Project. The Change Request will include the following information:

- The nature of the change.
- A good faith estimate of the additional cost or associated savings to the Smyrna, if any.
- The timetable for implementing the change.
- The effect on and/or risk to the schedule, resource needs or resource responsibilities.

The Smyrna will use its good faith efforts to either approve or disapprove any Change Request within ten (10) Business Days (or other period as mutually agreeable between Tyler and the Smyrna). Any changes to the Project scope, budget, or timeline must be documented and approved in writing using a Change Request form. These changes constitute a formal amendment to the Statement of Work and will supersede any conflicting term in the Statement of Work.



4. Acceptance Process

The implementation of a Project involves many decisions to be made throughout its lifecycle. Decisions will vary from higher level strategy decisions to smaller, detailed Project level decisions. It is critical to the success of the Project that each Smyrna office or department designates specific individuals for making decisions on behalf of their offices or departments.

Both Tyler and the Smyrna will identify representative project managers. These individuals will represent the interests of all stakeholders and serve as the primary contacts between the two organizations.

The coordination of gaining Smyrna feedback and approval on Project deliverables will be critical to the success of the Project. The Smyrna project manager will strive to gain deliverable and decision approvals from all authorized Smyrna representatives. Given that the designated decision-maker for each department may not always be available, there must be a designated proxy for each decision point in the Project. Assignment of each proxy will be the responsibility of the leadership from each Smyrna department. The proxies will be named individuals that have the authorization to make decisions on behalf of their department.

The following process will be used for accepting Deliverables and Control Points:

- The Smyrna shall have five (5) business days from the date of delivery, or as otherwise mutually agreed upon by the parties in writing, to accept each Deliverable or Control Point. If the Smyrna does not provide acceptance or acknowledgement within five (5) business days, or the otherwise agreed upon timeframe, not to be unreasonably withheld, Tyler deems the Deliverable or Control Point as accepted.
- If the Smyrna does not agree the Deliverable or Control Point meets requirements, the Smyrna shall notify Tyler project manager(s), in writing, with reasoning within five (5) business days, or the otherwise agreed-upon timeframe, not to be unreasonably withheld, of receipt of the Deliverable.
- Tyler shall address any deficiencies and redeliver the Deliverable or Control Point. The Smyrna shall then have two (2) business days from receipt of the redelivered Deliverable or Control Point to accept or again submit written notification of reasons for rejecting the milestone. If the Smyrna does not provide acceptance within two (2) business days, or the otherwise agreed upon timeframe, not to be unreasonably withheld, Tyler deems the Deliverable or Control Point as accepted.

5. Roles and Responsibilities

The following defines the roles and responsibilities of each Project resource for the Smyrna and Tyler. Roles and responsibilities may not follow the organizational chart or position descriptions at the Smyrna, but are roles defined within the Project. It is common for individual resources on both the Tyler and Smyrna project teams to fill multiple roles. Similarly, it is common for some roles to be filled by multiple people.

5.1 Tyler Roles & Responsibilities

Tyler assigns a project manager prior to the start of each Phase of the Project (some Projects may only be one Phase in duration). Additional Tyler resources are assigned as the schedule develops and as needs arise.

5.1.1 Tyler Executive Manager

Tyler executive management has indirect involvement with the Project and is part of the Tyler escalation process. This team member offers additional support to the Project team and collaborates with other Tyler department managers as needed to escalate and facilitate implementation Project tasks and decisions.

- Provides clear direction for Tyler staff on executing on the Project Deliverables to align with satisfying the Smyrna 's overall organizational strategy.
- Authorizes required Project resources.
- Resolves all decisions and/or issues not resolved at the implementation management level as part of the escalation process.
- Acts as the counterpart to the Smyrna 's executive sponsor.

5.1.2 Tyler Implementation Manager

- Tyler implementation management has indirect involvement with the Project and is part of the Tyler escalation process. The Tyler project managers consult implementation management on issues and outstanding decisions critical to the Project. Implementation management works toward a solution with the Tyler Project Manager or with Smyrna management as appropriate. Tyler executive management is the escalation point for any issues not resolved at this level.
- Assigns Tyler Project personnel.
- Provides support for the Project team.
- Provides management support for the Project to ensure it is staffed appropriately and staff have necessary resources.
- Monitors Project progress including progress towards agreed upon goals and objectives.

5.1.3 Tyler Project Manager

- The Tyler project manager(s) provides oversight of the Project, coordination of Tyler resources between departments, management of the Project budget and schedule, effective risk, and issue management, and is the primary point of contact for all Project related items. As requested by the Smyrna, the Tyler Project Manager provides regular updates to the Smyrna Steering Committee and other Tyler governance members. Tyler Project Manager's role includes responsibilities in the following areas:

5.1.3.1 Contract Management

- Validates contract compliance throughout the Project.
- Ensures Deliverables meet contract requirements.
- Acts as primary point of contact for all contract and invoicing questions.
- Prepares and presents contract milestone sign-offs for acceptance by the Smyrna project manager(s).
- Coordinates Change Requests, if needed, to ensure proper Scope and budgetary compliance.

5.1.3.2 Planning

- Delivers project planning documents.
- Defines Project tasks and resource requirements.
- Develops initial Project schedule and Project Management Plan.
- Collaborates with the Smyrna project manager(s) to plan and schedule Project timelines to achieve on-time implementation.

5.1.3.3 Implementation Management

- Tightly manages Scope and budget of Project to ensure Scope changes and budget planned versus actual are transparent and handled effectively and efficiently.
- Establishes and manages a schedule and Tyler resources that properly support the Project Schedule and are also in balance with Scope/budget.
- Establishes risk/issue tracking/reporting process between the Smyrna and Tyler and takes all necessary steps to proactively mitigate these items or communicate with transparency to the Smyrna any items that may impact the outcomes of the Project.

- Collaborates with the Smyrna ’s project manager(s) to establish key business drivers and success indicators that will help to govern Project activities and key decisions to ensure a quality outcome of the project.
- Collaborates with the Smyrna ’s project manager(s) to set a routine communication plan that will aide all Project team members, of both the Smyrna and Tyler, in understanding the goals, objectives, status, and health of the Project.

5.1.3.4 Resource Management

- Acts as liaison between Project team and Tyler manager(s).
- Identifies and coordinates all Tyler resources across all applications, Phases, and activities including development, forms, installation, reports, implementation, and billing.
- Provides direction and support to Project team.
- Manages the appropriate assignment and timely completion of tasks as defined in the Project Schedule, task list, and Go-Live Checklist.
- Assesses team performance and adjusts as necessary.
- Consulted on in Scope 3rd party providers to align activities with ongoing Project tasks.

5.1.4 Tyler Implementation Consultant

- Completes tasks as assigned by the Tyler project manager(s).
- Documents activities for services performed by Tyler.
- Guides the Smyrna through software validation process following configuration.
- Assists during Go-Live process and provides support until the Smyrna transitions to Client Services.
- Facilitates training sessions and discussions with the Smyrna and Tyler staff to ensure adequate discussion of the appropriate agenda topics during the allotted time.

5.1.5 Tyler Sales

- Supports Sales to Implementation knowledge transfer during Initiate & Plan.
- Provides historical information, as needed, throughout implementation.
- Participates in pricing activities if additional licensing and/or services are needed.

5.1.6 Tyler Technical Services

- Maintains Tyler infrastructure requirements and design document(s).
- Involved in system infrastructure planning/review(s).
- Provides first installation of licensed software with initial database on servers.
- Supports and assists the project team with technical/environmental issues/needs.
- Deploys Tyler products.

5.2 Smyrna Roles & Responsibilities

Smyrna resources will be assigned prior to the start of each Phase of the Project. One person may be assigned to multiple Project roles.

5.2.1 Smyrna Executive Sponsor

The Smyrna executive sponsor provides support to the Project by providing strategic direction and communicating key issues about the Project and its overall importance to the organization. When called upon, the executive sponsor also acts as the final authority on all escalated Project issues. The executive sponsor engages in the Project, as needed, to provide necessary support, oversight, guidance, and escalation, but does not participate in day-to-day Project activities. The executive sponsor empowers the Smyrna

steering committee, project manager(s), and functional leads to make critical business decisions for the Smyrna.

- Champions the project at the executive level to secure buy-in.
- Authorizes required project resources.
- Actively participates in organizational change communications.

5.2.2 Smyrna Steering Committee

The Smyrna steering committee understands and supports the cultural change necessary for the Project and fosters an appreciation for the Project's value throughout the organization. The steering committee oversees the Smyrna project manager and Project through participation in regular internal meetings. The Smyrna steering committee remains updated on all Project progress, Project decisions, and achievement of Project milestones. The Smyrna steering committee also serves as primary level of issue resolution for the Project.

- Works to resolve all decisions and/or issues not resolved at the project manager level as part of the escalation process.
- Attends all scheduled steering committee meetings.
- Provides support for the project team.
- Assists with communicating key project messages throughout the organization.
- Prioritizes the project within the organization.
- Ensures the project staffed appropriately and that staff have necessary resources.
- Monitors project progress including progress towards agreed upon goals and objectives.
- Has the authority to approve or deny changes impacting the following areas:
    - Cost
    - Scope
    - Schedule
    - Project Goals
    - Smyrna Policies
    - Needs of other client projects

5.2.3 Smyrna Project Manager

The Smyrna shall assign project manager(s) prior to the start of this project with overall responsibility and authority to make decisions related to Project Scope, scheduling, and task assignment. The Smyrna Project Manager should communicate decisions and commitments to the Tyler project manager(s) in a timely and efficient manner. When the Smyrna project manager does not have the knowledge or authority to make decisions, he or she engages the necessary resources to participate in discussions and make decisions in a timely fashion to avoid Project delays. The Smyrna project manager is responsible for reporting to the Smyrna steering committee and determining appropriate escalation points.

5.2.3.1 Contract Management

- Validates contract compliance throughout the project.
- Ensures that invoicing and Deliverables meet contract requirements.
- Acts as primary point of contact for all contract and invoicing questions. Collaborates on and approves Change Requests, if needed, to ensure proper scope and budgetary compliance.

5.2.3.2 Planning

- Reviews and accepts project planning documents.
- Defines project tasks and resource requirements for the Smyrna project team.
- Collaborates in the development and approval of the project schedule.

- Collaborates with Tyler project manager(s) to plan and schedule project timelines to achieve on-time implementation.

5.2.3.3 Implementation Management

- Tightly manages project budget and scope.
- Collaborates with Tyler project manager(s) to establish a process and approval matrix to ensure that scope changes and budget (planned versus actual) are transparent and handled effectively and efficiently.
- Collaborates with Tyler project manager to establish and manage a schedule and resource plan that properly supports the project schedule as a whole and is also in balance with scope and budget.
- Collaborates with Tyler project manager(s) to establish risk and issue tracking and reporting process between the Smyrna and Tyler and takes all necessary steps to proactively mitigate these items or communicate with transparency to Tyler any items that may impact the outcomes of the project.
- Collaborates with Tyler project manager(s) to establish key business drivers and success indicators that will help to govern project activities and key decisions to ensure a quality outcome of the project.
- Routinely communicates with both the Smyrna staff and Tyler, aiding in the understanding of goals, objectives, current status, and health of the project by all team members.
- Manages the requirements gathering process and ensure timely and quality business requirements are being provided to Tyler.

5.2.3.4 Resource Management

- Acts as liaison between project team and stakeholders.
- Identifies and coordinates all Smyrna resources across all modules, phases, and activities including data conversions, forms design, hardware and software installation, reports building, and satisfying invoices.
- Provides direction and support to project team.
- Builds partnerships among the various stakeholders, negotiating authority to move the project forward.
- Manages the appropriate assignment and timely completion of tasks as defined.
- Assesses team performance and takes corrective action, if needed.
- Provides guidance to Smyrna technical teams to ensure appropriate response and collaboration with Tyler Technical Support Teams to ensure timely response and appropriate resolution.
- Owns the relationship with in-Scope 3rd party providers and aligns activities with ongoing project tasks.
- Ensures that users have appropriate access to Tyler project toolsets as required.
- Conducts training on proper use of toolsets.
- Validates completion of required assignments using toolsets.

5.2.4 Smyrna Functional Leads

- Makes business process change decisions under time sensitive conditions.
- Communicates existing business processes and procedures to Tyler consultants.
- Assists in identifying business process changes that may require escalation.
- Contributes business process expertise for Current & Future State Analysis.
- Identifies and includes additional subject matter experts to participate in Current & Future State Analysis.
- Validates that necessary skills have been retained by end users.
- Provides End Users with dedicated time to complete required homework tasks.
- Acts as an ambassador/champion of change for the new process and provide business process change support.

- Identifies and communicates any additional training needs or scheduling conflicts to the Smyrna project manager.
- Actively participates in all aspects of the implementation, including, but not limited to, the following key activities:
    - Task completion
    - Stakeholder Meeting
    - Project Management Plan development
    - Schedule development
    - Maintenance and monitoring of risk register
    - Escalation of issues
    - Communication with Tyler project team
    - Coordination of Smyrna resources
    - Attendance at scheduled sessions
    - Change management activities
    - Modification specification, demonstrations, testing and approval assistance
    - Data analysis assistance
    - Decentralized end user training
    - Process testing
    - Solution Validation

5.2.5 Smyrna Power Users

- Participate in project activities as required by the project team and project manager(s).
- Provide subject matter expertise on the Smyrna business processes and requirements.
- Act as subject matter experts and attend Current & Future State Analysis sessions as needed.
- Attend all scheduled training sessions.
- Participate in all required post-training processes as needed throughout project.
- Test all application configuration to ensure it satisfies business process requirements.
- Become application experts.
- Participate in Solution Validation.
- Adopt and support changed procedures.
- Complete all deliverables by the due dates defined in the project schedule.
- Demonstrate competency with Tyler products processing prior to Go-live.
- Provide knowledge transfer to the Smyrna staff during and after implementation.

5.2.6 Smyrna End Users

- Attend all scheduled training sessions.
- Become proficient in application functions related to job duties.
- Adopt and utilize changed procedures.
- Complete all deliverables by the due dates defined in the project schedule.
- Utilize software to perform job functions at and beyond Go-live.

5.2.7 Smyrna Technical Lead

- Coordinates updates and releases with Tyler as needed.
- Coordinates the copying of source databases to training/testing databases as needed for training days.
- Coordinates and adds new users, printers and other peripherals as needed.
- Validates that all users understand log-on process and have necessary permission for all training sessions.
- Coordinates interface development for Smyrna third party interfaces.

- Develops or assists in creating reports as needed.
- Ensures on-site system meets specifications provided by Tyler.
- Assists with software installation as needed.

5.2.7.1 Smyrna Upgrade Coordination

- Becomes familiar with the software upgrade process and required steps.
- Becomes familiar with Tyler's releases and updates.
- Utilizes Tyler resources to stay abreast of the latest Tyler releases and updates, as well as the latest helpful tools to manage the Smyrna's software upgrade process.
- Assists with the software upgrade process during implementation.
- Manages software upgrade activities post-implementation.
- Manages software upgrade plan activities.
- Coordinates software upgrade plan activities with Smyrna and Tyler resources.
- Communicates changes affecting users and department stakeholders.
- Obtains department stakeholder acceptance to upgrade production environment.

5.2.8 Smyrna Change Management Lead

- Validates that users receive timely and thorough communication regarding process changes.
- Provides coaching to supervisors to prepare them to support users through the project changes.
- Identifies the impact areas resulting from project activities and develops a plan to address them proactively.
- Identifies areas of resistance and develops a plan to reinforce the change.
- Monitors post-production performance and new process adherence.

Part 3: Project Plan

6. Project Stages

Work Breakdown Structure

The Work Breakdown Structure (WBS) is a hierarchical representation of a Project or Phase broken down into smaller, more manageable components. The top-level components are called "Stages" and the second level components are called "Work Packages". The work packages, shown below each stage, contain the high-level work to be done. The detailed Project Schedule, developed during Project/Phase Planning and finalized during subsequent stages, lists the tasks to be completed within each work package. Each stage ends with a "Control Point", confirming the work performed during that stage of the Project has been accepted by the Smyrna.

Work Breakdown Structure (WBS)

1. Initiate & Plan	2. Assess & Define	3. Prepare Solution	4. Production Readiness	5. Production	6. Close
1.1 Initial Coordination	2.1 Solution Orientation	3.1 Initial System Deployment	4.1 Solution Validation	5.1 Go Live	6.1 Phase Close Out
1.2 Project/Phase Planning	2.2 Current & Future State Analysis	3.2 Configuration	4.2 Go Live Readiness	5.2 Transition to Client Services	6.2 Project Close Out
1.3 Infrastructure Planning	2.3 Modification Analysis	3.3 Process Refinement	4.3 End User Training	5.3 Post Go Live Activities	
1.4 Stakeholder Meeting					
1.5 GIS Planning*	2.5 Data Assessment	3.5 Data Delivery			
		3.6 Modifications*			

Items noted with an asterisk in the graphic above relate to specific products and services. If those products and services are not included in the scope of the contract, these specific work packages will be noted as "This work package is not applicable" in Section 6 of the Statement of Work.

6.1 Initiate and Plan

The Initiate and Plan stage involves Project initiation, infrastructure, and planning. This stage creates a foundation for the Project by identifying and establishing sequence and timing for each Phase as well as verifying scope for the Project. This stage will be conducted at the onset of the Project, with a few unique items being repeated for the additional Phases as needed.

6.1.1 Initial Coordination

Prior to Project commencement, Tyler management assigns project manager(s). Additional Project resources will be assigned later in the Project as a Project schedule is developed. Tyler provides the Smyrna with initial Project documents used to gather names of key personnel, their functional role as it pertains to the Project, as well as any blackout dates to consider for future planning. the Smyrna gathers the information requested by the provided deadline ensuring preliminary planning and scheduling can be conducted moving the Project forward in a timely fashion. Internally, the Tyler Project Manager(s) coordinate with sales to ensure transfer of vital information from the sales process prior to scheduling a Project Planning Meeting with the Smyrna's team. During this step, Tyler will work with the Smyrna to establish the date(s) for the Project and Phase Planning session.

Objectives:

- Formally launch the project.
- Establish project governance.
- Define and communicate governance for Tyler.
- Identify Smyrna project team.

STAGE 1	Initial Coordination																
	Tyler								Smyrna								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Tyler project team is assigned	A	R	C	I	I	I	I		I		I						
Smyrna project team is assigned									A	I	R	I	I	I			
Provide initial project documents to the Smyrna		A	R	C			C		I		I						
Gather preliminary information requested			I						A		R	C		C		C	C
Sales to implementation knowledge transfer		A	R	I	I	I	I				I						
Create Project Portal to store project artifacts and facilitate communication		A	R								I						

Inputs	Contract documents
	Statement of Work

Outputs/Deliverables	Working initial project documents
	Project portal

Work package assumptions:

- Project activities begin after the agreement has been fully executed.

6.1.2 Project/Phase Planning

Project and Phase planning provides an opportunity to review the contract, software, data conversions and services purchased, identify applications to implement in each Phase (if applicable), and discuss implementation timeframes.

During this work package Tyler will work with the Smyrna to coordinate and plan a formal Project planning meeting(s). This meeting signifies the start of the Project and should be attended by all Smyrna Project team members and the Tyler Project Manager. The meeting provides an opportunity for Tyler to introduce its implementation methodology, terminology, and Project management best practices to the Smyrna's Project Team. This will also present an opportunity for project managers and Project sponsors to begin to discuss Project communication, metrics, status reporting and tools to be used to measure Project progress and manage change.

Tyler will work with the Smyrna Project Team to prepare and deliver the Project Management Plan as an output of the planning meeting. This plan will continue to evolve and grow as the Project progresses and will describe how the project will be executed, monitored, and controlled.

During project planning, Tyler will introduce the tools that will be used throughout the implementation. Tyler will familiarize the Smyrna with these tools during project planning and make them available for review and maintenance as applicable throughout the project. Some examples are Solution validation plan, issue log, and go-live checklist.

STAGE 1	Project/Phase Planning																
	Tyler								Smyrna								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power)	Department Heads	End Users	Technical Leads
Schedule and conduct planning session(s)		A	R						I		C	C	I				
Develop Project Management Plan		A	R						I		C	C	I				

Develop initial project schedule		A	R	I	I	I	I		I	I	C	C	I	I	C		I

Inputs	Contract documents
	Statement of Work
	Guide to Starting Your Project

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Project Management Plan	Delivery of document
	Project Operational Plan	Delivery of document
	Initial Project Schedule	Smyrna provides acceptance of schedule based on resource availability, project budget, and goals.

Work package assumptions:

- Smyrna has reviewed and completed the Guide to Starting Your Project document.

6.1.3 Infrastructure Planning

Procuring required hardware and setting it up properly is a critical part of a successful implementation. Tyler will be responsible for building the environments for a hosted/SaaS deployment, unless otherwise identified in the Agreement. . The Smyrna is responsible for the installation, setup and maintenance of all peripheral devices.

Objectives:

- Ensure the Smyrna's infrastructure meets Tyler's application requirements.
- Ensure the Smyrna's infrastructure is scheduled to be in place and available for use on time.

STAGE 1	Infrastructure Planning																
	Tyler								Smyrna								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts	Department Heads	End Users	Technical Leads
Initial Infrastructure Communication		A	R		C		C				C						C
Schedule Environment Availability		A	R				C				I						

Inputs	Initial Infrastructure Requirements

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Completed Infrastructure Requirements	Delivery of Requirements

6.1.4 Stakeholder Meeting

Communication of the Project planning outcomes to the Smyrna Project team, executives and other key stakeholders is vital to Project success. The Stakeholder meeting is a strategic activity to inform, engage, gain commitment, and instill confidence in the Smyrna team. During the meeting, the goals and objectives of the Project will be reviewed along with detail on Project scope, implementation methodology, roles and responsibilities, Project timeline and schedule, and keys to Project success.

Objectives:

- Formally present and communicate the project activities and timeline.
- Communicate project expectations.

STAGE 1	Stakeholder Meeting																	
	Tyler								Smyrna									
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Create Stakeholder Meeting Presentation	I	A	R	I	I				I	I	C		I				
Review Stakeholder Meeting Presentation		I	C						A		R		C				
Perform Stakeholder Meeting Presentation	I	A	R	I	I				I	I	C	I	I	I	I	I	I

Inputs	Agreement
	SOW
	Project Management Plan

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Stakeholder Meeting Presentation	

Work package assumptions:

- None

6.1.5 This work package is not applicable.

6.1.6 Control Point 1: Initiate & Plan Stage Acceptance

Acceptance criteria for this stage includes completion of all criteria listed below.

Note: Advancement to the Assess & Define stage is not dependent upon Tyler's receipt of this stage acceptance.

Initiate & Plan Stage Deliverables:

- Project Management Plan
- Initial Project Schedule

Initiate & Plan stage acceptance criteria:

- All stage deliverables accepted based on acceptance criteria previously defined
- Project governance defined
- Project portal made available to the Smyrna
- Stakeholder meeting complete

6.2 Assess & Define

The Assess & Define stage will provide an opportunity to gather information related to current Smyrna business processes. This information will be used to identify and define business processes utilized with Tyler software. The Smyrna collaborates with Tyler providing complete and accurate information to Tyler staff and assisting in analysis, understanding current workflows and business processes.

6.2.1 Solution Orientation

The Solution Orientation provides the Project stakeholders a high-level understanding of the solution functionality prior to beginning the current and future state analysis. The primary goal is to establish a foundation for upcoming conversations regarding the design and configuration of the solution.

Tyler utilizes a variety of tools for the Solution Orientation, focusing on Smyrna team knowledge transfer such as: eLearning, documentation, or walkthroughs. The Smyrna team will gain a better understanding of the major processes and focus on data flow, the connection between configuration options and outcome, integration, and terminology that may be unique to Tyler's solution.

Objectives:

- Provide a basic understanding of system functionality.
- Prepare the Smyrna for current and future state analysis.

STAGE 2	Solution Orientation																	
	Tyler								Smyrna									
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Provide pre-requisites			A	R							I	I		I	I		I
Complete pre-requisites											A	R		C			C

Conduct orientation			A	R							I	I		I	I		I

Inputs	Solution orientation materials
	Training Plan

6.2.2 Current & Future State Analysis

The Current & Future State Analysis provides the Project stakeholders and Tyler an understanding of process changes that will be achieved with the new system.

The Smyrna and Tyler will evaluate current state processes, options within the new software, pros and cons of each based on current or desired state and make decisions about the future state configuration and processing. This may occur before or within the same timeframe as the configuration work package. The options within the new software will be limited to the scope of this implementation and will make use of standard Tyler functionality.

The Smyrna will adopt the existing Tyler solution wherever possible to avoid project schedule and quality risk from over customization of Tyler products. It is the Smyrna's responsibility to verify that in-scope requirements are being met throughout the implementation if functional requirements are defined as part of the contract. The following guidelines will be followed when evaluating if a modification to the product is required:

- A reasonable business process change is available.
- Functionality exists which satisfies the requirement.
- Configuration of the application satisfies the requirement.
- An in-scope modification satisfies the requirement.

Requirements that are not met will follow the agreed upon change control process and can have impacts on the project schedule, scope, budget, and resource availability.

STAGE 2	Current & Future State Analysis																
	Tyler								Smyrna								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Current State process review			A	R	I	I	I				C	C	C	C			C
Discuss future-state options			A	R	C	C	C				C	C	C	C			C
Make future-state decisions (non-COTS)			C	C	C	C	C				A	R	I	C			C
Document anticipated configuration options			A	R	C	C	C				I	I	I	I			I

required to support future state	

Inputs	Smyrna current state documentation
	Solution Orientation completion

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Documentation that describes future-state decisions and configuration options to support future-state decisions.	Delivery of document

Work package assumptions:

- Smyrna attendees possess sufficient knowledge and authority to make future state decisions.
- The Smyrna is responsible for any documentation of current state business processes.
- The Smyrna can effectively communicate current state processes.

6.2.3 This work package is not applicable.

6.2.4 This work package is not applicable.

6.2.5 Control Point 2: Assess & Define Stage Acceptance

Acceptance criteria for this Stage includes completion of all criteria listed below.

Note: Advancement to the Prepare Solution Stage is dependent upon Tyler's receipt of the Stage Acceptance.

Assess & Define Stage Deliverables:

- Documentation of future state decisions and configuration options to support future state decisions.
- Modification specification document.
- Assess & Define Stage Acceptance Criteria:
- All stage deliverables accepted based on criteria previously defined.
- Solution Orientation is delivered.

6.3 Prepare Solution

During the Prepare Solution stage, information gathered during the Initiate & Plan and Assess & Define stages will be used to install and configure the Tyler software solution. Software configuration will be validated by the Smyrna against future state decisions defined in previous stages and processes refined as needed to ensure business requirements are met.

6.3.1 Initial System Deployment

The timely availability of the Tyler Solution is important to a successful Project implementation. The success and timeliness of subsequent work packages are contingent upon the initial system deployment of Tyler Licensed Software on an approved network and infrastructure. Delays in executing this work package can affect the project schedule.

Objectives:

- All licensed software is installed and operational.
- The Smyrna can access the software.

STAGE 3	Initial System Deployment (Hosted/SaaS)*															
	Tyler								Smyrna							
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Prepare hosted environment			A				R				I						C
Install Licensed Software for Included Environments			A				R				I						C
Install Licensed Software on Smyrna Devices (if applicable)			I				C				A						R
Tyler System Administration Training (if applicable)			A				R				I						C

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Licensed Software is Installed on the Server(s)	Software is accessible
	Licensed Software is Installed on Smyrna Devices (if applicable)	Software is accessible
	Installation Checklist/System Document	

Work package assumptions:

- The most current available version of the Tyler Licensed Software will be installed.
- The Smyrna will provide network access for Tyler modules, printers, and Internet access to all applicable Smyrna and Tyler Project staff.

6.3.2 Configuration

The purpose of Configuration is to prepare the software product for validation.

Tyler staff collaborates with the Smyrna to complete software configuration based on the outputs of the future state analysis performed during the Assess and Define Stage. The Smyrna collaborates with Tyler staff iteratively to validate software configuration.

Objectives:

- Software is ready for validation.
- Educate the Smyrna Power User how to configure and maintain software.
- Prepare standard interfaces for process validation (if applicable).

STAGE 3	Configuration															
	Tyler								Smyrna							
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Conduct configuration training			A	R							I	C		C			
Complete Tyler configuration tasks (where applicable)			A	R							I	I		I			
Complete Smyrna configuration tasks (where applicable)			I	C							A	R		C			
Standard interfaces configuration and training (if applicable)			A	R			C				I	C		C			C
Updates to Solution Validation testing plan			C	C							A	R		C			C

Inputs	Documentation that describes future state decisions and configuration options to support future state decisions.

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Configured System	

Work package assumptions:

- Tyler provides guidance for configuration options available within the Tyler software. The Smyrna is responsible for making decisions when multiple options are available.

6.3.3 Process Refinement

Tyler will educate the Smyrna users on how to execute processes in the system to prepare them for the validation of the software. The Smyrna collaborates with Tyler staff iteratively to validate software configuration options to support future state.

Objectives:

- Ensure that Smyrna understands future state processes and how to execute the processes in the software.

- Refine each process to meet the business requirements.
- Validate standard interfaces, where applicable.
- Validate forms and reports, where applicable.

STAGE 3	Process Refinement																
	Tyler								Smyrna								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Conduct process training			A	R							I	C	I	C			
Confirm process decisions			I	C						A	R	C	I	C			
Test configuration			I	C							A	R		C			
Refine configuration (Smyrna Responsible)			I	C							A	R		C			
Refine configuration (Tyler Responsible)			A	R							I	I		I			
Validate interface process and results			I	C			C				A	R		C			C
Update Smyrna-specific process documentation (if applicable)			I	C							A	R		C			
Updates to Solution Validation testing plan			C	C							A	R		C			C

Inputs	Initial Configuration
	Documentation that describes future state decisions and configuration options to support future state decisions.
	Solution validation test plan

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Updated solution validation test plan	
	Completed Smyrna-specific process documentation (completed by Smyrna)	

Work package assumptions:

- None

6.3.4 This work package is not applicable.

6.3.5 This work package is not applicable.

6.3.6 Control Point 3: Prepare Solution Stage Acceptance

Acceptance criteria for this Stage includes all criteria listed below in each Work Package.

Note: Advancement to the Production Readiness Stage is dependent upon Tyler's receipt of the Stage Acceptance.

Prepare Solution Stage Deliverables:

- Licensed software is installed.
- Installation checklist/system document.

Prepare Solution Stage Acceptance Criteria:

- All stage deliverables accepted based on criteria previously defined.
- Software is configured.
- Solution validation test plan has been reviewed and updated if needed.

6.4 Production Readiness

Activities in the Production Readiness stage will prepare the Smyrna team for go-live through solution validation, the development of a detailed go-live plan and end user training. A readiness assessment will be conducted with Smyrna to review the status of the project and the organization's readiness for go-live.

6.4.1 Solution Validation

Solution Validation is the end-to-end software testing activity to ensure that Smyrna verifies all aspects of the Project (hardware, configuration, business processes, etc.) are functioning properly, and validates that all features and functions per the contract have been deployed for system use.

Objectives:

- Validate that the solution performs as indicated in the solution validation plan.
- Ensure the Smyrna organization is ready to move forward with go-live and training (if applicable).

STAGE 4	Solution Validation																
	Tyler								Smyrna								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads

Update Solution Validation plan			A	R	C						C	C		C			
Update test scripts (as applicable)			C	C	C						A	R		C			
Perform testing			C	C	C						A	R		C			
Document issues from testing			C	C	C						A	R		C			
Perform required follow-up on issues			A	R	C						C	C		C			

Inputs	Solution Validation plan
	Completed work product from prior stages (configuration, business process, etc.)

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Solution Validation Report	Smyrna updates report with testing results

Work package assumptions:

- Designated testing environment has been established.
- Testing includes current phase activities or deliverables only.

6.4.2 Go-Live Readiness

Tyler and Smyrna will ensure that all requirements defined in Project planning have been completed and the Go-Live event can occur, as planned. A go-live readiness assessment will be completed identifying risks or actions items to be addressed to ensure Smyrna has considered its ability to successfully Go-Live. Issues and concerns will be discussed, and mitigation options documented. Tyler and the Smyrna will jointly agree to move forward with transition to production. Expectations for final preparation and critical dates for the weeks leading into and during the Go-Live week will be planned in detail and communicated to Project teams.

Objectives:

- Action plan for go-live established.
- Assess go-live readiness.
- Stakeholders informed of go-live activities.

STAGE 4	Go-Live Readiness																
	Tyler								Smyrna								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Perform Readiness Assessment	I	A	R	C	C	I	C	I	I	I	I		I				I

Conduct Go-Live planning session		A	R	C							C	C	C	C	C		C
Order peripheral hardware (if applicable)			I							A	R						C
Confirm procedures for Go-Live issue reporting & resolution		A	R	I	I	I	I				C	C	I	I	I	I	I
Develop Go-Live checklist		A	R	C	C						C	C	I	C			C
Final system infrastructure review (where applicable)			A				R				C						C

Inputs	Future state decisions
	Go-live checklist

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Updated go-live checklist	Updated Action plan and Checklist for go-live delivered to Smyrna

Work package assumptions:

- None

6.4.3 End User Training

End User Training is a critical part of any successful software implementation. Using a training plan previously reviewed and approved, the Project team will organize and initiate the training activities.

Tyler Led: Tyler provides training for all applicable users. One or multiple occurrences of each scheduled training or implementation topic will be covered.

Tyler will provide standard application documentation for the general use of the software. It is not Tyler's responsibility to develop Smyrna specific business process documentation. Smyrna-led training labs using Smyrna specific business process documentation if created by the Smyrna can be added to the regular training curriculum, enhancing the training experiences of the end users.

Objectives:

- End users are trained on how to use the software prior to go-live.
- The Smyrna is prepared for on-going training and support of the application.

STAGE 4	End User Training	
	Tyler	Smyrna

RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Update training plan		A	R	C							C		I		C		
End User training (Tyler-led)		A	R	C							C	C	I	C	C	C	
Train-the-trainer		A	R	C							C	C	I	C			
End User training (Smyrna-led)			C	C							A	R	I	C	C	C	

Inputs	Training Plan
	List of End Users and their Roles / Job Duties
	Configured Tyler System

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	End User Training	Smyrna signoff that training was delivered

Work package assumptions:

- The Smyrna project team will work with Tyler to jointly develop a training curriculum that identifies the size, makeup, and subject-area of each of the training classes.
- Tyler will work with the Smyrna as much as possible to provide end-user training in a manner that minimizes the impact to the daily operations of Smyrna departments.
- Smyrna will be responsible for training new users after go-live (exception—previously planned or regular training offerings by Tyler).

6.4.4 Control Point 4: Production Readiness Stage Acceptance

Acceptance criteria for this stage includes all criteria listed below. Advancement to the Production stage is dependent upon Tyler's receipt of the stage acceptance.

Production Readiness stage deliverables:

- Solution Validation Report.
- Update go-live action plan and/or checklist.
- End user training.

Production Readiness stage acceptance criteria:

- All stage deliverables accepted based on criteria previously defined.
- Go-Live planning session conducted.

6.5 Production

Following end user training the production system will be fully enabled and made ready for daily operational use as of the scheduled date. Tyler and Smyrna will follow the comprehensive action plan laid out during Go-

Live Readiness to support go-live activities and minimize risk to the Project during go-live. Following go-live, Tyler will work with Smyrna to verify that implementation work is concluded, post go-live activities are scheduled, and the transition to Client Services is complete for long-term operations and maintenance of the Tyler software.

6.5.1 Go-Live

Following the action plan for Go-Live, defined in the Production Readiness stage, Smyrna and Tyler will complete work assigned to prepare for Go-Live.

Tyler staff collaborates with Smyrna during Go-Live activities. The Smyrna transitions to Tyler software for day-to day business processing.

Some training topics are better addressed following Go-Live when additional data is available in the system or based on timing of applicable business processes and will be scheduled following Go-Live per the Project Schedule.

Objectives:

- Execute day to day processing in Tyler software.
- Smyrna data available in Production environment.

STAGE 5	Go-Live																
	Tyler								Smyrna								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Provide final source data extract, if applicable			C		C						A						R
Final source data pushed into production environment, if applicable			A	C	R						I	C		C			C
Proof final converted data, if applicable			C	C	C						A	R		C			
Complete Go-Live activities as defined in the Go-Live action plan			C	C	C					A	R	C	I	C			
Provide Go-Live assistance			A	R	C	C		I			C	C	I	C		I	C

Inputs	Comprehensive Action Plan for Go-Live
	Final source data (if applicable)

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Data is available in production environment	Smyrna confirms data is available in production environment

Work package assumptions:

- Smyrna will complete activities documented in the action plan for Go-Live as scheduled.
- External stakeholders will be available to assist in supporting the interfaces associated with the Go-Live live process.
- The Smyrna business processes required for Go-Live are fully documented and tested.
- The Smyrna Project team and subject matter experts are the primary point of contact for the end users when reporting issues during Go-Live.
- The Smyrna Project Team and Power User's provide business process context to the end users during Go-Live.

6.5.2 Transition to Client Services

This work package signals the conclusion of implementation activities for the Phase or Project with the exception of agreed-upon post Go-Live activities. The Tyler project manager(s) schedules a formal transition of the Smyrna onto the Tyler Client Services team, who provides the Smyrna with assistance following Go-Live, officially transitioning the Smyrna to operations and maintenance.

Objectives:

- Ensure no critical issues remain for the project teams to resolve.
- Confirm proper knowledge transfer to the Smyrna teams for key processes and subject areas.

STAGE 5	Transition to Client Services																
	Tyler								Smyrna								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Transfer Smyrna to Client Services and review issue reporting and resolution processes	I	I	A	I	I			R	I	I	C	C		C			
Review long term maintenance and continuous improvement			A					R			C	C		C			

Inputs	Open item/issues List

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Client Services Support Document	

Work package assumptions:

- No material project issues remain without assignment and plan.

6.5.3 Post Go-Live Activities

Some implementation activities are provided post-production due to the timing of business processes, the requirement of actual production data to complete the activities, or the requirement of the system being used in a live production state.

Objectives:

- Schedule activities that are planned for after Go-Live.
- Ensure issues have been resolved or are planned for resolution before phase or project close.

STAGE 5	Post Go-Live Activities																
	Tyler								Smyrna								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Schedule contracted activities that are planned for delivery after go-live		A	R	C	C	C	C	I			C	C	I	C			C
Determine resolution plan in preparation for phase or project close out		A	R	C	C	C		I			C	C	I	C			

Inputs	List of post Go-Live activities

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Updated issues log	

Work package assumptions:

- System is being used in a live production state.

6.5.4 Control Point 5: Production Stage Acceptance

Acceptance criteria for this Stage includes completion of all criteria listed below:

- Advancement to the Close stage is not dependent upon Tyler's receipt of this Stage Acceptance.
- Converted data is available in production environment.

Production Stage Acceptance Criteria:

- All stage deliverables accepted based on criteria previously defined.
- Go-Live activities defined in the Go-Live action plan completed.
- Client services support document is provided.

6.6 Close

The Close stage signifies full implementation of all products purchased and encompassed in the Phase or Project. Smyrna transitions to the next cycle of their relationship with Tyler (next Phase of implementation or long-term relationship with Tyler Client Services).

6.6.1 Phase Closeout

This work package represents Phase completion and signals the conclusion of implementation activities for the Phase. The Tyler Client Services team will assume ongoing support of Smyrna for systems implemented in the Phase.

Objectives:

- Agreement from Tyler and the Smyrna team that activities within this phase are complete.

STAGE 6	Phase Close Out																
	Tyler								Smyrna								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Reconcile project budget and status of contract Deliverables	I	A	R						I	I	C						
Hold post phase review meeting		A	R	C	C	C	C				C	C	C	C			C
Release phase-dependent Tyler project resources	A	R	I								I						

Participants	Tyler	Smyrna
	Project Leadership	Project Manager
	Project Manager	Project Sponsor(s)
	Implementation Consultants	Functional Leads, Power Users, Technical Leads
	Technical Consultants (Conversion, Deployment, Development)	

	Client Services	

Inputs	Contract
	Statement of Work
	Project artifacts

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Final action plan (for outstanding items)	
	Reconciliation Report	
	Post Phase Review	

Work package assumptions:

- Tyler deliverables for the phase have been completed.

6.6.2 Project Closeout

Completion of this work package signifies final acceptance and formal closing of the Project.

At this time Smyrna may choose to begin working with Client Services to look at continuous improvement Projects, building on the completed solution.

Objectives:

- Confirm no critical issues remain for the project teams to resolve.
- Determine proper knowledge transfer to the Smyrna team for key processes and subject areas has occurred.
- Verify all deliverables included in the Agreement are delivered.

STAGE 6	Project Close Out																
	Tyler								Smyrna								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Conduct post project review		A	R	C	C	C	C				C	C	C	C			C
Deliver post project report to Smyrna and Tyler leadership	I	A	R						I	I	C						
Release Tyler project resources	A	R	I								I						

Inputs	Contract
	Statement of Work

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Post Project Report	Smyrna acceptance; Completed report indicating all project Deliverables and milestones have been completed

Work package assumptions:

- All project implementation activities have been completed and approved.
- No critical project issues remain that have not been documented and assigned.
- Final project budget has been reconciled and invoiced.
- All Tyler deliverables have been completed.

6.6.3 Control Point 6: Close Stage Acceptance

Acceptance criteria for this Stage includes completion of all criteria listed below.

Close Stage Deliverables:

- Post Project Report.

Close Stage Acceptance Criteria:

- Completed report indicating all Project deliverables and milestones have been completed.

7. General Assumptions

Tyler and Smyrna will use this SOW as a guide for managing the implementation of the Tyler Project as provided and described in the Agreement. There are a few assumptions which, when acknowledged and adhered to, will support a successful implementation. Assumptions related to specific work packages are documented throughout the SOW. Included here are general assumptions which should be considered throughout the overall implementation process.

7.1 Project

- Project activities will begin after the Agreement has been fully executed.
- The Smyrna Project Team will complete their necessary assignments in a mutually agreed upon timeframe to meet the scheduled go-live date, as outlined in the Project Schedule.
- Sessions will be scheduled and conducted at a mutually agreeable time.
- Additional services, software modules and modifications not described in the SOW or Agreement will be considered a change to this Project and will require a Change Request Form as previously referenced in the definition of the Change Control Process.
- Tyler will provide a written agenda and notice of any prerequisites to the Smyrna project manager(s) ten (10) business days or as otherwise mutually agreed upon time frame prior to any scheduled on-site or remote sessions, as applicable.
- Tyler will provide guidance for configuration and processing options available within the Tyler software. If multiple options are presented by Tyler, Smyrna is responsible for making decisions based on the options available.
- Implementation of new software may require changes to existing processes, both business and technical, requiring Smyrna to make process changes.
- Smyrna is responsible for defining, documenting, and implementing their policies that result from any business process changes.

7.2 Organizational Change Management

Unless otherwise contracted by Tyler, Smyrna is responsible for managing Organizational Change. Impacted Smyrna resources will need consistent coaching and reassurance from their leadership team to embrace and accept the changes being imposed by the move to new software. An important part of change is ensuring that impacted Smyrna resources understand the value of the change, and why they are being asked to change.

7.3 Resources and Scheduling

- Smyrna resources will participate in scheduled activities as assigned in the Project Schedule.
- The Smyrna team will complete prerequisites prior to applicable scheduled activities. Failure to do so may affect the schedule.
- Tyler and Smyrna will provide resources to support the efforts to complete the Project as scheduled and within the constraints of the Project budget.
- Abbreviated timelines and overlapped Phases require sufficient resources to complete all required work as scheduled.
- Changes to the Project Schedule, availability of resources or changes in Scope will be requested through a Change Request. Impacts to the triple constraints (scope, budget, and schedule) will be assessed and documented as part of the change control process.
- Smyrna will ensure assigned resources will follow the change control process and possess the required business knowledge to complete their assigned tasks successfully. Should there be a change in resources, the replacement resource should have a comparable level of availability, change control process buy-in, and knowledge.
- Smyrna makes timely Project related decisions to achieve scheduled due dates on tasks and prepare for subsequent training sessions. Failure to do so may affect the schedule, as each analysis and implementation session is dependent on the decisions made in prior sessions.
- Smyrna will respond to information requests in a comprehensive and timely manner, in accordance with the Project Schedule.
- Smyrna will provide adequate meeting space or facilities, including appropriate system connectivity, to the project teams including Tyler team members.
- For on-site visits, Tyler will identify a travel schedule that balances the needs of the project and the employee.

7.4 This work package is not applicable.

7.5 Facilities

- Smyrna will provide dedicated space for Tyler staff to work with Smyrna resources for both on-site and remote sessions. If Phases overlap, Smyrna will provide multiple training facilities to allow for independent sessions scheduling without conflict.
- Smyrna will provide staff with a location to practice what they have learned without distraction.

8. Glossary

Word or Term	Definition
Acceptance	Confirming that the output or deliverable is suitable and conforms to the agreed upon criteria.
Accountable	The one who ultimately ensures a task or deliverable is completed; the one who ensures the prerequisites of the task are met and who delegates the work to those responsible. [Also see RACI]
Application	A computer program designed to perform a group of coordinated functions, tasks, or activities for the benefit of the user.
Application Programming Interface (API)	A defined set of tools/methods to pass data to and received data from Tyler software products
Agreement	This executed legal contract that defines the products and services to be implemented or performed.
Business Process	The practices, policy, procedure, guidelines, or functionality that the client uses to complete a specific job function.
Business Requirements Document	A specification document used to describe Client requirements for contracted software modifications.
Change Request	A form used as part of the Change Control process whereby changes in the scope of work, timeline, resources, and/or budget are documented and agreed upon by participating parties.
Change Management	Guides how we prepare, equip and support individuals to successfully adopt change in order to drive organizational success & outcomes
Code Mapping [where applicable]	An activity that occurs during the data conversion process whereby users equate data (field level) values from the old system to the values available in the new system. These may be one to one or many to one. Example: Old System [Field = eye color] [values = BL, Blu, Blue] maps to New Tyler System [Field = Eye Color] [value = Blue].
Consulted	Those whose opinions are sought, typically subject matter experts, and with whom there is two-way communication. [Also see RACI]
Control Point	This activity occurs at the end of each stage and serves as a formal and intentional opportunity to review stage deliverables and required acceptance criteria for the stage have been met.
Data Mapping [where applicable]	The activity determining and documenting where data from the legacy system will be placed in the new system; this typically involves prior data analysis to understand how the data is currently used in the legacy system and how it will be used in the new system.
Deliverable	A verifiable document or service produced as part of the Project, as defined in the work packages.

Go-Live	The point in time when the Client is using the Tyler software to conduct daily operations in Production.
Informed	Those who are kept up-to-date on progress, often only on completion of the task or deliverable, and with whom there is just one-way communication. [Also see RACI]
Infrastructure	The composite hardware, network resources and services required for the existence, operation, and management of the Tyler software.
Interface	A connection to and potential exchange of data with an external system or application. Interfaces may be one way, with data leaving the Tyler system to another system or data entering Tyler from another system, or they may be bi-directional with data both leaving and entering Tyler and another system.
Integration	A standard exchange or sharing of common data within the Tyler system or between Tyler applications
Legacy System	The software from which a client is converting.
Modification	Custom enhancement of Tyler's existing software to provide features or functions to meet individual client requirements documented within the scope of the Agreement.
On-site	Indicates the work location is at one or more of the client's physical office or work environments.
Organizational Change	The process of changing an organization's strategies, processes, procedures, technologies, and culture, as well as the effect of such changes on the organization.
Output	A product, result or service generated by a process.
Peripheral devices	An auxiliary device that connects to and works with the computer in some way. Some examples: scanner, digital camera, printer.
Phase	A portion of the Project in which specific set of related applications are typically implemented. Phases each have an independent start, Go-Live and closure dates but use the same Implementation Plans as other Phases of the Project. Phases may overlap or be sequential and may have different Tyler resources assigned.
Project	The delivery of the software and services per the agreement and the Statement of Work. A Project may be broken down into multiple Phases.
RACI	A matrix describing the level of participation by various roles in completing tasks or Deliverables for a Project or process. Individuals or groups are assigned one and only

	one of the following roles for a given task: Responsible (R), Accountable (A), Consulted (C), or Informed (I).
Remote	Indicates the work location is at one or more of Tyler's physical offices or work environments.
Responsible	Those who ensure a task is completed, either by themselves or delegating to another resource. [Also see RACI]
Scope	Products and services that are included in the Agreement.
Solution	The implementation of the contracted software product(s) resulting in the connected system allowing users to meet Project goals and gain anticipated efficiencies.
Stage	The top-level components of the WBS. Each Stage is repeated for individual Phases of the Project.
Standard	Software functionality that is included in the base software (off-the-shelf) package; is not customized or modified.
Statement of Work (SOW)	Document which will provide supporting detail to the Agreement defining Project-specific activities, services, and Deliverables.
System	The collective group of software and hardware that is used by the organization to conduct business.
Test Scripts	The steps or sequence of steps that will be used to validate or confirm a piece of functionality, configuration, enhancement, or Use Case Scenario.
Training Plan	Document(s) that indicate how and when users of the system will be trained relevant to their role in the implementation or use of the system.
Validation (or to validate)	The process of testing and approving that a specific Deliverable, process, program, or product is working as expected.
Work Breakdown Structure (WBS)	A hierarchical representation of a Project or Phase broken down into smaller, more manageable components.
Work Package	A group of related tasks within a project.

Part 4: Appendices

9. No Conversion - This work package is not applicable.

10. Additional Appendices

10.1 Client Resources

For the purposes of this project, roles defined in section 5.2 may be consolidated for efficiency purposes. The expectations of responsibilities for Smyrna include the following:

- A project sponsor that champions the project at an executive level to secure buy-in from end-users, authorizes required project resources, and actively participates in organizational change.
    - The project sponsor will also be responsible for resolving issues that are escalated from the project manager level, and be able to make decisions on issue resolution, with authority to make decisions about changes to cost, scope, and schedule.
- A project manager to be a primary point of contact for the Tyler project team. The project manager will work to validate contract compliance throughout the project, assist with project planning, and provide direction and support for Smyrna's Enterprise Supervision project.
    - The project manager will also act as the primary point of contact for any contract and invoicing questions.
- A subject matter expert will be required to assist in making business process change decisions and contribute subject matter expertise to help guide the Tyler implementation team in configuring business processes within the Enterprise Supervision system. The subject matter expert will be expected to provide the Tyler implementation resource with the needs of the department and answer questions regarding configuration preferences within the system.

10.2 Configuration Approach

It is expected that the client team will utilize Enterprise Supervision as a commercial off the shelf (COTS) application and adjust current business practices to align with Enterprise Supervision best practices.

10.3 General

Tyler and Smyrna team will mutually agree to manage the output and deliverables from the sections above in a manner that is most efficient given the size and scope of this implementation project.

11. Project Timeline

11.1 Sample Project Timeline

Implementation is expected to be completed in a reasonable timeframe, as outlined below. This is a single phased implementation. A high-level timeline graphic has been provided. The project managers will establish a detailed project schedule during the Initiation & Planning Stage.

11.1.1 Timeline Graphic

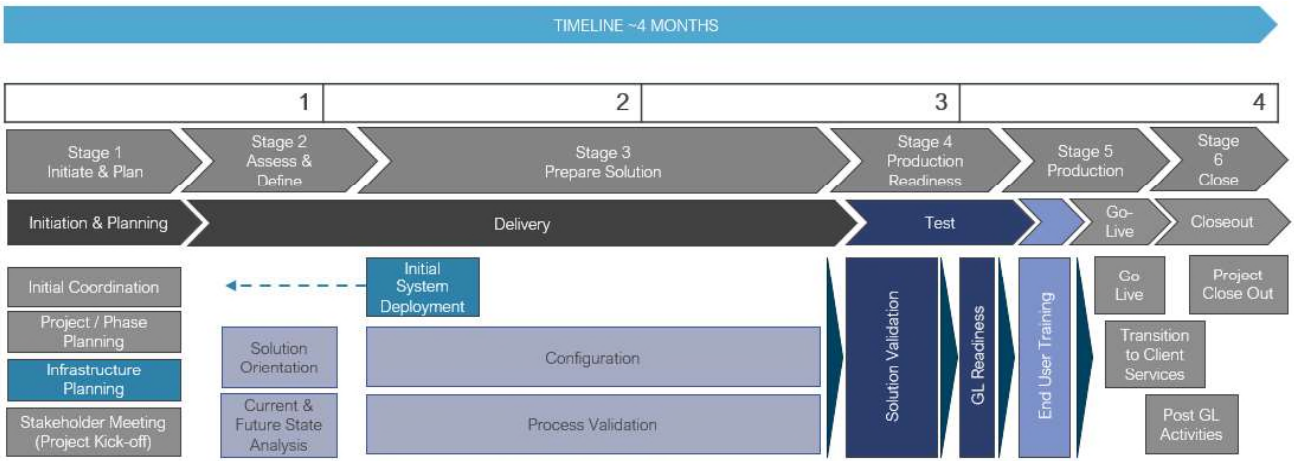


Exhibit E
Smyrna, Tennessee Addendum to Agreement

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STANDARD ADDENDUM TO AGREEMENT

This standard contract addendum is executed on the day of _____, 2025 by and between **THE TOWN OF SMYRNA, TENNESSEE**, a municipal corporation in the State of Tennessee, herein further referenced and identified as ("The Town") and **TYLER TECHNOLOGIES, INC.** herein further referenced and identified as ("Vendor") in order to amend the terms of the Agreement, including all attachments, exhibits, or any actual or virtual documents or writing, including, but not limited to, all any "clickwrap," "clickthrough" or "click and accept" agreement or other Terms of Service scheduled for presentation to the Town Council for approval on the ___ day of _____, 2025.

WITNESSETH

WHEREAS, the parties wish to execute this addendum to the Agreement for the purposes of substituting, clarifying or inserting certain terms of or into their original Agreement executed on the ____ day of _____, 2025; and

WHEREAS, the terms of this addendum to the Agreement shall take precedence over all other terms, conditions or language to the contrary or in conflict with the language contained in the Agreement; however, any term or clause not modified by the provisions herein shall be governed by the original agreement. The parties agree that this addendum shall not be construed to create any ambiguity, it being the expressed intent of the parties that this addendum shall control; and

THEREFORE, In consideration of using Vendor's form Agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Vendor the parties hereto agree to the following:

1. **VENUE:** The parties agree that venue for any legal or other dispute arising under the terms of the original agreement or this addendum to agreement shall lie exclusively in the courts in or serving Rutherford County, Tennessee or the United States District Court, for the Middle District of Tennessee.
2. **USE OF TOWN's LOGO OR NAME:** Vendor shall not use the Town's name or any logo in marketing or publicity materials or for marketing or publicity purposes without the prior written authorization from the Town. Vendor shall not issue, publish, or divulge any materials developed or used in the performance of this Agreement or make any statement to the media relating to this Agreement without the prior written consent of the Town.
3. **UNILATERAL MODIFICATION OF AGREEMENT NOT PERMITTED:** Vendor may make unilateral changes to its Privacy Policy, provided any such changes are subject to the provisions of this Addendum, shall not alter this Addendum, and shall not materially alter the use of the service or reduce the level of protection provided to the Town at the time of the execution of this Agreement. Except as provided in the preceding sentence, notwithstanding anything in the Agreement to the contrary, any change to the Agreement made by Vendor that is not in writing and

that is not properly executed by the signatures of authorized representatives of the parties hereto, including attestation by the Town s Clerk and approved as to form by the Town Attorney are subject to the terms and conditions of this Addendum, and shall not alter this Addendum and shall not materially alter the use of the service or reduce the level of protection provided to the Town at the time of the execution of this Agreement.

4. **PRICE ASSURANCE:** Unless specifically stated in the Agreement, the prices set forth in the Investment Summary, attached as Exhibit A to the Agreement, shall be valid for the full, initial term of the Agreement; provided, however, the SaaS Fees shall increase by 5% year-over-year beginning in Year 2. Upon expiration of the initial term, Town s annual SaaS Fees will be at Vendor s then-current rates. If Vendor specifically states in the Agreement that he, she or it cannot honor the price for the full, initial term of the Agreement, the Agreement is voidable at the sole discretion of the Town. If the Town elects to void the Agreement, at its sole discretion, it shall not be deemed to be a breach of the contract by either party.
5. **CONFIDENTIALITY:** The Town, as a Tennessee Municipal Corporation is subject to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq; therefore, this Addendum, the Agreement and all documents or materials, in any format, including, but not limited to paper, electronic or virtual, that are public records pursuant to law, are not confidential and are subject to disclosure, without regard to any provision contained in the Agreement declaring information confidential. The Town will respond to all proper Open Records Requests in the time allowed by law; provided, however, the Town will promptly disclose such request to Vendor or provide Vendor with prompt notice or the time to obtain a protective order. The Town does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 16 serves to meet such burden and authorization of disclosure.
6. **BOYCOTT OF ISRAEL:** The Vendor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.
7. **NO PRESUMPTION AGAINST DRAFTER:** The parties are both business entities having substantial experience with the subject matter of this addendum, and each has fully participated in the negotiation and drafting of this addendum. Accordingly, this addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed addendum differs in any respect from any previous draft hereof.
8. **SURVIVAL:** This entire addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference and shall remain in full force and effect until the expiration of any applicable statute of limitation.
9. **EFFECTIVE DATE:** This addendum shall be deemed to have the same effective date of the Agreement.

Smyrna, TN SaaS Agreement 081425

Final Audit Report 2025-08-19

Created:	2025-08-19
By:	Kiley Aycock (kiley.aycock@tylertech.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAaYTdrR7DXY-6GbxQHgbl0JHC2vfUyShV

"Smyrna, TN SaaS Agreement 081425" History

Document created by Kiley Aycock (kiley.aycock@tylertech.com)
2025-08-19 - 8:04:16 PM GMT

Document emailed to Sherry Clark (sherry.clark@tylertech.com) for signature
2025-08-19 - 8:04:38 PM GMT

Email viewed by Sherry Clark (sherry.clark@tylertech.com)
2025-08-19 - 8:41:37 PM GMT

Document e-signed by Sherry Clark (sherry.clark@tylertech.com)
Signature Date: 2025-08-19 - 8:44:11 PM GMT - Time Source: server

Agreement completed.
2025-08-19 - 8:44:11 PM GMT

Town of Smyrna
Town Council Meeting

Agenda Summary

Agenda Item Number 12.
Department: Information Systems
Date: August 28, 2025

Subject:
Approval of the terms of, and authorization for the Mayor to execute, a Contract with Placer Labs Inc. to utilize their Analytics Platform Solution.

Fiscal Impact:

Contract Type:
Original Contract

Contract Term (if applicable):
Year 1 - $29,000, Year 2 - $30,450. Total 2-Year Cost $59,450.

Background:
This is a proposed contract with Placer Labs Inc. to utilize their Analytics Platform, providing the data and tools to evaluate mobility, demographic and behavioral data demonstrating the effectiveness of special events in providing positive economic impact while also supporting planning activities related to service improvement, growth and future development opportunities.

Summary:
The Town of Smyrna published an Events Analytics Request for Proposal to evaluate solutions that will provide visitor traffic, demographics and flow behavior data to::

- Gain comprehensive insights into visitor demographics and behavior.
- Understand traffic patterns and movement within key areas of the Town.
- Support economic development initiatives with data-driven strategies.
- Improve urban planning and infrastructure development.
- Analysis of business traffic as it relates to utilities and usage rates
- Enhance public safety and emergency response through real-time data.
- Optimize resource allocation and operational efficiency.

We received 4 responses and Placer.AI was the selected solution based on overall scores and was the lowest cost solution.

Recommended Council Action:
Staff recommends that the Town Council approve this item, providing the Mayor with the authority to sign this contract.

Attachments:
1. RFP for Event Analytics Platform
2. Placer Labs Inc -RFP Response
3. Placer (AI) Labs, Inc. Agreement

LEGAL NOTICE

REQUEST FOR PROPOSALS

The Town of Smyrna will accept proposals for an Event Analytics Platform solution. Bidders shall submit sealed quotations in the format specified in the Request for Proposals no later than 10:00 a.m. CDT, Tuesday, August 5, 2025 at which time bids will be publicly opened and read aloud. No bid may be withdrawn after the scheduled closing time for a period of 90 days. Bidding documents may be obtained at Smyrna Town Hall during regular business hours or www.townofsmyrna.org. Quotations should be mailed or hand delivered to:

Sierra Lowry
Smyrna Town Hall
Sealed RFP Event Analytics Platform
August 5, 2025 @ 10:00 a.m.
315 South Lowry Street
Smyrna, TN 37167

The Town of Smyrna will not discriminate in the purchase of all goods and services on the basis of race, color, religion, sex, national origin, age, disability or any other lawfully protected classification.

Verbal quotations or quotations received after the closing date will not be accepted. The Town of Smyrna reserves the right to reject any and all bids, to waive technicalities or informalities and to accept any bid deemed to be in the best interest of the Town.

Submitted by: Sierra Lowry
Finance Director

To be run: July 15, 2025

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SECTION I - GENERAL INFORMATION

A. The Town of Smyrna desires to accept proposals for an Event Analytics Platform solution.

Smyrna Town Hall
315 South Lowry St.
Smyrna, TN 37167

Questions should be directed to Todd Spearman, Assistant Town Manager phone (615) 459-9742 extension 2378 or e-mail todd.spearman@townofsmyrna.org.

B. The Town of Smyrna reserves the right to reject any and all quotations, to waive technicalities or informalities and to accept any proposal deemed to be in the best interest of the Town. No proposal may be withdrawn after the scheduled closing time for a period of 90 days.

C. The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully address the full intent and meaning of each aspect of the specifications.

D. Section III, IV and Required Paperwork shall be completed and included as an integral part of each bidder's proposal.

E. The Town is a tax-exempt organization.

F. Mail is delivered after 11:00 a.m. Monday through Friday.

G. The Town of Smyrna, in accordance with Title VI of the Civil Rights Act of 1964 and Title 49, Code of Federal Regulations, hereby notifies all Bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, handicap or national origin in consideration for an award.

H. Bid quotations ***must*** be submitted on the Town's quotation page(s). No exceptions.

I. By submission of this bid, each bidder/proposer and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to T.C.A. § 12-12-106 Iran Divestment Act. For reference purposes, the list is currently available online at: State of TN_Debarred_Vendors.pdf

SECTION II – SPECIFICATIONS

1. Introduction

The Town of Smyrna is seeking a robust analytics platform to provide mobility data using location intelligence for geospatial economic analysis. This platform will provide insights into visitor behavior, demographics, traffic patterns, and other location-based data to inform strategic decisions and optimize resources. This Request for Proposal (RFP) invites qualified vendors to submit proposals outlining their solution, capabilities, pricing, and implementation plan.

2. Background

The Town of Smyrna requires detailed analytics regarding visitor traffic, demographics, and behavior patterns to support various departments, estimate economic impact, development, urban planning, public utilities, public safety, park use, and the effectiveness of special events. We aim to leverage location-based data to enhance decision-making, optimize resource allocation, and improve services for residents and visitors.

3. Objectives

The primary objectives of this initiative are to:

- Gain comprehensive insights into visitor demographics and behavior.
- Understand traffic patterns and movement within key areas of the Town.
- Support economic development initiatives with data-driven strategies.
- Improve urban planning and infrastructure development.
- Enhance public safety and emergency response through real-time data.
- Optimize resource allocation and operational efficiency.

4. Scope of Work

The selected vendor will be required to provide a location analytics platform that includes, but is not limited to, the following functionalities:

- **Visitor Analytics:** Detailed analysis of visitor demographics, visit frequency, dwell time, and origin.
- **Traffic Pattern Analysis:** Visualization and analysis of traffic flow, pedestrian movement, and congestion points.
- **Geofencing and Zone Analysis:** Ability to create custom geofences and analyze activity within specific zones.
- **Data Visualization and Reporting:** User-friendly dashboards, customizable reports, and data export capabilities.
- **Data Integration:** Seamless integration with existing data systems and tools.
- **Mobile and Web Access:** Access to the platform and data through both mobile and web interfaces.

- **Historical and Real-time Data:** Access to both historical and real-time location data.
- **Data Accuracy and Privacy:** High data accuracy and adherence to privacy regulations.

5. Proposal Submission

Please submit an original hard copy plus one electronic copy of the proposal to the Finance Director's Office at the address on page one. All proposals must be sealed and clearly marked with the proposer's name and the words "Event Analytics Platform RFP, Bid Opening Date: 10:00 a.m., month day, 2025." Failure to provide this information on the envelope may result in the proposal not being considered. Proposers must allow sufficient time to ensure receipt of the proposal. It shall be the sole responsibility of the proposer to have the bid delivered to the Town before the deadline.

Proposals should include the following information:

- **Company Overview:** Background, experience, and qualifications of the vendor.
- **Solution Description:** Detailed description of the location analytics platform and its features.
- **Technical Specifications:** Technical requirements, data sources, and infrastructure details.
- **Data Accuracy and Methodology:** Explanation of data collection methods, accuracy, and validation processes.
- **Implementation Plan:** Detailed timeline for deployment, training, and ongoing support.
- **Pricing Structure:** Comprehensive pricing proposal, including licensing fees, support costs, and any additional charges.
- **Case Studies and References:** Examples of successful implementations and client references.
- **Security and Privacy:** Information on data security measures and privacy policies.

6. Evaluation Criteria

Proposals will be evaluated using the factors listed below to ascertain which bid best meets the needs of the Town. A committee will score each proposal and rank the bidders from highest to lowest score. If the Town cannot negotiate a contract with the highest score, then the Town will negotiate with the next highest score until a contract is in place. The items to be considered during the evaluation and the associated point values are as follows:

Criteria	Maximum Points
Functionality and Features	40
Technical Capabilities	10
Implementation and Support	10
Pricing and Value	30
Vendor Experience and Reputation	10
Total Possible Score	100

- **Functionality and Features:** Completeness and suitability of the proposed solution to meet the Scope of Work objectives (Section 4 above).

- **Technical Capabilities:** Robustness and scalability of the platform.
- **Implementation and Support:** Feasibility and effectiveness of the implementation plan.
- **Pricing and Value:** Competitiveness and overall value of the proposed solution.
- **Vendor Experience and Reputation:** Track record and client references.

The Town reserves the right to award a contract solely on the written proposal.

7. Contract Agreement

The successful vendor will be expected to enter into an agreement with the Town of Smyrna. The agreement shall be signed and attested, but not dated, by the proper business representative and submitted with the request for proposal. An executed contract will be forwarded to the winning vendor after Council approval. Once a contract has been issued all documents from that point forward will be sent to the attention of Mr. Todd Spearman, Assistant Town Manager.

8. Projected Timeline

- **Request for Proposals issued:** July 15, 2025
- **Proposal Submission Deadline:** August 5, 2025, 10:00 AM CDT.
- **Selection Process:** August 5-15, 2025
- **Recommendation to Council:** August 18, 2025
- **Award of Contract:** September 9, 2025
- **Implementation Start:** October 1, 2025

SMYRNA/LOCAL BUSINESS LICENSE

Compensation of more than $100,000 from contracts performed in one county by a contractor described in Tenn. Code Ann. § 67- 4-708(4)(A) will be sourced to that county and the tax from such contracts will be distributed to that county. Compensation of $100,000 or less from contracts performed in one county by such person will be sourced to the county of the person's domicile or location. If the person does not have a domicile or location in Tennessee, such compensation will be earmarked and allocated to the state's general fund.

For purposes of distribution of the municipal business tax provided for in Tenn. Code Ann. § 67-4-705, receipts will be sourced to the municipality in which the person's established physical location, outlet, or other place of business is located. Receipts from sales made by persons operating from an established physical location, outlet, or other place of business in one municipality who extend their operations outside the boundaries of the municipality without establishing a physical location, outlet, or place of business outside the boundaries of the municipality will be sourced to the municipality in which the person's established physical location, outlet, or other place of business is located.

If the person has no established physical location, outlet, or other place of business in the state, then such receipts will not be subject to the municipal business tax. Receipts from all

taxable sales of any services or tangible personal property by a provider of video programming services will be sourced to the municipality where the property or service is received by the customer regardless of whether or not the provider has a physical location, outlet, or other place of business in that municipality.

Compensation of more than $100,000 from contracts performed in one municipality by a contractor described in Tenn. Code Ann. § 67- 4-708(4)(A) will be sourced to that municipality and the tax from such contracts will be distributed to that municipality. Compensation of $100,000 or less from contracts performed in one municipality by such person will be sourced to the municipality of the person's domicile or location. If the person does not have a domicile or location in Tennessee, such compensation will not be subject to the municipal business tax. (*From Tennessee Business Tax Guide/ Tenn. Dept. of Revenue 2019; See also, Tennessee Works Tax Act (2023), Public Chapter 377, 2023 Session of the 113th General Assembly)*

INSURANCE REQUIREMENTS

The Vendor shall purchase and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Vendor, its agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

1. **Commercial General Liability**

Commercial General Liability insurance shall have a minimum limit per occurrence of $1,000,000 and a minimum general aggregate of $2,000,000. It shall include completed operations, product liability and personal injury liability insurance.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to the Town of Smyrna. The Vendor shall be responsible for all deductibles and self-insured retentions.

C. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability Coverages
   a. The Town, its elected and appointed officials, agents, employees and volunteers shall be named as an additional insured as regards negligence by the vendor.

   b. The Vendor's insurance shall be primary as respects the Town, its elected and appointed officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the Town of Smyrna shall be excess and non-contributory of the Vendor's insurance.

2. Employers' Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Town, its elected and appointed officials, agents, employees and volunteers for losses arising from work performed by the Vendor for the Town of Smyrna.

3. All Coverages
   a. Coverage shall not be canceled, suspended, or voided by either party (the Vendor or the insurer) or reduced in coverage or in limits except after 30 days written notice has been given to the Town of Smyrna. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Vendor's policy.

   b. Neither the acceptance of the completed work nor the payment thereof shall release the Vendor from the obligations of the insurance requirements or indemnification agreement.

   c. The insurance companies issuing the policies shall have no recourse against the Town of Smyrna for payment of premiums or for assessments under any form of the policies.

   d. Replacement certificates, policies or endorsements shall be provided to the Town for any such insurance expiring prior to the completion of services.

   e. Any failure of the Vendor to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its elected and appointed officials, agents, employees and volunteers.

D. ACCEPTABILITY OF INSURERS

All required insurance shall be provided by a company or companies licensed to conduct business in the State of Tennessee. Insurance shall be underwritten by insurers with an A.M. Best Company ratings no less than an A.

E. VERIFICATION OF COVERAGE

The Vendor shall furnish the Town with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. **The Certificates are to be received and approved by the Town before work commences and upon any contract renewal thereafter.**

Upon failure of the Vendor to furnish, deliver and maintain such insurance as requested, this contract, at the election of the Town, may be suspended, discontinued or terminated. Failure of the Vendor to purchase and/or maintain any required insurance shall not relieve the Vendor from any liability or indemnification under the contract.

The Certificate of Insurance naming the "Town of Smyrna" as **Additional Insured** shall be addressed to the attention of:

Town of Smyrna

Department of Safety & Risk Management
ATTN: Henry Urbina
315 S Lowry St
Smyrna, TN 37167

It can also be submitted electronically to henry.urbina@townofsmyrna.org. The subject line has to indicate the name of the project.

The Town reserves the right to request complete certified copies of all required insurance policies at any time.

F. SUBCONTRACTORS

Vendor shall include all subcontractors as insureds under its policies **OR** shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Town of Smyrna reserves the right to request copies of subcontractor's Certificates at any time.

G. WORKERS' COMPENSATION INDEMNITY

In the event Vendor is not required to provide or is exempt from providing workers' compensation coverage, the parties hereby agree that Vendor, its owners, agents and employees will have no cause of action against, and will not assert a claim against the Town of Smyrna, its elected and appointed officials, agents, employees and volunteers, under any circumstances. The parties also hereby agree that the Town of Smyrna, its elected and appointed officials, agents, employees and volunteers shall in no circumstance be, or considered as, the employer or statutory employer of Vendor, its owners, agents and employees. The parties further agree that Vendor is a wholly independent vendor and is exclusively responsible for its employees, owners, and agents. Vendor hereby agrees to protect, defend, indemnify and hold the Town of Smyrna, its elected and appointed officials, agents, employees and volunteers harmless from any such assertion or claim that may arise from the performance of this contract.

HOLD HARMLESS AND INDEMNITY REQUIREMENT:

Vendor shall indemnify and hold harmless, to the maximum extent permitted by law, the Town of Smyrna and its officers, agents, employees, volunteers, from and against any and all liability, damages, losses, (whether in contract or in tort, including personal injury, accidental death or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), and costs (including reasonable attorney's fees, litigation, arbitration, mediation, appeal expenses) which in whole or in part are caused by the negligence, recklessness or intentional wrongful misconduct of the Vendor and persons employed by or utilized by the Vendor in Vendor's performance of this Agreement.

The vendor further agrees to protect, defend, and save the Town, its elected and appointed officials, agents, employees and volunteers while working in the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind of character, including the cost of their defense, arising in favor of the vendor's employees or third parties on account of bodily or personal injuries, death or damage to property arising out of services performed or omissions of services or in any way resulting from the acts of omissions of the vendor and/or its agents, employees, subcontractors, representative of the Town under this agreement.

Pursuant to Tennessee Attorney General Opinion 93-01, the Town will not indemnify, defend or hold harmless in any fashion the Vendor from any claims arising from any failure, regardless of any language in any attachment or other document that the Vendor may provide.

APPLICABLE LAW:

Any contract resulting from this RFP shall be governed by and construed under the laws of the State of Tennessee.



AGREEMENT

This Agreement is made and entered into as of this _____ day of _____, 20___, by and between _____, a _____ _____ (the "Bidder") and the Town of Smyrna, Tennessee, a Tennessee municipal corporation (the "Town") for the purpose of _____.

WHEREAS, the Bidder has submitted a quotation for the provision of certain products and/or services to the Town, all in accordance with the terms of the Request for Proposals attached hereto and incorporated herein by reference as if set forth at length verbatim as Exhibit A (the "RFP"), and which Proposal from the Bidder is attached hereto and incorporated herein by reference as if set forth at length verbatim as Exhibit B (the "Quotation"); the RFP and the Quotation, together with any and all ancillary documents thereto, shall be collectively referred to herein as the "Bid Documents"; and

WHEREAS, the Town now desires to accept the Bidder's quotation, in accordance with the terms set forth in such Bid Documents.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned do hereby agree as follows:

1. Acceptance of Bid Documents. The terms of the Bid Documents, as incorporated herein by reference, are hereby accepted by the parties hereto. The Bidder hereby agrees to provide the goods and/or services contemplated by such Bid Documents in accordance with the terms set forth therein. The Town hereby accepts the Bidder's quotation to provide the goods and/or services contemplated by such Bid Documents in accordance with the terms set forth therein.

2. Entire Agreement. This Agreement, including the exhibits and any other documents referred to herein or therein, which form a part hereof, contains the entire understanding of the parties with respect to its subject matter. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein or therein. This Agreement supersedes all prior written or oral agreements and understandings between the parties with respect to its subject matter and may not be altered, modified or amended, in whole or in part, except by the express written authorization and consent of the parties hereto.

3. Severability. This agreement constitutes the product of negotiations of the parties hereto and any enforcement of hereof will be interpreted in a neutral manner and not more strongly against any party based upon the source of the draftsmanship of this Agreement. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall continue to be fully effective.

4. Limitation of Liability. The Town of Smyrna shall not be liable for any loss, claim, expense or damage caused by, contributed to or arising out of the acts or omission of Bidder or third parties, whether negligent or otherwise.

5. Warranties. The Bidder warrants to the Town that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects, suitable for the purpose for which the materials and equipment are furnished, and in conformance with the Agreement. If it does not perform as warranted, Bidder shall use all commercially reasonable efforts to correct the product(s) so that it operates in all material respects in conformity with the written representations of Bidder. If Bidder cannot correct the product(s) within a reasonable period of time, Bidder shall refund the purchase price of the product(s). All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

6. Software Deadline, Testing and Acceptance: If applicable to the Agreement, software provided by Bidder shall be installed for the purposes of testing, as stated herein below, no later than one hundred twenty (120) days from the effective date of this Agreement unless the parties, in writing, set a different specific date. In Addition, software provided by Bidder to The Town is subject to inspection and testing to verify that the software conforms to its written specifications and to ensure it meets The Town's needs. The Town shall have seven (7) business days after the software is installed to perform testing of the software using The Town's data. The Town shall provide Bidder with written notice of acceptance or rejection of the software five (5) business days or less after the end of the testing period. If the Town does not provide timely written notice of acceptance or rejection to Bidder, the software shall be deemed to be accepted by The Town. If the software is rejected, The Town may, at its sole discretion, either (1) return the software and receive a refund of all fees paid with respect thereto, or (2) allow Bidder to repair or replace the software, without charge, in a timely manner. In the event The Town elects to allow the Bidder to repair or replace the software, The Town shall have an additional (7) business days in which to accept or reject the software as laid out hereinabove.

7. Use of The Town's Logo or Name: Bidder shall not use The Town's name or any logo in marketing or publicity materials or for marketing or publicity purposes without the prior written authorization from The Town. Bidder shall not issue, publish, or divulge any materials developed or used in the performance of this Agreement or make any statement to the media relating to this Agreement without the prior written consent of The Town.

8. Indemnification**.** The parties hereto agree that Bidder shall indemnify The Town for any and all claims of negligence, tortious conduct or otherwise unlawful acts committed by Bidder in the performance of their obligations under the terms of this agreement, including any and all attachments or exhibits thereto and Bidder agrees to pay any and all costs associated with the enforcement of the terms of this indemnity agreement by The Town, including but not limited to, court costs, civil judgments, assessments or any other reasonable fees associated therewith. This clause shall survive the expiration or termination of this Agreement and shall remain in full force and effect until the expiration of any applicable statute of limitation. In addition, Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private of public entities and, therefore, prohibits an agreement by The Town to indemnify a third party or agree to a limitation of liability provision.

9. Non-Appropriation: Bidder acknowledges that The Town is a governmental entity, and the validity of this Agreement is based upon the availability of public funding under its authority. In the event The Town fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to The Town, and such termination shall not be a breach of the Agreement, and any unused payment made to Bidder shall be returned to The Town.

10. Tax Exemption: As a tax-exempt entity, The Town shall not be responsible for sales or use taxes incurred for products or services. The Town shall supply Bidder with its Sales and Use Tax Exemption Certificate upon Bidder's request. Bidder shall bear the burden of providing its suppliers with a copy of The Town's tax exemption certificate and Bidder shall assume all liability for such taxes, if any, that should be incurred.

11. Attorney Fees. The parties hereto agree that The Town shall be in no event liable for any attorney's fees which Bidder may incur due to breach of this Agreement by either party; and further, The Town shall not acquiesce to any term in any document that indicates or infers The Town may or shall be responsible for the Attorney's fees of another party or the Bidder's attorney fees.

12. Boycott of Israel. The Bidder certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

13. Failure to perform. The parties agree, in the event Bidder fails to perform any obligation, other than with regards to the date of delivery, set out in this Agreement, the Town shall be reimbursed by Bidder for any and all expenses associated with having to obtain a new provider to finish out the contracted term, including, but in no way limited to, any charges/fees, which are above and beyond the amount the Town would have paid to Bidder to complete the same task; provided, however, that if the failure, by its nature, is one that can be cured, the Bidder shall have fifteen (15) business days after receipt of written notice from the Town to cure said failure to perform. The parties hereby agree, unless a specific date of delivery is provided in this Agreement or other bid documents, all deliveries shall be made to the Town no later than ninety (90) days from the date of order. The parties further agree that if Bidder, in good faith, is not able to meet this ninety (90) day deadline of delivery due to forces beyond his, her or its control, that were unforeseeable at the time of signing this contract, then this entire Agreement shall be voidable at the sole discretion of the Town. Should the Town elect to void this Agreement due to Bidder's good faith inability, due to forces beyond his, her or its control, and which were unforeseeable at the time of signing this Agreement to meet the delivery deadline, then neither party shall be deemed to have breached this Agreement, and Bidder shall return all monies, within seven (7) business days, paid by the Town for the products/items that could not be delivered in the allotted time.

14. Unilateral Modification of Agreement Not Permitted: Bidder may make unilateral changes to its Privacy Policy, provided any such changes are subject to the provisions of this Agreement but shall not materially alter the use of the service or reduce the level of protection provided to the Town at the time of the execution of this Agreement. Except as provided in the preceding sentence, notwithstanding anything in this Agreement to the contrary, any change to this Agreement made by Bidder that is not in writing and that is not properly executed by the signatures of authorized representatives of the parties hereto, including attestation by The Town's Clerk and approved as to form by the Town Attorney are subject to the terms and conditions of this Agreement.

15. Changes to Terms: Except as provided in Paragraph No. 13 above pertaining to Bidder's Privacy Policy, Bidder shall provide The Town written notice, sent in care of Town Attorney's Office, Smyrna, Tennessee, 315 South Lowry Street, Tennessee 37167, of any proposed change to this Agreement at least ninety (90) days prior to being effective to The Town. The Town shall have thirty (30) days after receiving the written notice to terminate this Agreement, and such cancellation shall not be a breach of this Agreement. Bidder will refund to The Town any payment made by The Town to Bidder equal to the difference between the number of months the payment was intended for and the number of months remaining on this Agreement that the fee was intended to cover.

16. Price Assurance: Unless specifically stated in this Agreement or other bid documents, the bid price shall be valid for the full term of this Agreement. If the Bidder, specifically states that he, she or it cannot honor the bid price for the full term of this Agreement; then this Agreement is voidable at the sole discretion of the Town, if at any time during the full term of this Agreement, Bidder requests to raise the bid price. If the Town elects to void this Agreement, at its sole discretion, it shall not be deemed to be a breach of the contract by either party.

17. Confidentiality. The Town, as a Tennessee Municipal Corporation is subject to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq; therefore, this Agreement and all documents or materials, in any format, including, but not limited to paper, electronic or virtual, that are public records pursuant to law, are not confidential and are subject to disclosure. The Town will respond to all proper Open Records Requests in the time allowed by law, without any requirement to disclose such request to Bidder or provide Bidder with notice or the time to obtain a protective order. The Town does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 16 serves to meet such burden and authorization of disclosure.

18. Mediation. The Town may, at its option, require the attempted resolution of any dispute arising under this Agreement by mediation prior to the filing of any lawsuit or other claim. Should any dispute arise, Bidder shall provide the Town notice of any intent to file suit by certified mail. The Town shall notify the Bidder of its intent to exercise its right to mediation within thirty (30) days of receiving such notice. If the Town does not exercise its right to mediation, Bidder may file suit. Any mediator selected under this clause shall be agreed upon by the parties and the costs of such mediation shall be divided and paid equally between the parties.

19. No Presumption Against Drafter: The parties are both business entities having substantial experience with the subject matter of this Agreement, and each has fully participated in the negotiation and drafting of this Agreement. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

20. Governing Law. This Agreement shall be deemed to have been executed and delivered within the State of Tennessee, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Tennessee. The parties agree that all obligations of the parties are performable in Smyrna, Tennessee.

21. Choice of Forum and Venue. The parties' choice of forum and venue shall be exclusively in the courts of Rutherford County, Tennessee or the United States District Court, for the Middle District of Tennessee. The parties hereby waive their right to a jury trial. Any provision of the Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

TOWN OF SMYRNA, TENNESSEE

By: _____
Name: Mary Esther Reed
Title: Mayor

ATTEST:

_____
Amber Hobbs, Town Clerk

BIDDER:

By: _____
Title: _____

ATTEST:

_____

SECTION IV - SPECIFICATION COMPLIANCE

Unless otherwise noted, all quotations for the Event Analytics Platform shall be in complete accordance with the specifications detailed herein.

Bidders shall note in the space provided below any exceptions or deviations in any way from the specifications of any section of this RFP. Bidders should provide complete detail of exceptions or deviations.

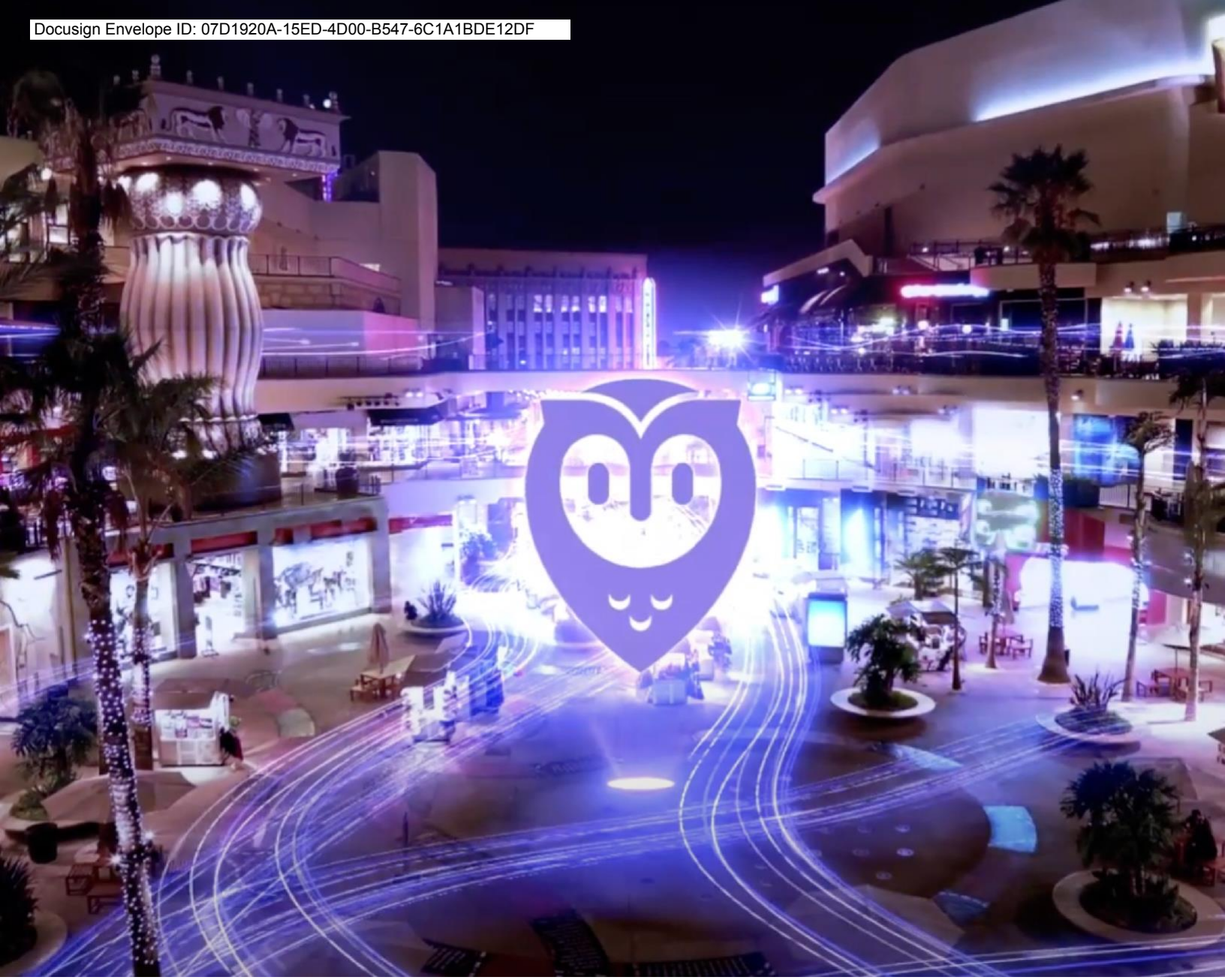
Proposal Exceptions

Section	Brief Description
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

By signature below, vendor acknowledges any quotation to be in full compliance with all aspects of each section of the RFP not noted above.

_____	_____
COMPANY	PHONE NUMBER
_____	_____
REPRESENTATIVE NAME	REPRESENTATIVE TITLE
_____	_____
SIGNATURE	E-MAIL ADDRESS

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Placer Labs Inc.

Event Analytics Platform RFP, Bid Opening

Date: 10:00 a.m., August 05, 2025

Docusign Envelope ID: 07D1920A-15ED-4D00-B547-6C1A1BDE12DF

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Company Overview

Placer was founded in 2013 by Noam Ben-Zvi (CEO), Zohar Bar-Yehuda (Data Scientist), Oded Fossfeld (CTO) and Ofir Lemel (CPO) and began providing services in 2017. Prior to selling commercially, our founders spent 3.5 years optimizing our algorithm for accuracy, as well as building a privacy-first panel, with partnerships across dozens of mobile applications and critical Mobile Application Providers. Placer's team of data engineers, product designers, solutions engineers, and customer success managers have extensive training and experience providing data to thousands of customers. We work tirelessly to improve our customer experience as exemplified by our monthly product updates which include new features built specifically to support our customer's business needs. Placer is trusted by thousands of private, non-profit, and public sector clients who rely on Placer data as a major component of their critical decision-making. Placer's diverse client base includes over 4,880 in the leading commercial real estate, brokerage, retail, finance, and consumer packaged goods companies and more than 1,680 civic clients. We understand the unique data needs and solutions best suited to each industry, and are able to customize solutions to meet our customers needs.

Solution Description

Placer's Product Features

→ Visitor Analytics

- ***Data for Visitors, Residents, Employees, and Passersby to any location in the United States.***
  - Visitor metrics including unique visitors, frequency of visits, dwell time.
  - "True Trade Area" reveals home and work location for visitors to any POI.
  - Daily visits, hourly visits, length of stay.
- ***Visitor Journey***
  - Visitor origin markets by city, state, zip code and census block.
  - Prior and Post locations for visitors to any POI.
  - Top visited national chains for visitors to any location.
  - Top visited local points of interest for visitors to any location.
  - Home zipcodes for visitors to any location
  - Cross visitation among POIs.
- ***Visitor Demographics and Customer Segmentation.***
  - Demographics for visitors to any location.
  - Psychographic data for visitors to any location: behaviors, interests etc.
  - Spend habits: favorite brands, consumer expenditures, etc.
  - Social media habits: Web preferences, brand affinity, hashtags etc.

→ Traffic Pattern Analysis

- ***Heat Maps*** reveal pedestrian activity movement and gathering.

→ Geofencing and Zone Analysis

- ***Unlimited Points of Interest***
  - Location data for every city, county, district, neighborhood, park, open space, campus, corridor, building, shopping center, public or private property, parking area, vacant land etc.
  - Location data for streets, roads, highways, transit locations, trails etc.
  - 'POI on the fly': Users may access, create, and save *unlimited* Points of Interest (POIs).
  - Millions of points of interest currently accessible to all users.

→ Data Visualization and Reporting

- ***Marketplace Applications and Services***

  Third party data, applications, and service providers enhance data with powerful insights about any location.
  - Applications to reveal demographics, psychographics, spend habits, and social/web preferences.

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- Partner Service Providers assist clients to operationalize data as part of business development efforts.

- ***Custom Reports***
  - A collection of custom reports is available to all users, and generated on demand. Some of the more popular reports for Civic clients include Retail Leakage, Pedestrian Heat Maps, Trip Origination by Market, Store Opening and Closing Impact, and Event Impact on Property.
  - Automated Monthly Reports deliver metrics about any POI.
  - Unlimited exports. Unlimited exports to PDF, CSV, JPEG, SHP and KMZ in Excel, KML, Tableau, Slides, pdf and other formats for integrations, sharing, and use in business efforts.

→ Data Integration
- ***Integrations*** for data feed, storage, and analysis.
- ***API and Data Feed*** are available for an additional fee in addition to access to the Placer Platform.

→ Historical and Real-time Data
- Placer provides ***historic and near real-time data*** from January 1, 2017 through within four days of the present day.

→ Mobile and Web Access
- Placer provides a ***User-Friendly Web Based Application*** and its SaaS services are available to customers through Placer's platform, accessible through a web browser behind a customer-specific login. Every user is able to access Placer data, generate insights, and export reports without the need for technical skills beyond what is used for a typical web browser or mapping application.
- Placer's ***Mobile Application*** (a mobile-optimized version of Placer's online platform) is available to authorized users of existing customers on both Apple and Android mobile devices.

Additional Placer Product Features

- **Property Information**
  - Size, ownership, tax history.
- **Sales Information**
  - Retail Sales currently available for grocery and select retail categories.
  - Sales forecasting performed with visitation and historic sales records.
- **Area Analysis**
  - Traffic volume along every street, by direction and time of day.
  - Planned Development: pipeline of development projects in planning, construction and completed.
  - Event data: Visitation numbers for events including but not limited to expositions, festivals, concerts, community events, sports, conferences, performing arts etc.
  - Event attendee visits to nearby properties.
- **Migration data** reveals change to population trends for any Zip Code, County, State, including change to population, change to income levels etc. Top migration origins and destinations.
- **COVID Recovery**: Visitation trends for retail and tourism for every city, county, state for present day benchmarked against a similar period in 2019.
- **Void Analysis**: reveal best fit retailer, hotel, or other development type for any location.
- **Site Selection:** reveal best locations for desired retail chains.

Technical Specifications

- **Technical Requirements**

  Placer provides a ***User-Friendly Web Based Application*** and its SaaS services are available to customers through Placer's platform, accessible through a web browser behind a customer-specific login. Every user is able to access

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Placer data, generate insights, and export reports without the need for technical skills beyond what is used for a typical web browser or mapping application.

Further, Placer is a cloud-centric operation and relies on GCP in the US for its services. We fully use the GCP cloud automatic scalability to meet on demand changes to maintain a high level of services to our customers. This cloud environment enables quick expansion of services based on higher demand.

- **Data Sources**

  Placer contracts with a range of "Mobile Application Providers" that together generate a panel of millions of monthly average users from which Placer's internal foot traffic data is derived.

  Contracts with these Mobile Application Providers require them to abide by the applicable laws to clearly and conspicuously post a notice, or a link to a notice, in the App Stores or on any website where the application may be acquired, as well as in its published privacy policy that contains: (a) a statement of fact that location data may be collected, used, shared and stored; (b) a description of location data collected by the application; (c) an explanation of how, and for what purpose, location data will be used or transferred to third parties (where final uses cases are defined to include analytics, attribution and research, including aggregated research into market trends); and (d) a conspicuous link to, or description of how to access, an easy-to-use, cost-free mechanism by which users may exercise choice to opt-in or opt-out of the collection of location data.

  To enhance Placer's data protections and to obtain a high level of privacy and compliance standards, Placer designed, implemented, and currently distributes our Differential Privacy Services ("DPS") to all of our Mobile Application Providers. The DPS consists of filtering services running on our Mobile Application Providers' Cloud, under their full control, that removes identifiers such as MAIDs, Name, Device Name, emails, and phone numbers. In addition the DPS removes pre-identified sensitive locations from the data prior to ingesting the data into its systems.

  The DPS also up-levels visitation data to obfuscate home locations, to avoid attributing such information to any specific user. This additional processing takes place prior to reaching Placer's domain. Furthermore, Placer does not provide data for points of interest with fewer than 50 unique devices.

  For more information on Placer's privacy architecture and foot traffic data handling, see Placer's Trust Center: https://www.placer.ai/company/trust-center.

- **Infrastructure Details**

  Placer's SaaS service is a multi-tenant environment. We do however logically segment the environment/data of our customers. Our services are hosted on GCP hosting data centers in the U.S.

  For clarification, Placer does not process or store customer data.

Data Accuracy and Methodology

- **Data Collection**

  Please see section: ***Technical Specifications - Data Sources*** for an overview of Placer's data collection methods.

- **Accuracy and Validation**

  Placer tests its data accuracy against "ground truth" sets, or public and validated data sources. Placer tests the quality by validation checks that include daily and weekly reviews of a set of statistical features to detect upstream errors.

  In the event any alerts are raised as part of the validation processes, Placer would manually review the results to ensure the change is expected.

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Further, Placer conducts continuous validation for data arriving from our data providers as part of the data ingestion process. Placer also runs comparison of results ensuring there are no unexpected changes.

Implementation Plan

- **Deployment**

  Below please find our suggested ***Timeline for Project Implementation***.

  Day 1: Account is provisioned by Placer. The customer will receive a notification of the account being set up. The full account provisioning can take between 24-72 hours to be fully completed. Once the account has been fully provisioned, your team will have access to the platform data to begin generating insights and reports.

  Day 1-14: The customer's Customer Success Manager (CSM) will schedule a kick-off call. Your kick-off call is designed to review the Placer Dashboard in more detail, discuss a work plan and project priorities and set up the customer's monthly report.

  Duration: The customer has access to Placer data and reports. The CSM will work with you to support your project and research

- **Training**

  Every client can be partnered with a Customer Success Manager (CSM) to receive training and strategic support for specific projects and business needs. CSMs help clients produce reports, advise on best practices, and make introductions to Solutions Engineers for more complex project needs. Staff will be introduced to your assigned Customer Success Manager (CSM) who will lead onboarding and training, and set up a meeting cadence with you. Frequency of training and training topics determined by the customer.

- **Ongoing Support**

  Customers assigned CSM can provide ongoing customer success support. Frequency of support and support topics are determined by the customer.

  Technical support is offered via email Monday-Friday, 9:00amPST-5pmPST, Federal Holidays excluded.

Case Studies and References

- **Case Studies**

  We have attached the following two (2) case studies that showcase how Placer assists Civic Organizations in driving economic growth to their region:
  - Prescott, AZ Secures $200k in New Grants
  - Dunwoody, GA secures $88k budget for annual holiday lights event

- **References**

  1. Company Name: City of La Vergne, Tennessee
     Contact Name: Thomas Broeker
     Title: Economic Development Director
     Phone Number: (615) 287-8651
     Email: tbroeker@lavergnetn.gov

  2. Company Name: City of Gallatin, Tennessee
     Contact Name: Rosemary Bates
     Title: Executive Director

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Phone Number: (615) 230-7953
Email: rosemary.bates@gallatintn.gov

3. Company Name: City of Columbia, Tennessee
   Contact Name: Kellye Murphy
   Title: Tourism & Marketing Director
   Phone Number: (931) 560-1575
   Email: KMurphy@columbiatn.gov

Security and Privacy

Placer currently maintains a comprehensive set of internal compliance policies and procedures generally covering its activities. TOC's of internal compliance policies and procedures may be provided upon request.

- ***Privacy by Design***
  Placer is a privacy-first company. The data we receive from mobile application data providers is stripped of identifiers such as names, device IDs, and contact information before it is shared with us. We intentionally built our business with underlying technology that doesn't rely on personally identifiable information. Visit our Trust Center https://www.placer.ai/company/trust-center/ for details.

- ***We Only Provide Aggregated Market Research About Places***
  We only provide our customers with aggregated statistical information about physical locations, such that any bit of information presented preserves K-anonymity of 50. This means that every dot on the map, whether representing a residential area or the end of a road segment, is always only an approximate location and never indicates the actual location of any one particular device

- ***We Don't Share or Sell User Data***
  We have never sold user-level data and we never will.

- ***We Don't Collect User Identifiers***
  The data we receive is stripped of identifiers, such as mobile advertising identifiers ("MAIDs"), names, other persistent device IDs, and contact information. We intentionally built our business with underlying technology that doesn't rely on personally identifiable information.

- ***We Respect User Consent and Privacy Best Practices***
  We vet our data partners, complying with all laws, regulations, and industry standards. Placer requires its partners to get opt in or opt out consent in accordance with applicable law

- ***We Invest in Data Security***
  We use end-to-end encryption to protect data in transit and at rest, using a centralized key management system and rotating keys. We also employ the Information Security Management System (ISMS) from ISO 27001, which includes a risk management program based on the ISO 31000, "Risk Management Framework." We also maintain a SOC 2 Type II certification.

For more information, please see our publicly available Privacy Policy https://www.placer.ai/privacy-policy.

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Case Study: Prove Event Value

Prescott, AZ asks, *How can we quantify our event's economic impact, optimize its marketing, and win grant money?*

A Placer Customer Story Deep-Dive

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ABOUT THE CUSTOMER

A 6 Week Citywide Event That Was Successful But Not Well Understood

Known as “Arizona’s Christmas City,” the City of Prescott, Arizona celebrates Christmas with weekly programming for 6 entire weeks, from Thanksgiving to Martin Luther King Jr. day.

Cristina Binkley, the Tourism & Economic Initiatives Coordinator for the city, was tasked with understanding and maximizing the impacts of all Christmas events. An unticketed event, the Christmas City organizers were simply taking pictures of the crowds for anecdotal insights about turnout.

The event was known to be successful, but to what extent? How could they leverage what seemed like a strong event?



Cristina Binkley
Tourism & Economic Initiatives Coordinator

CITY OF PRESCOTT



City of Prescott Christmas Celebration
Prescott, AZ

1.5	44K	~400K	3	75K
month long celebration	Population	Visitors over 6 weeks	Average dwell time in hours	Average household income

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The Challenge

How could the city **quantify the strength of the event** and secure outside grant money?

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Leverage Placer.ai insights to measure economic impact

Insight #1: Out-of-town travelers attending the event help drive hotel revenue

Insight #2: Targeted zip code advertising increased event visitation

Insight #3: Demand insights help organizers optimize marketing and reduce overcrowding

Insight #4: The six week event has an economic impact of $52M



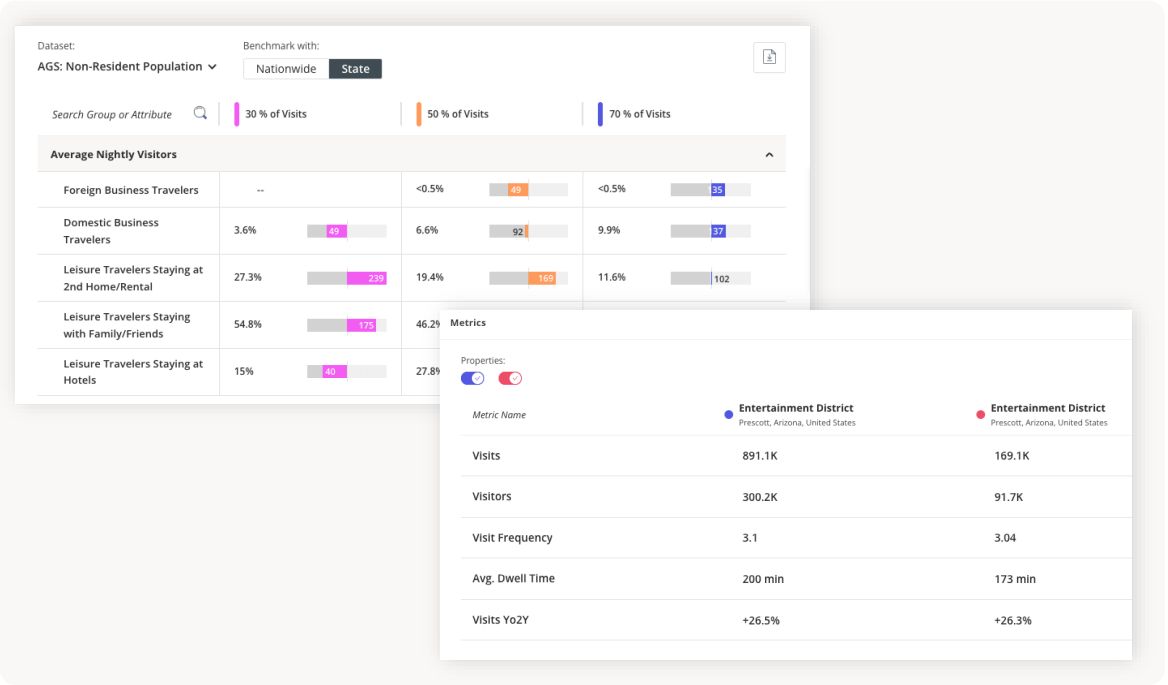
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Insight #1: Out of Towners drove event growth, hotel use

Using Overview Metrics and Audience Profile

The annual Christmas celebration attracts over 391K visitors, with 32% traveling from 50+ miles away for the event

Cristina identified where tourists were coming from and how their attendance compared to local visitors, including the event's most popular time of day and how long they stayed for the event. Trade Area Coverage By Distance revealed the true reach of the event, highlighting that attendees came from both near and far.



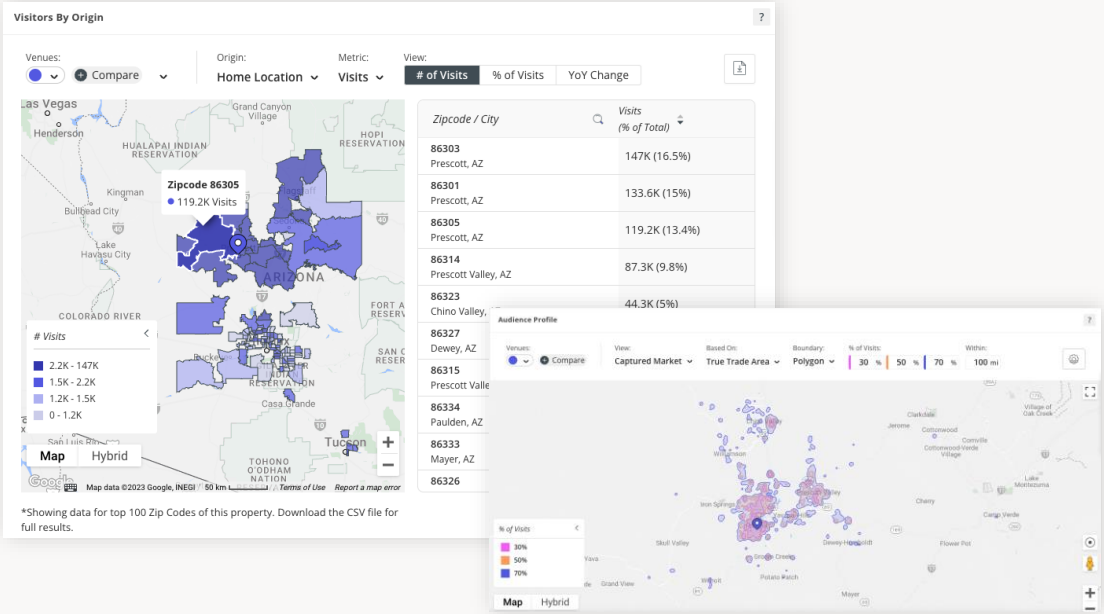
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Insight #2: Targeted zip code advertising increased visitation

Using Visitors by Origin, Audience Profile

Attendance data proves targeting ads by zip code increased visitation from those areas

Having consistently advertised to specific zip codes, Placer's attendance breakdown by zip code helped the event organizers validate the effectiveness of their marketing efforts. Using Placer, they could see the increase in the number of visitors from the targeted areas. These insights were previously unavailable due to the event's unticketed nature.



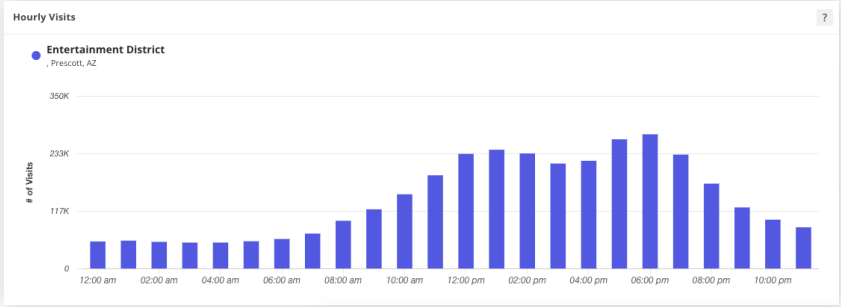
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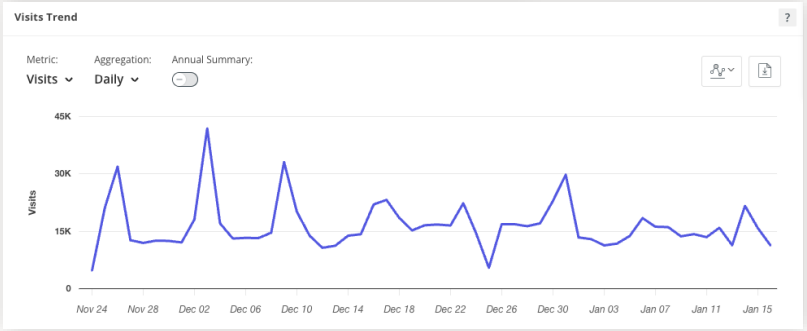
Insight #3: Demand insights helped organizers optimize marketing and reduce overcrowding

Using Visits Trend, Hourly Visits

Visitation metrics provide insight into demand throughout the event

Prior to Placer's insights, the city received resident complaints regarding individual days that were heavily marketed, leading to traffic congestion. In addition to identifying peak hours, Placer showed that demand was strong throughout the 6 week event, leading the organizers to refrain from highlighting specific dates, reducing congestion and improving resident satisfaction.





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Insight #4: The six week event had an economic impact of $52M



Economist uses Placer visit data to calculate $52M economic impact

Placer visit and overnight guest data helped an economist calculate the event's total economic impact to be $52M, with visitor spending of $35M and tax revenue of $1.1M.

The economic impact report helped the city's Chamber of Commerce secure $200K in grants in less than a year, including a $150K grant from AOT (the Arizona Office of Tourism).

BY THE NUMBERS...



$52M
in total economic impact



$35M
In visitor spending



563
full time jobs directly and indirectly supported



$1.1M
in city tax revenue

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The Outcome

Placer data, and the resulting economic impact report, helped event organizers secure **$200k in new grants.**

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In the Customer's Words

Placer's insights into our event attendance and attendees has impacted our city in so many ways. We market events more efficiently than ever before, see clear ways to better serve our residents, and have helped our partners land multiple grants to help put on the Christmas City event. Placer has been a wonderful asset to the Office of Tourism and our community partners.



Cristina Binkley

Tourism & Economic Initiatives Coordinator,
City of Prescott

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Thank You

www.placer.ai

Grow Your Business With Placer.ai

Placer.ai is the most advanced location analytics platform for physical locations, the people and businesses that interact with them, and the markets they inhabit. With an uncompromising commitment to privacy, Placer empowers thousands of organizations – from Fortune 100 companies to local governments – to analyze consumer behavior, understand market trends, and optimize critical business decisions.

Loved and Trusted By Thousands of Customers



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Case Study: Secure Event Funding

Dunwoody, GA secures $88k budget for annual holiday lights park event using Placer foot traffic data to prove event popularity

A Placer Customer Story

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City Of Dunwoody, GA Seeks To Prove Holiday Lights Event Popularity

Since its inception in 2020, the City of Dunwoody's annual Holiday Lights event had blossomed into a community favorite, drawing crowds to what was once a quiet park during the holiday season.

Designed initially to activate the space in December and foster a sense of connection during the pandemic, the event quickly became a beloved tradition. Yet, without concrete data to quantify its success, city officials struggled to justify the budget and its increases.



Rachel Waldron
Parks and Recreation Director
The City of Dunwoody, GA



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The Challenge

How could the City of Dunwoody, GA **demonstrate the popularity and impact** of its annual Holiday Lights Display park event with the community?

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Leverage Placer.ai foot traffic and visitor journey data to **prove event value & impact**

THE PROCESS

STEP 01 Use Placer to geofence the event area at its site, Brook Run Park

STEP 02 Analyze yearly visitation and attendee visitator journey insights

STEP 03 Prove event value and local community impact to secure increased funding



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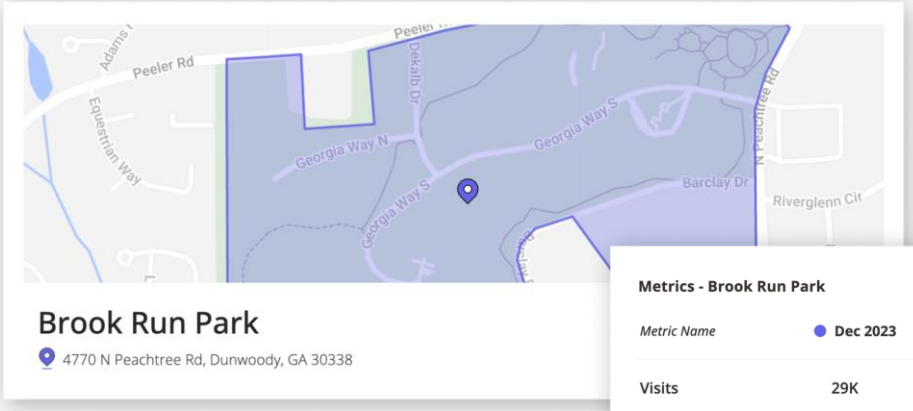
PLACER INSIGHT #1

The Holiday Lights park display attracted 4x more visitation than originally anticipated, proving the event's popularity

Using Custom POI, Overview Metrics

The event drew >15k visitors in 2020 and 29k visitors in 2023.

As a large, public and ungated event, the Holiday Lights display presented a particular challenge - it would be difficult to understand event attendance through eyeball estimates alone. Using Placer.ai, Rachel Waldron (Parks and Recreation Director for the City of Dunwoody) could analyze true event attendance during the period of December.



Metrics - Brook Run Park

Metric Name	Dec 2023	Dec 2020
Visits	29K	15.8K
Visit Frequency	1.56	1.34
Visits YoY	+0.7%	+378.5%

> *Placer.ai data revealed visitation to the Holiday Lights event were over 4x initial estimates. Rather than 5,000 attendees, the yearly event drew >20k visitors in 2023.*

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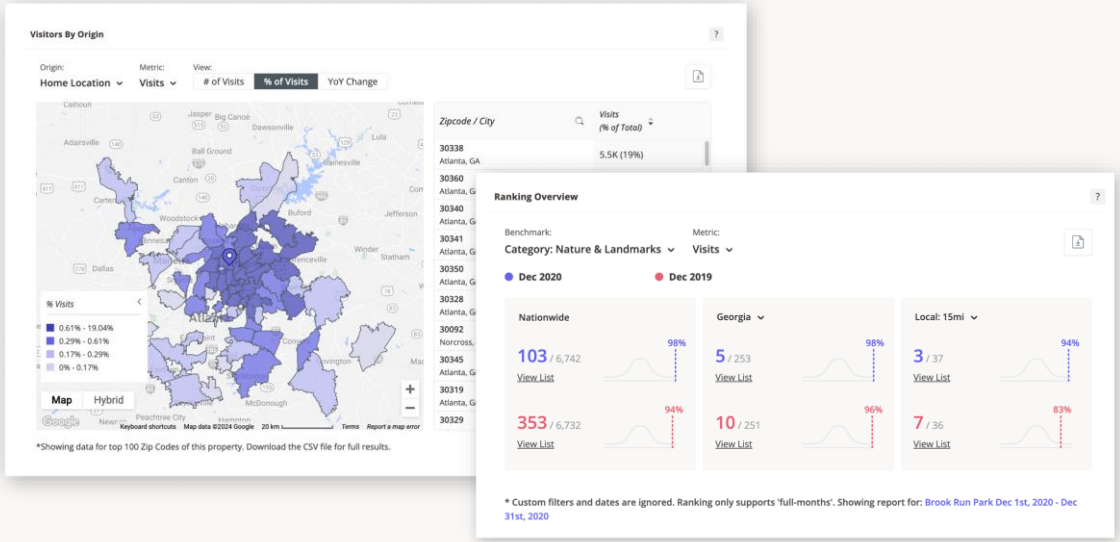
PLACER INSIGHT #2

Guests traveled from 10+ miles away, making Brook Run Park a top local (and free) destination for holiday entertainment

Using Visitors By Origin, Rankings Overview

Brook Run Park ranked in the 94% percentile locally (<15mi) in the Nature & Landmarks category

Dunwoody heard attendees compare the event to the extensive lights display at the botanical gardens in Atlanta, which required an entrance fee of $25 per adult. With more than 16% of attendees traveling from 10-30 miles away and the visits making the park a top ranked local attraction, it was clear that the free public lights display was hugely popular with families, couples, and residents alike.



In Dec 2020, Brook Run Park ranked in the 98% percentile nationwide and 98% percentile in Georgia for the Nature & Landmarks category during the event period.

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PLACER INSIGHT #3

Nearly 25% of event attendees had come from / went to a local business as part of their visit, proving community benefit

Using Daily Visits, Visitor Journey

Thursdays and Fridays were the most popular, attracting nearly 14k visits over the event period.

Placer's Visitor Journey report demonstrated that event attendees frequented dining and retail establishments as part of their visit, indicating a positive economic impact on the local community. This suggested that additional funding to support and improve the event could continue attendance growth and benefit local businesses.



Thursdays and Fridays were the most popular days, with both seeing nearly 7k visitors over the event period.



Placer's Visitor Journey report revealed shared visitation from/to dining and retail establishments, suggesting a positive local economic impact,

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The Outcome

The City of Dunwoody, GA successfully **secured $88K in budget allocations** for the Holiday Lights display at Brook Run Park.

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In the Customer's Words

> When city leaders questioned the success of the event, we were happy to show that attendance was more than 4x what was expected. That gave them the confidence to increase our budget, helping us to deliver an event that our residents and guests have come to know and love."



Rachel Waldron
Parks and Recreation Director
The City of Dunwoody, GA

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Thank You

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Loved and Trusted By Thousands of Customers



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SECTION IV - SPECIFICATION COMPLIANCE

Unless otherwise noted, all quotations for the Event Analytics Platform shall be in complete accordance with the specifications detailed herein.

Bidders shall note in the space provided below any exceptions or deviations in any way from the specifications of any section of this RFP. Bidders should provide complete detail of exceptions or deviations.

Proposal Exceptions

Section	Brief Description
II: Insurance Requirements	Please note that Placer has over 4,800 customers and cannot change its insurance policies for any individual customer. We have further been moving away from custom insurance requests (including adding customers as named insured) due to the nature of the services provided and the resourcing required for tracking and compliance
II.F: Subcontractors	Not applicable- Placer does not use subcontractors
II.G: Workers' Compensation Indemnity	Not applicable to the Services that are being provided.
II: Hold Harmless and Indemnity Requirement	Placer modified to be relevant to the Services being provided.
III.4: Limitation of Liability	Limitation of Liability as it relates to our Subscription offering is covered in the License Agreement - section 6
III.5: Warranties	Warranty as it relates to our Subscription offering is covered in the License Agreement - section 4.
III.6: Software Deadline, Testing, and Acceptance	Not applicable. Placer is providing access to its platform and a license to the data contained therein as part of this agreement. Placer is not processing your data on our platform nor are we performing any custom work or professional services. Therefore, there is no acceptance/rejection process or as Placer's platform is available as-is to all 4,800+ customers.
III.8: Indemnification	Indemnification as it relates to our Subscription offering is covered in the License Agreement - section 5.
III.13: Failure to Perform	Not applicable. Placer is providing access to its platform and a license to the data contained therein as part of this agreement. Placer is not processing your data on our platform nor are we performing any custom work or professional services.
III.17: Confidentiality	Placer, a growing technology company, serves thousands of public sector customers nationwide. We strive to balance specific local requirements with a consistent contracting approach across our customer base. Our standard practice is to commit to general compliance with applicable laws rather than incorporating every local law or regulation explicitly. To protect proprietary information, and consistent with agreements with other civic entities, we require notice of Open Records requests unless legally prohibited.

By signature below, vendor acknowledges any quotation to be in full compliance with all aspects of each section of the RFP not noted above.

Placer Labs Inc.	415-228-2444
COMPANY	PHONE NUMBER
Vernell Wisdom	Head of Contract Management
REPRESENTATIVE NAME	REPRESENTATIVE TITLE

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Signed by:
Vernell Wisdom
872052F8DE44419...

SIGNATURE

vernell.wisdom@placer.ai
E-MAIL ADDRESS

If awarded, Placer agrees to discuss all terms and conditions herein during good faith negotiations with the Town of Smyrna, Tennessee before signing any final agreement, but does not agree to accept all stated Specifications and Agreement Terms and Conditions before such time.

We have attached a sample of Placer's redlines of the Town of Smyrna, Tennessee Specifications and Agreement for your review.

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will be sourced to the municipality where the property or service is received by the customer regardless of whether or not the provider has a physical location, outlet, or other place of business in that municipality.

Compensation of more than $100,000 from contracts performed in one municipality by a contractor described in Tenn. Code Ann. § 67- 4-708(4)(A) will be sourced to that municipality and the tax from such contracts will be distributed to that municipality. Compensation of $100,000 or less from contracts performed in one municipality by such person will be sourced to the municipality of the person's domicile or location. If the person does not have a domicile or location in Tennessee, such compensation will not be subject to the municipal business tax. (*From Tennessee Business Tax Guide/ Tenn. Dept. of Revenue 2019; See also, Tennessee Works Tax Act (2023), Public Chapter 377, 2023 Session of the 113th General Assembly)*

INSURANCE REQUIREMENTS

Commented [AS1]: Please note that Placer has over 4,800 customers and cannot change its insurance policies for any individual customer. We have further been moving away from custom insurance requests (including adding customers as named insured) due to the nature of the services provided and the resourcing required for tracking and compliance.

(a) Placer Labs Inc. ("Placer") will maintain at all times during the Term, at Placer's own cost and expense, insurance for claims which may arise from or in connection with the operations of Placer with coverage at least as broad and with limits of liability not less than the following: (i) Worker's Compensation: Statutory; (ii) Employers Liability: $1,000,000 per occurrence; $1,000,000 aggregate; (iii) Commercial General Liability: $4,000,000 per claim; $5,000,000 aggregate; (iv) Professional Liability (E&O): $5,000,000 per claim; $5,000,000 aggregate; and (v) Cyber (Network Security) Liability: $5,000,000 per claim; $5,000,000 aggregate.

(b) These insurance policies will be carried with companies that have an A.M. Best Co. rating of "A-" and "Class VII" or better. Deductible amounts under the foregoing policies shall be paid by Placer and the insurance coverage provided for herein will not act to limit Placer's liability under this Agreement. Placer may deliver a Certificate of Insurance evidencing the required insurance coverage to Customer prior to the Term and during the Term Placer will promptly deliver such Certificate to Customer upon receipt of a written request.

~~The Vendor shall purchase and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Vendor, its agents, representatives, employees or subcontractors~~.

~~**A. MINIMUM SCOPE AND LIMITS OF INSURANCE**~~

~~1. **Commercial General Liability**~~
~~Commercial General Liability insurance shall have a minimum limit per occurrence of $1,000,000 and a minimum general aggregate of $2,000,000. It shall include completed operations, product liability and personal injury liability insurance.~~

~~**B. DEDUCTIBLES AND SELF-INSURED RETENTIONS**~~

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Any deductibles or self-insured retentions must be declared to the Town of Smyrna. The Vendor shall be responsible for all deductibles and self-insured retentions.

C. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability Coverages
   a. The Town, its elected and appointed officials, agents, employees and volunteers shall be named as an additional insured as regards negligence by the vendor.

   b. The Vendor's insurance shall be primary as respects the Town, its elected and appointed officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the Town of Smyrna shall be excess and non-contributory of the Vendor's insurance.

2. Employers' Liability Coverage
   The insurer shall agree to waive all rights of subrogation against the Town, its elected and appointed officials, agents, employees and volunteers for losses arising from work performed by the Vendor for the Town of Smyrna.

3. All Coverages
   a. Coverage shall not be canceled, suspended, or voided by either party (the Vendor or the insurer) or reduced in coverage or in limits except after 30 days written notice has been given to the Town of Smyrna. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Vendor's policy.

   b. Neither the acceptance of the completed work nor the payment thereof shall release the Vendor from the obligations of the insurance requirements or indemnification agreement.

   c. The insurance companies issuing the policies shall have no recourse against the Town of Smyrna for payment of premiums or for assessments under any form of the policies.

   d. Replacement certificates, policies or endorsements shall be provided to the Town for any such insurance expiring prior to the completion of services.

   e. Any failure of the Vendor to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its elected and appointed officials, agents, employees and volunteers.

D. ACCEPTABILITY OF INSURERS

All required insurance shall be provided by a company or companies licensed to conduct business in the State of Tennessee. Insurance shall be underwritten by insurers with an A.M. Best Company ratings no less than an A.

E. VERIFICATION OF COVERAGE

~~The Vendor shall furnish the Town with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. **The Certificates are to be received and approved by the Town before work commences and upon any contract renewal thereafter.**~~

~~Upon failure of the Vendor to furnish, deliver and maintain such insurance as requested, this contract, at the election of the Town, may be suspended, discontinued or terminated. Failure of the Vendor to purchase and/or maintain any required insurance shall not relieve the Vendor from any liability or indemnification under the contract.~~

~~The Certificate of Insurance naming the "Town of Smyrna" as **Additional Insured** shall be addressed to the attention of:~~

~~Town of Smyrna~~
~~Department of Safety & Risk Management~~
~~ATTN: Henry Urbina~~
~~315 S Lowry St~~
~~Smyrna, TN 37167~~

~~It can also be submitted electronically to henry.urbina@townofsmyrna.org. The subject line has to indicate the name of the project.~~

~~The Town reserves the right to request complete certified copies of all required insurance policies at any time.~~

~~F. **SUBCONTRACTORS**~~

~~Vendor shall include all subcontractors as insureds under its policies **OR** shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Town of Smyrna reserves the right to request copies of subcontractor's Certificates at any time~~.

Commented [AS2]: Not applicable- Placer does not use subcontractors

~~G. **WORKERS' COMPENSATION INDEMNITY**~~

~~In the event Vendor is not required to provide or is exempt from providing workers' compensation coverage, the parties hereby agree that Vendor, its owners, agents and employees will have no cause of action against, and will not assert a claim against the Town of Smyrna, its elected and appointed officials, agents, employees and volunteers, under any circumstances. The parties also hereby agree that the Town of Smyrna, its elected and appointed officials, agents, employees and volunteers shall in no circumstance be, or considered as, the employer or statutory employer of Vendor, its owners, agents and employees. The parties further agree that Vendor is a wholly independent vendor and is exclusively responsible for its employees, owners, and agents. Vendor hereby agrees to protect, defend, indemnify and hold the Town of Smyrna, its elected and appointed officials, agents, employees and volunteers harmless from any such assertion or claim that may arise from the performance of this contract.~~

Commented [AS3]: Not applicable to the Services that are being provided.

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HOLD HARMLESS AND INDEMNITY REQUIREMENT:

Commented [AS4]: Placer modified to be relevant to the Services being provided.

Placer shall defend, indemnify and hold Customer harmless from liability to third parties resulting from infringement by Placer's provision of Placer Data of any United States patent or any copyright or misappropriation of any trade secret. The foregoing obligations do not apply with respect to any portions or components of Placer Data (i) that are created, compiled, or modified by any party other than Placer, (ii) combined with other products, processes, data, or materials where the alleged infringement relates to such combination, (iii) where Customer continues allegedly infringing activity after being notified thereof or after being informed of alternatives that would have avoided the alleged infringement, or (iv) where Customer's use of Placer Data is not strictly in accordance with this Agreement. If, due to a claim of infringement, Placer Data are held by a court of competent jurisdiction to be or are believed by Placer to be infringing, Placer may, at its option (a) obtain for Customer a license to continue using Placer Data or (b) terminate the Order Form and Customer's rights thereunder and provide Customer a refund of any prepaid, unused fees for Placer Data. ~~Vendor shall indemnify and hold harmless, to the maximum extent permitted by law, the Town of Smyrna and its officers, agents, employees, volunteers, from and against any and all liability, damages, losses, (whether in contract or in tort, including personal injury, accidental death or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), and costs (including reasonable attorney's fees, litigation, arbitration, mediation, appeal expenses) which in whole or in part are caused by the negligence, recklessness or intentional wrongful misconduct of the Vendor and persons employed by or utilized by the Vendor in Vendor's performance of this Agreement. The vendor further agrees to protect, defend, and save the Town, its elected and appointed officials, agents, employees and volunteers while working in the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind of character, including the cost of their defense, arising in favor of the vendor's employees or third parties on account of bodily or personal injuries, death or damage to property arising out of services performed or omissions of services or in any way resulting from the acts of omissions of the vendor and/or its agents, employees, subcontractors, representative of the Town under this agreement.~~

Pursuant to Tennessee Attorney General Opinion 93-01, the Town will not indemnify, defend or hold harmless in any fashion the Vendor from any claims arising from any failure, regardless of any language in any attachment or other document that the Vendor may provide.

APPLICABLE LAW:

Any contract resulting from this RFP shall be governed by and construed under the laws of the State of Tennessee.

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AGREEMENT

This Agreement is made and entered into as of this _____ day of _____, 20____, by and between Placer Labs Inc., a Delaware corporation (the "Bidder") and the Town of Smyrna, Tennessee, a Tennessee municipal corporation (the "Town") for the purpose of the proposal titled "RFP Event Analytics Platform".

WHEREAS, the Bidder has submitted a quotation for the provision of certain products and/or services to the Town, all in accordance with the terms of the Request for Proposals attached hereto and incorporated herein by reference as if set forth at length verbatim as Exhibit A (the "RFP"), and which Proposal from the Bidder is attached hereto and incorporated herein by reference as if set forth at length verbatim as Exhibit B (the "Quotation"); the RFP and the Quotation, together with any and all ancillary documents thereto, shall be collectively referred to herein as the "Bid Documents"; and

WHEREAS, the Town now desires to accept the Bidder's quotation, in accordance with the terms set forth in such Bid Documents.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned do hereby agree as follows:

1. Acceptance of Bid Documents. The terms of the Bid Documents, as incorporated herein by reference, are hereby accepted by the parties hereto. The Bidder hereby agrees to provide the goods and/or services contemplated by such Bid Documents in accordance with the terms set forth therein. The Town hereby accepts the Bidder's quotation to provide the goods and/or services contemplated by such Bid Documents in accordance with the terms set forth therein.

2. Entire Agreement. This Agreement, including the exhibits and any other documents referred to herein or therein, which form a part hereof, contains the entire understanding of the parties with respect to its subject matter. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein or therein. This Agreement supersedes all prior written or oral agreements and understandings between the parties with respect to its subject matter and may not be altered, modified or amended, in whole or in part, except by the express written authorization and consent of the parties hereto.

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3. Severability. This agreement constitutes the product of negotiations of the parties hereto and any enforcement of hereof will be interpreted in a neutral manner and not more strongly against any party based upon the source of the draftsmanship of this Agreement. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall continue to be fully effective.

4. Limitation of Liability. ~~The Town of Smyrna shall not be liable for any loss, claim, expense or damage caused by, contributed to or arising out of the acts or omission of Bidder or third parties, whether negligent or otherwise.~~

5. Warranties. ~~The Bidder warrants to the Town that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects, suitable for the purpose for which the materials and equipment are furnished, and in conformance with the Agreement. If it does not perform as warranted, Bidder shall use all commercially reasonable efforts to correct the product(s) so that it operates in all material respects in conformity with the written representations of Bidder. If Bidder cannot correct the product(s) within a reasonable period of time, Bidder shall refund the purchase price of the product(s). All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.~~

6. ~~Software Deadline, Testing and Acceptance: If applicable to the Agreement, software provided by Bidder shall be installed for the purposes of testing, as stated herein below, no later than one hundred twenty (120) days from the effective date of this Agreement unless the parties, in writing, set a different specific date. In Addition, software provided by Bidder to The Town is subject to inspection and testing to verify that the software conforms to its written specifications and to ensure it meets The Town's needs. The Town shall have seven (7) business days after the software is installed to perform testing of the software using The Town's data. The Town shall provide Bidder with written notice of acceptance or rejection of the software five (5) business days or less after the end of the testing period. If the Town does not provide timely written notice of acceptance or rejection to Bidder, the software shall be deemed to be accepted by The Town. If the software is rejected, The Town may, at its sole discretion, either (1) return the software and receive a refund of all fees paid with respect thereto, or (2) allow Bidder to repair or replace the software, without charge, in a timely manner. In the event The Town elects to allow the Bidder to repair or replace the software, The Town shall have an additional (7) business days in which to accept or reject the software as laid out hereinabove.~~

7. Use of The Town's Logo or Name: Bidder shall not use The Town's name or any logo in marketing or publicity materials or for marketing or publicity purposes without the prior written authorization from The Town. Bidder shall not issue, publish, or divulge any materials developed or used in the performance of this Agreement or make any statement to the media relating to this Agreement without the prior written consent of The Town.

Commented [AS1]: Limitation of Liability as it relates to our Subscription offering is covered in the License Agreement - section 6

Commented [AS2]: Warranty as it relates to our Subscription offering is covered in the License Agreement - section 4.

Commented [AS3]: Not applicable. Placer is providing access to its platform and a license to the data contained therein as part of this agreement. Placer is not processing your data on our platform nor are we performing any custom work or professional services. Therefore, there is no acceptance/rejection process or as Placer's platform is available as-is to all 4,800+ customers.

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8. Indemnification. ~~The parties hereto agree that Bidder shall indemnify The Town for any and all claims of negligence, tortious conduct or otherwise unlawful acts committed by Bidder in the performance of their obligations under the terms of this agreement, including any and all attachments or exhibits thereto and Bidder agrees to pay any and all costs associated with the enforcement of the terms of this indemnity agreement by The Town, including but not limited to, court costs, civil judgments, assessments or any other reasonable fees associated therewith. This clause shall survive the expiration or termination of this Agreement and shall remain in full force and effect until the expiration of any applicable statute of limitation. In addition, Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private of public entities and, therefore, prohibits an agreement by The Town to indemnify a third party or agree to a limitation of liability provision~~.

Commented [AS4]: Indemnification as it relates to our Subscription offering is covered in the License Agreement - section 5.

9. Non-Appropriation: Bidder acknowledges that The Town is a governmental entity, and the validity of this Agreement is based upon the availability of public funding under its authority. In the event The Town fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to The Town, and such termination shall not be a breach of the Agreement, and any unused payment made to Bidder shall be returned to The Town.

10. Tax Exemption: As a tax-exempt entity, The Town shall not be responsible for sales or use taxes incurred for products or services. The Town shall supply Bidder with its Sales and Use Tax Exemption Certificate upon Bidder's request. Bidder shall bear the burden of providing its suppliers with a copy of The Town's tax exemption certificate and Bidder shall assume all liability for such taxes, if any, that should be incurred.

11. Attorney Fees. The parties hereto agree that The Town shall be in no event liable for any attorney's fees which Bidder may incur due to breach of this Agreement by either party; and further, The Town shall not acquiesce to any term in any document that indicates or infers The Town may or shall be responsible for the Attorney's fees of another party or the Bidder's attorney fees.

12. Boycott of Israel. The Bidder certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

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13. Failure to perform. ~~The parties agree, in the event Bidder fails to perform any obligation, other than with regards to the date of delivery, set out in this Agreement, the Town shall be reimbursed by Bidder for any and all expenses associated with having to obtain a new provider to finish out the contracted term, including, but in no way limited to, any charges/fees, which are above and beyond the amount the Town would have paid to Bidder to complete the same task; provided, however, that if the failure, by its nature, is one that can be cured, the Bidder shall have fifteen (15) business days after receipt of written notice from the Town to cure said failure to perform. The parties hereby agree, unless a specific date of delivery is provided in this Agreement or other bid documents, all deliveries shall be made to the Town no later than ninety (90) days from the date of order. The parties further agree that if Bidder, in good faith, is not able to meet this ninety (90) day deadline of delivery due to forces beyond his, her or its control, that were unforeseeable at the time of signing this contract, then this entire Agreement shall be voidable at the sole discretion of the Town. Should the Town elect to void this Agreement due to Bidder's good faith inability, due to forces beyond his, her or its control, and which were unforeseeable at the time of signing this Agreement to meet the delivery deadline, then neither party shall be deemed to have breached this Agreement, and Bidder shall return all monies, within seven (7) business days, paid by the Town for the products/items that could not be delivered in the allotted time.~~

Commented [AS5]: Not applicable. Placer is providing access to its platform and a license to the data contained therein as part of this agreement. Placer is not processing your data on our platform nor are we performing any custom work or professional services.

14. Unilateral Modification of Agreement Not Permitted: Bidder may make unilateral changes to its Privacy Policy, provided any such changes are subject to the provisions of this Agreement but shall not materially alter the use of the service or reduce the level of protection provided to the Town at the time of the execution of this Agreement. Except as provided in the preceding sentence, notwithstanding anything in this Agreement to the contrary, any change to this Agreement made by Bidder that is not in writing and that is not properly executed by the signatures of authorized representatives of the parties hereto, including attestation by The Town's Clerk and approved as to form by the Town Attorney are subject to the terms and conditions of this Agreement.

15. Changes to Terms: Except as provided in Paragraph No. ~~13~~ 14 above pertaining to Bidder's Privacy Policy, Bidder shall provide The Town written notice, sent in care of Town Attorney's Office, Smyrna, Tennessee, 315 South Lowry Street, Tennessee 37167, of any proposed change to this Agreement at least ninety (90) days prior to being effective to The Town. The Town shall have thirty (30) days after receiving the written notice to terminate this Agreement, and such cancellation shall not be a breach of this Agreement. Bidder will refund to The Town any payment made by The Town to Bidder equal to the difference between the number of months the payment was intended for and the number of months remaining on this Agreement that the fee was intended to cover.

16. Price Assurance: Unless specifically stated in this Agreement or other bid documents, the bid price shall be valid for the full term of this Agreement. If the Bidder, specifically states that he, she or it cannot honor the bid price for the full term of this Agreement; then this Agreement is voidable at the sole discretion of the Town, if at any time during the full term of this Agreement, Bidder requests to raise the bid price. If the Town elects to void this Agreement, at its sole discretion, it shall not be deemed to be a breach of the contract by either party.

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17. Confidentiality. The Town, as a Tennessee Municipal Corporation is subject to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq; therefore, this Agreement and all documents or materials, in any format, including, but not limited to paper, electronic or virtual, that are public records pursuant to law, are not confidential and are subject to disclosure. The Town will respond to all proper Open Records Requests in the time allowed by law, provided that the Town provides Bidder with prompt written notice of such requirement, when legally permissible, and reasonably cooperates with the Bidder to limit or challenge such requirement~~without any requirement to disclose such request to Bidder or provide Bidder with notice or the time to obtain a protective order~~. The Town does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 16 serves to meet such burden and authorization of disclosure.

Commented [AS6]: Placer, a growing technology company, serves thousands of public sector customers nationwide. We strive to balance specific local requirements with a consistent contracting approach across our customer base. Our standard practice is to commit to general compliance with applicable laws rather than incorporating every local law or regulation explicitly.

To protect proprietary information, and consistent with agreements with other civic entities, we require notice of Open Records requests unless legally prohibited.

18. Mediation. The Town may, at its option, require the attempted resolution of any dispute arising under this Agreement by mediation prior to the filing of any lawsuit or other claim. Should any dispute arise, Bidder shall provide the Town notice of any intent to file suit by certified mail. The Town shall notify the Bidder of its intent to exercise its right to mediation within thirty (30) days of receiving such notice. If the Town does not exercise its right to mediation, Bidder may file suit. Any mediator selected under this clause shall be agreed upon by the parties and the costs of such mediation shall be divided and paid equally between the parties.

19. No Presumption Against Drafter: The parties are both business entities having substantial experience with the subject matter of this Agreement, and each has fully participated in the negotiation and drafting of this Agreement. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

20. Governing Law. This Agreement shall be deemed to have been executed and delivered within the State of Tennessee, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Tennessee. The parties agree that all obligations of the parties are performable in Smyrna, Tennessee.

21. Choice of Forum and Venue. The parties' choice of forum and venue shall be exclusively in the courts of Rutherford County, Tennessee or the United States District Court, for the Middle District of Tennessee. The parties hereby waive their right to a jury trial. Any provision of the Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

TOWN OF SMYRNA, TENNESSEE	**BIDDER: PLACER LABS INC.**
By: _____	By: _____
Name: Mary Esther Reed	Title: Head of Contract Management
Title: Mayor	
ATTEST:	ATTEST: Signed by: Vernell Wisdom
_____	_____
Amber Hobbs, Town Clerk	Vernell Wisdom, Head of Contract Management

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Exhibit B

Quotation Page

Pricing Structure: Year 1

Cost of Placer's Platform Services for the Town of Smyrna, Tennessee
not including tax, if applicable: $29,000.00

~~Licensing fees:~~

~~Support costs:~~

~~Additional charges, if any:~~

Pricing Structure: Year 2

Cost of Placer's Platform Services for the Town of Smyrna, Tennessee
not including tax, if applicable: $30,450.00

~~Licensing fees:~~

~~Support costs:~~

~~Additional charges, if any:~~

Total Two-Year Cost: $59,450.00 *not including any applicable tax*. Customer to supply tax exemption form if exempt. If no exempt form is received, Customer is responsible for all applicable taxes arising directly from the Services other than U.S. taxes based on Placer's net income.

We have attached Placer's Order Form that includes the two-year cost of Placer's Platform Services for the Town of Smyrna, Tennessee. There are no additional fees, costs, or additional charges beyond the associated cost for Placer's Platform Services, excluding any applicable taxes.

PLACER LABS INC.
ORDER FORM

Town of Smyrna, Tennessee	("**Customer**")	Placer Labs Inc.	("**Placer**")
Address:	315 South Lowry St Smyrna, TN 37167	Address:	440 N Barranca Ave., #1277 Covina, CA 91723
		Contact Person	Chase Webster
Contact Person:	Todd Spearman	Billing Contact Person:	Jason Tsui
Email:	todd.spearman@townofsmyrna.org	Billing Email*:	billing@placer.ai
Phone:	(615) 267-5011	Billing Phone*:	415-228-2444 ext 806
Billing Contact Email:	todd.spearman@townofsmyrna.org	*Not for use for official notices.	

1. Services and Fees.

The services provided under this Order Form (the "**Services**") include:

Services Description	Services Description Detail
Platform Access	Section 2
Chains Report Expanded	Section 2
Void Analysis	Section 2

Total Annual Fee – Year 1	**$29,000.00**
Total Annual Fee – Year 2	**$30,450.00**

All Fees in this Order Form are shown in US Dollar (USD)

2. Services Description.

Chains Report Expanded
Chains Report Expanded which displays chain-level demographic and psychographic data.

Placer Venue Analytics Platform
- Access to Placer's location analytics platform (the "Placer Platform"). Access to Placer XTRA reports,subject to Scoping and Additional Usage Limitations in Section 3.

Void Analysis
Access to the Void Analysis tool.

3. Permitted Uses and Limitations.

Placer Confidential Information
All rights reserved. This document contains confidential and/or proprietary information belonging to Placer Labs Inc. which may not be reproduced or transmitted in any form or by any means without the express written consent of Placer.

Permitted Uses:

Customer may use Placer Data solely for the following purposes ("**Permitted Uses**"): (a) Customer may use Placer Data for Customer's internal business purposes; and (b) Customer may incorporate Placer Data into Research Data, as described and subject to the restrictions below.

"**Placer Data**" means the data, information and materials accessible via the Services.

"**Research Data**" means datasets and other materials created by Customer that result in any part from Customer's use of Placer Data:

- Research Data may contain limited excerpts and discrete portions of Placer Data ("Excerpts") so long as: (i) such Excerpts are only supportive of, and do not independently form a substantial part of, the Research Data; (ii) Research Data does not include full copies or substantial portions of Placer Data; and (iii) any such Research Data is distributed to no more than a limited number of Customer's clients and prospective clients and is not commercially or generally distributed;
- The Customer may share Research Data with current and potential customers, and in marketing materials; provided that the Customer shall cite Placer as a provider of such information (for such purpose only, Placer grants Customer the rights to use the Placer.ai name and logo, provided that any such use of the Placer.ai name and logo must clearly indicate that Placer is the provider of data only, and is not involved in any analysis, conclusion, recommendation); and
- Customer shall not, directly or indirectly, resell, distribute, sublicense, display or otherwise provide Placer Data to any third parties, except that Customer may display Placer Data as part of Research Data.

No part of the Placer Data or Research Data may be used: (i) in connection with, or to enable development of machine learning, rules engines, or other similar automated processes; or (ii) to train third-party artificial intelligence ("AI") technologies, models, software, platforms or tools including, without limitation, ChatGPT, Bard and similar AI technologies. None of the Placer Data, or any part thereof, may be shared externally with any third-party AI technology service providers unless the third-party AI service providers are contractually prohibited from: (i) using the Placer Data to develop or improve the AI technology, (ii) storing any portion of the Placer Data; and (iii) redistributing any portion of the Placer Data to any third party.

Scoping and Additional Usage Limitations: In addition to and not in replacement of any usage limitations in this Order Form and the Agreement, Customer's access to and usage of the Services and Placer Data is further limited as follows:

- Customer and its authorized users may not share user credentials, logins or Placer Data with any others.
- Customer and its authorized users may not provide access to any third party agents acting on Customer's behalf (including any consultants, contractors, or other agents of Customer) without prior written consent from Placer. Any such approved access may be subject to an additional fee pursuant to a written amendment to this Order Form.
- Xtra Reports: Quarterly Maximum of 26 credits; Annual Maximum of 104.

4. Term and Termination.

Term:

The Initial Term and any Additional Terms are referred to collectively as the "Term."

- Initial Term: The initial term of this Order Form will begin as of the last signature date set forth below (the "**Effective Date**"), and will continue for 24 consecutive months thereafter (the "**Initial Term**"). Each renewal or additional term, if any, is referred to as "**Additional Term**," and the Initial Term and any Additional Terms are referred to collectively as the "**Term"**.

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- Additional Term: This Order Form shall continue on the same terms and conditions set forth herein for additional periods of the same duration as the Initial Term, if mutually agreed in writing by both parties (email would be sufficient).

Termination:

- Material Breach: Either party may terminate this Order Form upon thirty (30) days' notice if the other party materially breaches any of the terms or conditions of this Order Form or the Agreement (as defined below), and the breach remains uncured during such thirty (30) days.
- Suspension: In addition, Placer may immediately suspend Customer's access to the Services, or terminate the Order Form, in the event of non-payment by the Customer or breach by Customer of any restrictions regarding usage of the Services.
- Fees: All Fees are non-refundable and in the event of any termination, Customer will pay in full for the Services.

Post -Termination:

- Rights and Licenses: Upon any termination or other expiration of this Order Form all rights and licenses granted to Customer to use the Services and Placer Data shall cease.
- Placer Data: Within ten (10) days after such termination or expiration, Customer will permanently delete or destroy all elements of Placer Data under its control; provided however, Customer shall not be required to immediately purge from its hard-copy, electronic or email files Placer Data that Customer accessed or otherwise used in compliance with the terms of this Order Form or the Agreement which are contained in such hard-copy, electronic or email files (the "Post-Termination Information"), so long as any Post-Termination Information is (x) solely retained for ordinary corporate systems backup, legal or regulatory purposes, (y) not used, copied, distributed or displayed for internal research or marketing or for any other commercial purposes and (z) ultimately deleted in accordance with Customer's data retention policy.
- Research Data: Customer may retain and continue to use and distribute copies of Research Data generated hereunder, provided that any such Research Data containing Excerpts (w) is presented in such a manner that it could not reasonably be decompiled or reverse engineered to extract the underlying Placer Data, (x) is used for Customer's internal, non-commercial business purposes only, (y) is ultimately deleted in accordance with Customer's data retention policy and (z) is otherwise used in accordance with this Order Form and the Agreement.
- Certification: Upon request from Placer, Customer shall certify in writing its compliance with this provision.

5. Invoicing, Payment Terms, and Fee Increases.

Invoicing and Payment Terms:

Placer will invoice Customer as follows for the Initial Term starting on the Effective Date:	Annually (Placer will invoice Customer for the entire Annual Fee promptly after the Effective Date and then annually thereafter)
Customer shall pay all invoices within the following number of days of the invoice date:	30

- Placer will send all billing via electronic invoice to the Customer billing contact email indicated above via NetSuite.

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- If Customer believes that Placer has invoiced Customer incorrectly, Customer must contact Placer no later than sixty (60) days after the closing date on the first invoice in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Placer's customer support department at support@placer.ai.
- Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.
- Customer is responsible for all applicable taxes arising directly from the Services other than U.S. taxes based on Placer's net income.

Fee Increases:

- The Annual Fee for the Initial Term has been based on the metric(s) and scoping in this Order Form, Placer reserves the right to increase the Customer's Annual Fee for any Additional Term if the metric or scope of use has increased.
- Except as specifically provided otherwise in this Order Form, renewal of promotional or one-time priced Fees will be at Placer's applicable subscription pricing in effect at the time of the applicable Additional Term.
- Customer agrees that if any event occurs that will result in a material increase in Customer's usage of the Services (whether due to a merger or acquisition or otherwise), Customer will notify Placer in writing no later than thirty (30) days following the date of such event and Placer reserves the right to increase the Customer's Annual Fee mid-Term accordingly. If such event consists of Customer's merger with or acquisition of another customer of Placer, the Annual Fee increase shall be in an amount no less than the pro-rated annual fee of such other customer.
- Except as specifically provided otherwise in this Order Form, Annual Fees for any Additional Term shall be subject to an increase up to the greater of eight percent (8%) or CPI, unless Placer provides notice of different pricing at least thirty (30) days prior to the applicable Additional Term. Any such increase in Annual Fees will only be effective upon commencement of the Additional Term.

6. Support.

Premier Customer Support
- Regular Meetings with Placer's Customer Success Team
- Live, Virtual Training support

Placer will use commercially reasonable efforts to provide customer service and technical support in connection with the Services on weekdays during the hours of 9:00 A.M. through 5:00 P.M. Pacific Time, with the exclusion of federal holidays. For any such support, Customer shall contact support@placer.ai.

7. Confidentiality.

Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Placer includes, without limitation, non-public information regarding features, functionalities and performance of, and pricing for, the Services. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted by the Agreement) or disclose to any third party any Proprietary Information. The foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, (b) was in the possession of or known to the Receiving Party, prior to disclosure thereof by the Disclosing Party, without any restrictions or confidentiality obligations, (c) was rightfully disclosed to it, without any restrictions or confidentiality obligations, by a third party, (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law, provided that the Receiving Party provides the Disclosing Party with prompt written notice of such requirement and reasonably cooperates with the Disclosing Party to limit or

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challenge such requirement. These provisions regarding Proprietary Information shall apply in perpetuity and shall survive any termination of the Order Form or the Agreement.

8. Miscellaneous.

Funding Failure Termination Right. If funds for continued payments under this Agreement by the Customer are at any time unavailable or are insufficient for the Initial Term or any Additional Term, through failure of any entity, including the Customer itself, to appropriate such funds, then the Customer shall, within ten (10) days of such determination, provide notice to Placer and both Placer and the Customer shall have the right to immediately terminate this Order Form without penalty or further payment by the Customer.

Public Records Laws. Placer acknowledges that if Customer is subject to the applicable public records laws and regulations for Tennessee state ("**Public Records Laws**"), that all obligations imposed by this Agreement are subordinate to Customer's obligations under Public Records Laws. Notwithstanding the foregoing, Customer agrees that it will keep Placer's Proprietary Information (including any Placer Data) confidential in accordance with this Order Form and the Agreement unless otherwise required by applicable law, including Public Records Law.

License Agreement Amendments. For the purposes of this Order Form only, the Agreement is hereby amended as follows:

- If applicable law prohibits Customer from indemnifying Placer, then Section 5.b of the Agreement, beginning "Customer shall defend, indemnify and hold Placer harmless…", is hereby deleted in its entirety.
- The third to the last sentence of Section 8 of the Agreement is hereby removed in its entirety and replaced with the following: "This Agreement shall be governed by the laws of the State of Tennessee without regard to its conflict of laws provisions."

Notices. All notices under the Order Form and the Agreement will be in writing and will be deemed to have been duly given (a) upon delivery by a recognized delivery service (e.g., FedEx) with delivery confirmation, (b) upon receipt, if sent by U.S. certified or registered mail, return receipt requested, or (c) when sent via email, if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Notices shall be sent to the addresses set forth in the Order Form, which addresses may be subsequently modified by written notice given in accordance with these provisions.

Trial Offering. If Placer provides Customer with additional Services or Placer Data during the Term and identifies such Services or Placer Data as for evaluation or trial purposes only (a "**Trial Offering**"), access to the Trial Offering is permitted only during the period designated by Placer (or if not designated, 30 days from receipt of access) ("**Trial Subscription Term**"), unless the Trial Offering is earlier terminated as provided below. During the Trial Subscription Term, Customer may only use the Trial Offering for internal evaluation purposes and may not otherwise use or distribute the Trial Offering for any other purposes. Notwithstanding any provision included in this Order Form or the Agreement to the contrary, in respect of the Trial Offering Customer acknowledges and agrees that: (i) either party may terminate the Trial Subscription Term immediately and without liability upon written notice to the other party; (ii) any Trial Offering is provided "as is"; (iii) Placer provides no warranty, service levels or indemnity for any Trial Offering and (iv) Placer's liability related to any Trial Offering will not exceed USD $100. Notwithstanding the foregoing, the Services and Placer Data provided in this Order Form is not considered a Trial Offering.

Promotional Use. Customer grants Placer the right to use Customer's company name and company logo, for Placer's promotional purposes.

9. Authorization.

This Order Form is entered into by and between Customer and Placer effective as of the Effective Date. This Order Form and use of the Services are governed by, and Customer and Placer agree to, the License Agreement located at https://www.placer.ai/placer-license-agreement/ (the "**Agreement**"); provided, however, that in the event of any conflict

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between this Order Form and the Agreement, this Order Form shall control. Unless otherwise defined in this Order Form, capitalized terms herein have the same meaning as in the Agreement.

"Customer"	**"Placer"**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date:	Date:

PLACER LABS INC.
ORDER FORM

Town of Smyrna, Tennessee	("**Customer**")	Placer Labs Inc.	("**Placer**")
Address:	315 South Lowry St Smyrna, TN 37167	Address:	440 N Barranca Ave., #1277 Covina, CA 91723
		Contact Person	Chase Webster
Contact Person:	Todd Spearman	Billing Contact Person:	Jason Tsui
Email:	todd.spearman@townofsmyrna.org	Billing Email*:	billing@placer.ai
Phone:	(615) 267-5011	Billing Phone*:	415-228-2444 ext 806
Billing Contact Email:	todd.spearman@townofsmyrna.org	*Not for use for official notices.	

1. Services and Fees.

The services provided under this Order Form (the "**Services**") include:

Services Description	Services Description Detail
Platform Access	Section 2
Chains Report Expanded	Section 2
Void Analysis	Section 2

Total Annual Fee – Year 1	**$29,000.00**
Total Annual Fee – Year 2	**$30,450.00**

All Fees in this Order Form are shown in US Dollar (USD)

2. Services Description.

Chains Report Expanded
Chains Report Expanded which displays chain-level demographic and psychographic data.

Placer Venue Analytics Platform

- Access to Placer's location analytics platform (the "Placer Platform"). Access to Placer XTRA reports,subject to Scoping and Additional Usage Limitations in Section 3.

Void Analysis
Access to the Void Analysis tool.

3. Permitted Uses and Limitations.

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Permitted Uses:

Customer may use Placer Data solely for the following purposes ("**Permitted Uses**"): (a) Customer may use Placer Data for Customer's internal business purposes; and (b) Customer may incorporate Placer Data into Research Data, as described and subject to the restrictions below.

"**Placer Data**" means the data, information and materials accessible via the Services.

"**Research Data**" means datasets and other materials created by Customer that result in any part from Customer's use of Placer Data:

Research Data may contain limited excerpts and discrete portions of Placer Data ("Excerpts") so long as: (i) such Excerpts are only supportive of, and do not independently form a substantial part of, the Research Data; (ii) Research Data does not include full copies or substantial portions of Placer Data; and (iii) any such Research Data is distributed to no more than a limited number of Customer's clients and prospective clients and is not commercially or generally distributed;

The Customer may share Research Data with current and potential customers, and in marketing materials; provided that the Customer shall cite Placer as a provider of such information (for such purpose only, Placer grants Customer the rights to use the Placer.ai name and logo, provided that any such use of the Placer.ai name and logo must clearly indicate that Placer is the provider of data only, and is not involved in any analysis, conclusion, recommendation); and

Customer shall not, directly or indirectly, resell, distribute, sublicense, display or otherwise provide Placer Data to any third parties, except that Customer may display Placer Data as part of Research Data.

No part of the Placer Data or Research Data may be used: (i) in connection with, or to enable development of machine learning, rules engines, or other similar automated processes; or (ii) to train third-party artificial intelligence ("AI") technologies, models, software, platforms or tools including, without limitation, ChatGPT, Bard and similar AI technologies. None of the Placer Data, or any part thereof, may be shared externally with any third-party AI technology service providers unless the third-party AI service providers are contractually prohibited from: (i) using the Placer Data to develop or improve the AI technology, (ii) storing any portion of the Placer Data; and (iii) redistributing any portion of the Placer Data to any third party.

Scoping and Additional Usage Limitations: In addition to and not in replacement of any usage limitations in this Order Form and the Agreement, Customer's access to and usage of the Services and Placer Data is further limited as follows:

Customer and its authorized users may not share user credentials, logins or Placer Data with any others.

Customer and its authorized users may not provide access to any third party agents acting on Customer's behalf (including any consultants, contractors, or other agents of Customer) without prior written consent from Placer. Any such approved access may be subject to an additional fee pursuant to a written amendment to this Order Form.

Xtra Reports: Quarterly Maximum of 26 credits; Annual Maximum of 104.

4. Term and Termination.

Term:

The Initial Term and any Additional Terms are referred to collectively as the "Term."

Initial Term: The initial term of this Order Form will begin as of the last signature date set forth below (the "**Effective Date**"), and will continue for 24 consecutive months thereafter (the "**Initial Term**"). Each renewal or additional term, if any, is referred to as "**Additional Term**," and the Initial Term and any Additional Terms are referred to collectively as the "**Term"**.

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Additional Term: This Order Form shall continue on the same terms and conditions set forth herein for additional periods of the same duration as the Initial Term, if mutually agreed in writing by both parties (email would be sufficient).

Termination:

Material Breach: Either party may terminate this Order Form upon thirty (30) days' notice if the other party materially breaches any of the terms or conditions of this Order Form or the Agreement (as defined below), and the breach remains uncured during such thirty (30) days.

Suspension: In addition, Placer may immediately suspend Customer's access to the Services, or terminate the Order Form, in the event of non-payment by the Customer or breach by Customer of any restrictions regarding usage of the Services.

Fees: All Fees are non-refundable and in the event of any termination, Customer will pay in full for the Services.

Post -Termination:

Rights and Licenses: Upon any termination or other expiration of this Order Form all rights and licenses granted to Customer to use the Services and Placer Data shall cease.

Placer Data: Within ten (10) days after such termination or expiration, Customer will permanently delete or destroy all elements of Placer Data under its control; provided however, Customer shall not be required to immediately purge from its hard-copy, electronic or email files Placer Data that Customer accessed or otherwise used in compliance with the terms of this Order Form or the Agreement which are contained in such hard-copy, electronic or email files (the "Post-Termination Information"), so long as any Post-Termination Information is (x) solely retained for ordinary corporate systems backup, legal or regulatory purposes, (y) not used, copied, distributed or displayed for internal research or marketing or for any other commercial purposes and (z) ultimately deleted in accordance with Customer's data retention policy.

Research Data: Customer may retain and continue to use and distribute copies of Research Data generated hereunder, provided that any such Research Data containing Excerpts (w) is presented in such a manner that it could not reasonably be decompiled or reverse engineered to extract the underlying Placer Data, (x) is used for Customer's internal, non-commercial business purposes only, (y) is ultimately deleted in accordance with Customer's data retention policy and (z) is otherwise used in accordance with this Order Form and the Agreement.

Certification: Upon request from Placer, Customer shall certify in writing its compliance with this provision.

5. Invoicing, Payment Terms, and Fee Increases.

Invoicing and Payment Terms:

Placer will invoice Customer as follows for the Initial Term starting on the Effective Date:	Annually (Placer will invoice Customer for the entire Annual Fee promptly after the Effective Date and then annually thereafter)
Customer shall pay all invoices within the following number of days of the invoice date:	30

Placer will send all billing via electronic invoice to the Customer billing contact email indicated above via NetSuite.

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If Customer believes that Placer has invoiced Customer incorrectly, Customer must contact Placer no later than sixty (60) days after the closing date on the first invoice in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Placer's customer support department at support@placer.ai.
Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.
Customer is responsible for all applicable taxes arising directly from the Services other than U.S. taxes based on Placer's net income.

Fee Increases:

The Annual Fee for the Initial Term has been based on the metric(s) and scoping in this Order Form, Placer reserves the right to increase the Customer's Annual Fee for any Additional Term if the metric or scope of use has increased.
Except as specifically provided otherwise in this Order Form, renewal of promotional or one-time priced Fees will be at Placer's applicable subscription pricing in effect at the time of the applicable Additional Term.
Customer agrees that if any event occurs that will result in a material increase in Customer's usage of the Services (whether due to a merger or acquisition or otherwise), Customer will notify Placer in writing no later than thirty (30) days following the date of such event and Placer reserves the right to increase the Customer's Annual Fee mid-Term accordingly. If such event consists of Customer's merger with or acquisition of another customer of Placer, the Annual Fee increase shall be in an amount no less than the pro-rated annual fee of such other customer.
Except as specifically provided otherwise in this Order Form, Annual Fees for any Additional Term shall be subject to an increase up to the greater of eight percent (8%) or CPI, unless Placer provides notice of different pricing at least thirty (30) days prior to the applicable Additional Term. Any such increase in Annual Fees will only be effective upon commencement of the Additional Term.

6. Support.

Premier Customer Support
Regular Meetings with Placer's Customer Success Team
Live, Virtual Training support

Placer will use commercially reasonable efforts to provide customer service and technical support in connection with the Services on weekdays during the hours of 9:00 A.M. through 5:00 P.M. Pacific Time, with the exclusion of federal holidays. For any such support, Customer shall contact support@placer.ai.

7. Confidentiality.

Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Placer includes, without limitation, non-public information regarding features, functionalities and performance of, and pricing for, the Services. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted by the Agreement) or disclose to any third party any Proprietary Information. The foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, (b) was in the possession of or known to the Receiving Party, prior to disclosure thereof by the Disclosing Party, without any restrictions or confidentiality obligations, (c) was rightfully disclosed to it, without any restrictions or confidentiality obligations, by a third party, (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law, provided that the Receiving Party provides the Disclosing Party with prompt written notice of such requirement and reasonably cooperates with the Disclosing Party to limit or

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challenge such requirement. These provisions regarding Proprietary Information shall apply in perpetuity and shall survive any termination of the Order Form or the Agreement.

8. Miscellaneous.

Funding Failure Termination Right. If funds for continued payments under this Agreement by the Customer are at any time unavailable or are insufficient for the Initial Term or any Additional Term, through failure of any entity, including the Customer itself, to appropriate such funds, then the Customer shall, within ten (10) days of such determination, provide notice to Placer and both Placer and the Customer shall have the right to immediately terminate this Order Form without penalty or further payment by the Customer.

Public Records Laws. Placer acknowledges that if Customer is subject to the applicable public records laws and regulations for Tennessee state ("**Public Records Laws**"), that all obligations imposed by this Agreement are subordinate to Customer's obligations under Public Records Laws. Notwithstanding the foregoing, Customer agrees that it will keep Placer's Proprietary Information (including any Placer Data) confidential in accordance with this Order Form and the Agreement unless otherwise required by applicable law, including Public Records Law.

License Agreement Amendments. For the purposes of this Order Form only, the Agreement is hereby amended as follows:

If applicable law prohibits Customer from indemnifying Placer, then Section 5.b of the Agreement, beginning "Customer shall defend, indemnify and hold Placer harmless…", is hereby deleted in its entirety.

The third to the last sentence of Section 8 of the Agreement is hereby removed in its entirety and replaced with the following: "This Agreement shall be governed by the laws of the State of Tennessee without regard to its conflict of laws provisions."

Notices. All notices under the Order Form and the Agreement will be in writing and will be deemed to have been duly given (a) upon delivery by a recognized delivery service (e.g., FedEx) with delivery confirmation, (b) upon receipt, if sent by U.S. certified or registered mail, return receipt requested, or (c) when sent via email, if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Notices shall be sent to the addresses set forth in the Order Form, which addresses may be subsequently modified by written notice given in accordance with these provisions.

Trial Offering. If Placer provides Customer with additional Services or Placer Data during the Term and identifies such Services or Placer Data as for evaluation or trial purposes only (a "**Trial Offering**"), access to the Trial Offering is permitted only during the period designated by Placer (or if not designated, 30 days from receipt of access) ("**Trial Subscription Term**"), unless the Trial Offering is earlier terminated as provided below. During the Trial Subscription Term, Customer may only use the Trial Offering for internal evaluation purposes and may not otherwise use or distribute the Trial Offering for any other purposes. Notwithstanding any provision included in this Order Form or the Agreement to the contrary, in respect of the Trial Offering Customer acknowledges and agrees that: (i) either party may terminate the Trial Subscription Term immediately and without liability upon written notice to the other party; (ii) any Trial Offering is provided "as is"; (iii) Placer provides no warranty, service levels or indemnity for any Trial Offering and (iv) Placer's liability related to any Trial Offering will not exceed USD $100. Notwithstanding the foregoing, the Services and Placer Data provided in this Order Form is not considered a Trial Offering.

Promotional Use. Customer grants Placer the right to use Customer's company name and company logo, for Placer's promotional purposes.

9. Authorization.

This Order Form is entered into by and between Customer and Placer effective as of the Effective Date. This Order Form and use of the Services are governed by, and Customer and Placer agree to, the License Agreement attached hereto as Exhibit A (the "**Agreement**"); provided, however, that in the event of any conflict between this Order Form and the

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Agreement, this Order Form shall control. Unless otherwise defined in this Order Form, capitalized terms herein have the same meaning as in the Agreement.

"Customer"	**"Placer"**
By: _____	By: Vernell Wisdom
Name: _____	Name: Vernell Wisdom
Title: _____	Title: Head of Contract Management
Date:	Date: 8/18/2025

EXHIBIT A
LICENSE AGREEMENT

This License Agreement (this "**Agreement**") is entered into by and between Placer Labs, Inc., a Delaware corporation ("**Placer**"), and the customer ("**Customer**") listed on the order form (the "**Order Form**") entered into by and between Placer and Customer, effective as of the last signature date set forth on the Order Form (the "**Effective Date**"). Unless otherwise defined in this Agreement, capitalized terms herein have the same meaning as in the Order Form.

1. LICENSE

Subject to the terms of this Agreement and the Order Form (including, without limitation, the payment of fees by Customer), Placer hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license to access and use the Services (as set forth in the Order Form) solely for the Permitted Uses (as set forth in the Order Form).

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly, or allow any third party to (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or Placer Data or any software, documentation or data related to the Services or Placer Data; (b) attempt to re-identify any anonymized, aggregated, deidentified, obfuscated, or statistical Placer Data, (c) modify, translate, or create derivative works based on Placer Data (except to the extent expressly set forth as Permitted Use in the Order Form), (d) share Placer Data with, or disclose Placer Data to, or use Placer Data for the benefit of, a third party (except to the extent expressly set forth as Permitted Use in the Order Form), (e) remove any proprietary notices or labels, (f) circumvent any security control or access mechanism for the Services or Placer Data, (g) perform systematic and/or bulk downloads of Placer Data, or web scraping of Placer Data/from the Services, or systematic API calling beyond the minimal amount needed for Permitted Uses, or attempt to reconstruct any portion of Placer Data, (h) use the Services or Placer Data in connection with any products, services, or activities that compete with Placer, or (i) attempt to build a user profile for a given individual or device based on Placer Data, or attempt, facilitate, or encourage others to identify a given individual or user or reconstruct user profiles based on Placer Data. Customer shall not, directly or indirectly, resell, distribute, sublicense, display, or otherwise provide to third parties the Services or any Placer Data or any derivatives of Placer Data, except that Customer may display Placer Data as part of Research Data during the Term. For the avoidance of doubt, and without limiting any other restrictions or obligations set forth in this Agreement, Customer shall not use, license, sub-license or distribute Placer Data or any data derived from Placer Data, for any of the following purposes: (I) in connection with establishing eligibility for employment, health care, credit or insurance; (II) for making decisions solely by automatic means where the decision has a significant effect on the individual to whom the data relates; (III) for any unlawful tracking or unlawful surveillance purposes; or (IV) to market or sell to law enforcement agencies or to any governmental agency to be used for a law enforcement purpose.

2.2 Customer represents, covenants, and warrants that Customer will use the Services and Placer Data and only in compliance with applicable laws and regulations. Furthermore, Customer will ensure all access to Placer ("log in") shall be done using email addresses of Customer's email domain, and never any personal email addresses. Although Placer has no obligation to monitor Customer's access to and use of the Services or Placer Data Placer may do so and may prohibit any access or use it believes may be (or alleged to be) in violation of the foregoing.

2.3 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services and Placer Data, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "**Access Equipment**"). Customer shall also be responsible for maintaining the security of the Access Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Access Equipment with or without Customer's knowledge or consent.

2.4 Customer shall maintain information security measures to safeguard Customer's Access Equipment and Placer Data in Customer's possession, including appropriate physical, technical, and organizational measures to ensure the security of such data. Such measures shall include, but not be limited to, the highest degree of care that Customer utilizes to safeguard its own sensitive data, which shall be no less than industry standard security measures in any event.

2.5 Customer shall maintain accurate and complete records relating to its use of Placer Data during the Term and for a period of one (1) year thereafter. Placer or its designee(s) may, at any time upon not less than ten (10) business days' notice to Customer, examine such records of Customer (and its affiliates and contractors, if any are permitted to use Placer Data) related to Customer's and any such parties' use of Placer Data ("**Audit**"). Customer will cooperate fully, and cause its affiliates and contractors to cooperate fully, with any such Audit(s) and will provide all records, data, documentation, and other information reasonably requested by Placer. The Audit(s) will be conducted during normal business hours, and at Placer's expense; provided however if such Audit reveals misuse of Placer Data by Customer, then Customer will bear the cost of such Audit, without limiting any other rights or remedies that Placer may have with respect to any such misuse of Placer Data.

3. PROPRIETARY RIGHTS

3.1 Placer shall own and retain all right, title and interest in and to (a) the Services and Placer Data, and all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with supporting the foregoing, and (c) all intellectual property rights related to any of the foregoing. No licenses are granted by estoppel or by implication.

3.2 Customer may provide feedback to Placer in respect of the Services or Placer Data. Feedback may include, without limitation, updates to or corrections of Placer Data (e.g., a retail store may have moved or may have been closed). Placer may use any such feedback to improve the Services or for other purposes, without any obligation to Customer.

3.3 In the course of using the Services, Customer may upload data (e.g., Customer's customer data) to the Services. Such uploaded data is referred to herein as "**Customer Data**". Customer hereby grants Placer a nonexclusive, worldwide, royalty-free, perpetual, irrevocable, sublicensable and transferable right to use, modify, reproduce, distribute, prepare derivative works of, display and perform Customer Data (including all related intellectual property rights) in an aggregated and de-identified format ("**Anonymized Customer Data**") in connection with the Services. Customer also hereby grants each user of the Services a non-exclusive license to access Anonymized Customer Data through the Services, and to use, modify, reproduce, distribute, prepare derivative works of, display and perform such Anonymized Customer Data as permitted through the functionality of the Services. For clarity, the foregoing license grant to Placer and users of the Services does not affect Customer's ownership of Customer Data. Placer reserves the right to remove any Customer Data and/or Anonymized Customer Data from the Services at any time for any reason. Customer, not Placer, remains solely responsible for all Customer Data that Customer uploads, posts, emails, transmits, or otherwise disseminates using, or in connection with, the Services, and Customer represents and warrants that Customer possesses all rights necessary to provide such Customer Data to Placer and to grant the rights to use such Customer Data as provided herein.

4. WARRANTY AND DISCLAIMER

4.1 Placer shall use reasonable efforts consistent with prevailing industry standards to provide access to the Services and Placer Data. Access may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Placer or by third-party providers, or because of other causes beyond Placer's reasonable control, but Placer shall use reasonable efforts to provide advance notice, by posting in the Services, email, or otherwise, of any scheduled service disruption. PLACER DOES NOT WARRANT THAT ACCESS TO THE SERVICES OR PLACER DATA WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR PLACER DATA.

4.2 Placer Data shall not include (i) any personally identifiable data, including but not limited to, name, email address, address or any other personal identifier ("**Personal Data**"), nor (ii) any sensitive data, including but not limited to Personal

Data relating to social security numbers and other government identifiers, information relating to health or medical conditions, and information relating to sex life or sexual orientation, political opinions, and financial account numbers ("**Sensitive Data**").

4.3 Placer represents and warrants that to its knowledge the Services and Placer Data do not infringe the intellectual property rights of any third party and comply with applicable laws and regulations. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 4, THE SERVICES AND PLACER DATA ARE PROVIDED "AS IS" AND PLACER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PLACER DATA ARE COMPILED BASED ON PROPRIETARY ALGORITHMS, AND PLACER DOES NOT WARRANT THAT ALL DATA SHALL BE COMPLETE AND ACCURATE. FURTHER, PLACER MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR PLACER DATA. Without limiting the foregoing disclaimer, Customer acknowledges and agrees that Placer Data consist of and represent the result of statistical inferences. Placer is not a backup service, and Customer is solely responsible for creating any backups of data provided by Placer. Placer is not responsible for decisions made by Customer based on Placer Data.

5. INDEMNITY

5.1 Placer shall defend, indemnify and hold Customer harmless from liability to third parties resulting from infringement by Placer's provision of Placer Data of any United States patent or any copyright or misappropriation of any trade secret. The foregoing obligations do not apply with respect to any portions or components of Placer Data (i) that are created, compiled, or modified by any party other than Placer, (ii) combined with other products, processes, data, or materials where the alleged infringement relates to such combination, (iii) where Customer continues allegedly infringing activity after being notified thereof or after being informed of alternatives that would have avoided the alleged infringement, or (iv) where Customer's use of Placer Data is not strictly in accordance with this Agreement. If, due to a claim of infringement, Placer Data are held by a court of competent jurisdiction to be or are believed by Placer to be infringing, Placer may, at its option (a) obtain for Customer a license to continue using Placer Data or (b) terminate the Order Form and Customer's rights thereunder and provide Customer a refund of any prepaid, unused fees for Placer Data.

5.2 Customer shall defend, indemnify and hold Placer harmless from liability to third parties, including any claims of government agencies or regulators, resulting from or arising out of either (a) the provision of any data by Customer not in compliance with applicable law, or (b) the use by or on behalf of Customer of any Placer Data not in compliance with applicable laws and regulations.

5.3 The obligations of either party to provide indemnification hereunder is subject to the party seeking indemnification (a) providing the indemnifying party with prompt written notice of any claim, (b) providing the indemnifying party with sole control over the defense and settlement of the applicable claim and (c) reasonably cooperating with the indemnifying party in defending such claim. Subject to the foregoing, the indemnified party may be represented in any proceeding by counsel of its own choosing at its own expense.

6. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS, OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THE ORDER FORM, THIS AGREEMENT, THE SERVICES OR PLACER DATA, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR NON-PAYMENT OF FEES, EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE ORDER FORM, THIS AGREEMENT, THE SERVICES OR PLACER DATA OR FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY WILL NOT EXCEED THE FEES PAID TO PLACER UNDER THE ORDER FORM DURING THE PREVIOUS TWELVE (12) MONTHS PRECEDING ANY CLAIM GIVING RISE TO ANY LIABILITY HEREUNDER.

NOTWITHSTANDING ANY OTHER PROVISIONS, THE FOREGOING LIMITATIONS WILL NOT APPLY TO BREACH OF CONFIDENTIALITY OBLIGATIONS OR BREACH OF LICENSING RESTRICTIONS.

7. EXPORT CONTROL

Customer may not remove or export from the United States or allow the export or re-export of Placer Data, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

8. MISCELLANEOUS

This Agreement includes and incorporates Placer's privacy policy located at https://www.placer.ai/privacy-policy/platform-services-privacy-policy/ (the "**Privacy Policy**"). The Order Form, the Privacy Policy, and all other referenced documents, if any, are integral parts of this Agreement. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Placer's prior written consent. Placer may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Placer in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. This Agreement shall have the same Term as, and shall terminate or expire concurrently with, the Order Form. The following will survive any termination of this Agreement and Order Form: Sections 2.1, 2.4, 2.5, 3.1, 3.2, 4 through 8 of this Agreement.

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 13.
Department: Administration
Date: August 28, 2025

Subject:
Approval of the terms of, and authorization for the Mayor to execute, an agreement with National Sign Plazas, INC for the installation and maintenance of the directional sign program.

Fiscal Impact:
There is no cost to the Town for this program. However, if the signage program is expanded for town-specific signage only, we would be responsible for the cost of those signs only. The contractor will charge businesses that choose to participate a market-rate fee, and the Town will receive a nominal administrative fee of $10.00 per panel per side, remitted quarterly. Additionally, the Town controls the placement of these signs and the number of signs.

Contract Type:
Original Contract

Contract Term (if applicable):
This agreement between the Town of Smyrna and National Sign Plazas, Inc., an Arizona corporation, outlines the terms for the installation and maintenance of Sign Plazas in the public right-of-way within the Town. The Contractor will construct, install, maintain, and repair the Sign Plazas, lease space to proprietors, builders and developers, and remit a portion of lease payments to the Town. The contract has a five-year term, with the possibility of two additional five-year renewals. It includes provisions for indemnification, insurance, and compliance with Tennessee law. The Contractor is responsible for all maintenance and must provide regular reports to the Town. The Town retains discretion over the number and placement of Sign Plazas. The agreement emphasizes mutual drafting and requires that any modifications be approved by the Smyrna Town Council.

Background:
Within the Town, there are a myriad private signs advertising various commercial enterprises, including but not limited to businesses, new development projects, and homebuilders. In many cases, these signs do not meet the Town's sign ordinance requirements and/or are improperly placed within the town's right-of-way—examples include yard signs and sail signs.

While the Town recently invested in addressing this problem through increased resources in code enforcement approved within the fiscal year 2026 budget, this contract will allow the town to address the issue proactively. Establishing standardized, Town of Smyrna-specific branded sign plazas will achieve the following:

Providing an aesthetically pleasing way for commercial enterprises to advertise
Ensure signage is legally confirming
Create wayfinding and placemaking throughout the town
Help with town branding efforts
Create a business-friendly way to ensure compliance while also supporting our businesses

Furthermore, the purpose of the sign plazas is to provide direction for the public to locations on commerce, subdivisions, housing developments, home builders, and public facilities within the Town while discouraging the placement of unsightly and hazardous off-site signs.

Summary:
Upon approval of this agreement, the Town will work with the contractor on the development of sign plaza structures (Exhibit A). Exhibit A is essentially the design standards of the signs, which will be branded with the Town's logo and color scheme. The final design will be presented to the Council once complete. It is important to note that the Town has the opportunity to provide wayfinding to town facilities, such as parks and Town Hall, on these signs at no charge to the Town. Additionally, once underway, we will have the ability to expand this standardized signage throughout the Town to further our placemaking, branding, and wayfinding efforts.

Recommended Council Action:
Staff recommends approval.

Attachments:
1. National Signs Plaza Agreement
2. National Signs Plaza Presentation

AGREEMENT FOR SERVICES

This Agreement ("Agreement") is entered into by and between the TOWN OF SMYRNA ("Town") and NATIONAL SIGN PLAZAS, INC., an Arizona corporation ("Contractor") (collectively, the "Parties").

WHEREAS, duly authorized governmental signs may be erected or maintained within any public street right-of-way and,

WHEREAS, Town desires to initiate a Sign Plaza Program to provide a public benefit and give direction to commerce, subdivisions, developers and homebuilders within the Town, and to contract for the installation and maintenance of the Sign Plazas and sign panels; and

WHERAS, Contractor represents that it is an Arizona corporation authorized to do business in the State of Tennessee; and

WHEREAS, Contractor desires to install Sign Plazas as described more fully in this Agreement; and

WHEREAS, Contractor desires to maintain the Sign Plazas after their installation and to lease space on the Sign Plazas to proprietors, developers and homebuilders and to bill and collect fees from the signage occupants for itself and for the Town; and,

WHEREAS, Contractor submitted a proposal which provides a public benefit and meets the Town's needs.

NOW, THEREFORE in consideration of these recitals and other good and valuable consideration, the value and receipt of which is acknowledged, Town and Contractor agree as follows:

1. Recitals. The Recitals above are hereby incorporated into this Agreement by reference.
2. Agreement. This Agreement consists of the Agreement itself, Exhibit A, describing the Sign Plaza Structures and Exhibit B, the Proposal and Qualifications, if needed. This Agreement shall be governed by the applicable laws and regulations of the Town of Smyrna and the State of Tennessee.

Each party shall comply with all the terms, conditions and specifications contained in the Agreement.

1. Scope of Work. Contractor shall perform the work set forth in the Agreement. In general, this work shall consist of the following:

   In administrating the Sign Plaza Program, the contractor will:

A. Construct, install, maintain and repair approved Sign Plazas and sign panels.
B. Contract with proprietors, developers and homebuilders for the lease of sign panels.
C. Assist Town in determining appropriate locations for Sign Plazas.
D. Attend meetings as necessary with Town staff and those customers of the sign plaza to coordinate project.
E. Collect all lease payments and remit to Town, on a quarterly basis, an administrative fee as specified in Section 4.B of this document.

2. Definition, Purpose of Sign Plaza Programs and Specifications of Sign Plazas.

A. Definition. For the purposes of this Agreement, a Sign Plaza is a structure placed in Town right of way for the purpose of displaying sign panels. The specifications of the Sign Plaza and sign panels are more fully developed in this Agreement.

B. Purpose of Sign Plazas. The purpose of Sign Plazas is to provide direction for the public, including homebuyers, and the patrons, to the location of commerce, subdivisions, housing developments, homebuilders and public facilities within Town while discouraging the placement of unsightly and hazardous off-site directional signs.

C. Specifications of Sign Plazas and Sign Panels. Contractor agrees to manufacture and install Sign Plaza structures and sign panels in accordance with the specifications in this Agreement and the following:

1. Sign Plaza Structures shall not exceed twelve (12) feet above average grade. Structures shall be more completely described in Exhibit A.
2. Sign Plazas shall be constructed of steel and/or aluminum and shall be capable of displaying up to ten (10) sign panels, double-sided, if necessary.
3. A Town topper panel will be designed for the Town and shall be prominently displayed at the top of any Sign Plaza within the jurisdictional limits of Town and shall be visible on any side of a Sign Plaza which displays directional sign panels.
4. The color of all Sign Plaza Structures shall be _____. All sign panels shall conform to Section 4.C.11 below.
5. The Contractor shall submit final design plans to Town for approval prior to installation of any Sign Plaza.
6. No additions, tag sign streamers, attention-getting devices or other appurtenances shall be attached to any Sign Plaza or sign panel.

7. Sign Plaza locations shall be approved and designated by Town with the assistance of the Contractor.
8. At the Town's request and direction, the Contractor shall remove and relocate any Sign Plazas within thirty (30) days of the receipt of written notice at no cost to the Town.
9. Contractor shall provide, at no cost to the Town, the equivalent of not less then ten percent (10%) of all permitted Sign Plazas to Town for use as directional signage to municipal or community service facilities or locations. Said sign panels shall be provided on a space available basis, secondary to sign panels to be displayed for commerce, developers, homebuilders, and residential communities, and shall be installed with no more than two (2) such sign panels per plaza.
10. Contractor shall provide to Town a semi-annual inventory report of existing installed sign panels.
11. Sign panels shall contain only the name of a business, residential community, subdivision, homebuilder, public facility, Town and logo, the builder, proprietor or developer's name and/or logo, the builder, proprietor or developer's recognized color scheme, and directional information or the name of the builder/proprietor/developer and logo and an appropriate directional arrow. Directional arrows will be of a uniform size; a line of text at the bottom of the sign panel with directional information is permissible if circumstances warrant it. Fluorescent colors are not allowed. Reflective colors and text are permissible. Unless so authorized by Town, the sign panels shall not appear to replicate the commonly accepted color schemes of motorist signs.
12. Contractor shall, at its own cost, maintain, repair, replace and repaint each sign panel as necessary or deemed necessary by the Town, to include removal for public infrastructure improvements. Upon notice by the Town, Contractor agrees to undertake necessary repairs or replacement of any sign panel within seventy-two (72) hours of receipt of notice
13. Contractor shall not install or maintain any Sign Plazas or sign panels within the Town, which are not in compliance with the terms of this Agreement.
14. Sign Panels shall be constructed of vinyl coated aluminum with a material comparable to 3M Engineering Grade exterior vinyl.
15. Individual sign panels on the Primary Structures shall not exceed fifty (50) inches in horizontal length by twelve (12) inches in height. Individual sign panels on the Community Structures shall not exceed fifty (50) inches in horizontal length by twelve (12) inches in height. Individual sign panels on the Neighborhood Structures shall not exceed thirty (30) inches in horizontal length by thirty (30) inches in height.

3. Number of Sign Plaza Structures. Town has sole discretion to determine the number and placement of the Sign Plazas in its right-of-way. Town shall agree to allow the signage to direct homebuyers or patrons to each new housing community or place of commerce. Said signage shall be defined as one Sign Plaza at each location where homebuyers or proprietor require information regarding a change of direction and likewise where homebuyers or proprietors would need reassurance to continue in a certain direction. One or more structures, located at least one hundred (100) feet apart, shall be allowed to accommodate directional sign panels. Contractor may submit to Town at any time during the term of the Agreement subsequent requests for the timely approval of additional Sign Plaza locations, as may be expressed by proprietors, homebuilders, developers, and residential communities over time.

4. Price and Payment Schedule for the Purchase of the Sign Plazas and Sign Panels. Subject to the provisions in Paragraph 6 below, the price and payment schedule for Sign Plazas shall be as follows:

    A. Contractor will install the Sign Plazas and rotate Town panels at no cost to the Town.
    B. Contractor will collect, and remit to the Town, an amount of ten dollars ($10) per panel side per month, which has directional information, excluding that of public service panels, as an administrative fee for the entire term of this Agreement. Said fees shall be remitted within ninety (90) days of the end of each fiscal quarter. Fiscal quarters will be based on the Contractor's fiscal cycle, beginning October 1 and ending September 30.

5. Term of Agreement and Termination of Agreement
    A. Term. The term of this Agreement is five (5) years.

    B. Renewal. At the end of the initial five-year term, this contract may renew for two additional five-year terms if the Town notifies the Contractor at least sixty (60) days before the end of the current term.
    C. Termination. This Agreement may not be terminated by either party for except for breach as provided in this Agreement:

        1. Termination by Town. (A) If Contractor breaches and fails to remedy said breach as provided for in this Agreement, Town may terminate this contract. Contractor shall remove the Sign Plazas within thirty (30) businesses days after receiving a written termination letter from the Town. (B) In addition, if a state law or other government regulatory authority determines such sign placement is prohibited, the Plazas shall be removed within 30 days and it will not be considered a breach of this Agreement. (C) In the event the municipality's legislative body enacts a

change to the Sign Ordinance and prohibits the placement of signs, it will not be considered a breach of this Agreement.

2. Termination by Contractor. If Contractor terminates this Agreement before the end of the term as stated in subsection A immediately above, Contractor agrees to remove all Sign Plazas.

6. Placement of Sign Panels. After the Town's written approval and acceptance of the installed Sign Plazas, Town agrees to extend to Contractor an exclusive right to use the Sign Plazas for sign panel placements and to maintain the Sign Plazas and sign panels subject to the terms of this Agreement.

   A. Contractor agrees to offer and place sign panels for commerce proprietors, homebuilders, developers and residential communities. Contractor further agrees to use Contractor's best efforts to place all available sign panels.
   B. Contractor agrees that the placement fees for the sign panels will be set at market rate. Contractor shall be allowed an annual cost of living increase for the fees as determined by the Consumer Price Index.
   C. Contractor agrees to maintain all aspects of the placement of the sign panels, including entering into sign placement service agreements, billing, collecting fees, and paying any applicable taxes and fees.
   D. Contractor will remit to Town on a quarterly basis the amount of the Town's Administrative Fee as specified in Section 4.B of this document.
   E. Contractor agrees to provide an annual report to Town pertaining to the number of sign panels installed within the Town, the amount billed and the collection of the Town's amount Administrative Fees.
   F. Contractor agrees that in no event will Town be liable for any fee payment or other fees related to the placement of the sign panels.
   G. Commerce proprietors, homebuilders, developers, and residential communities with sites located within the jurisdictional boundaries of the Town shall at all times be allowed to participate in the Sign Plaza program
   H. Town and Contractor agree that no sign panels other than those manufactured and installed by Contractor shall be allowed on the Sign Plaza Structures.

7. Maintenance of Sign Plazas:

   A. Contractor agrees to maintain the Sign Plazas and sign panels for the term of this Agreement.

B. Contractor agrees to replace damaged Sign Plazas and sign panels, as it deems necessary or as requested by the Town.

C. Contractor agrees to provide to Town a telephone number and a contact person allowing Town to contact Contractor requesting maintenance on the Sign Plazas or sign panels during a standard business days and hours.

D. Contractor agrees to repair all Sign Plazas within five (5) business days of the receipt of the Town's written request for repair. Contractor further agrees to remove for repair all sign panels within seventy-two (72) hours of written notification of the need of repair by the Town. Sign panel will be replaced within five (5) business days of the written notification.

E. Contractor agrees to maintain a regular maintenance schedule to check each Sign Plaza and sign panel for all necessary repairs and to complete those repairs promptly.

F. Contractor shall retain the right to enter the Town right-of-way to maintain, repair, replace or repaint a sign panel and/or sing plaza, and shall return the right-of-way to its pre-entry condition after its work is completed.

G. Contractor agrees to maintain all Sign Plazas and sign panels in conformity with all terms of this Agreement.

8. Indemnification. Contractor agrees to indemnify, defend, and hold harmless the Town, its officials, officers, officers, agents, and employees from: a) liability for damages resulting from injury, death, property damage, and economic loss suffered by any person as a result of the negligent or willful act or omission of the Contractor or the Contractor's officer, agent, employee, or subcontractor; and b) reasonable attorney fees, court costs, settlement expenses and litigation expenses related to liability described in subsection a) immediately above and/or relating to any claim or action asserting such liability against the Town, its officials, officers, agents, and employees, unless said claim or action is the result of the negligent or willful act or omission of Town or the Town's officer, agent, employee, or subcontractor.

9. Insurance. Contractor shall maintain in full force and effect throughout the entire term of this Agreement insurance with an insurance company authorized to conduct business in the State of Tennessee with the following policy limits.

A. Comprehensive General Liability - $2,000,000 combined aggregate

B. Automobile Liability - $1,000,000

C. Workers Compensation

1. Bodily Injury by Accident - $1,000,000
2. Bodily Injury by Disease - $500,000

Contractor shall present a Certificate of Insurance annually in a form satisfactory to the Town Attorney which shall name Town as an additional insured party on Contractor's Comprehensive General and Automobile Liability policies. If during the term of this Agreement, any such insurance is canceled, or if Contractor fails to renew same, or if the policy limits are reduced below the limits required above, such event shall constitute a default of this Agreement. Contractor shall immediately notify Town in writing if such an event occurs. Contractor shall have Five (5) business days to cure any such default.

10. Independent Contractor. Contractor shall, at all times herein, be an independent contractor and not an employee of the Town, nor shall any of the Contractor's employees or subcontractors be an employee of the Town.

11. Notice. Any notice required to be given pursuant to this Agreement may be personally served upon the parties or may be served by certified mail, return receipt required, to:

TOWN :
Town of Smyrna
Attn: Town Manager
315 S. Lowry St.
Smyrna, TN 37167
Telephone: 615-459-9742

CONTRACTOR:
National Sign Plazas, Inc.
Attn: Grant Hayzlett, President
2202 West Huntington Drive
Tempe, AZ 85282
Telephone: 720-482-9293

All notices, regardless of the nature of service, shall additionally be served upon Contractor at Contractor's office(s) in Austin, TX MSA located at:

Attn: Patrick Fuller, Vice President
715 Discovery Blvd, #502
Cedar Park, TX78613
Telephone: (512) 670-3717

12. Assignment and Subcontracting. Contractor may not delegate, assign or subcontract all or any part of the work except the fabrication and installation of the Sign Plaza structures and production of the sign panels, which require equipment, materials and expertise which the Contractor reasonably may not be expected to possess, without the Town's prior written consent.

13. Miscellaneous. The Contract Documents represent the entire and integrated Agreement between Town and Contractor and supersedes all prior negotiations, representations of Agreements, whether written or oral, except as where noted. The Contract Documents may be modified only by a written document signed by both parties and approved by the Smyrna Town Council at a public meeting. This Agreement shall be governed under Tennessee State law, and any action relating to the Agreement shall be brought only in the County of Rutherford.

14. Mutual Drafting. Town and the Contractor each has had opportunity to consult legal counsel regarding the drafting of this Agreement and the provisions of this Agreement shall not be construed against or in favor of either party.

15. Default and Remedies. If any Party fails to perform any of its obligations under the Contract Documents, such failure shall constitute a default. The non-defaulting Party shall give the defaulting Party written notice of the default. The defaulting Party shall have ten (10) business days after the receipt of such notice in which to cure the default. Failure to cure the default shall constitute a breach of this Agreement. In the event of a breach, the non-breaching party may terminate this Agreement and may obtain any reasonable remedy provided by law.

In Witness Whereof, authorized parties have signed this Agreement on the dates indicated below.

Town of _____

By _____

Date _____

National Sign Plazas, Inc
an Arizona Corporation

By _____
Grant Hayzlett, President

Date _____

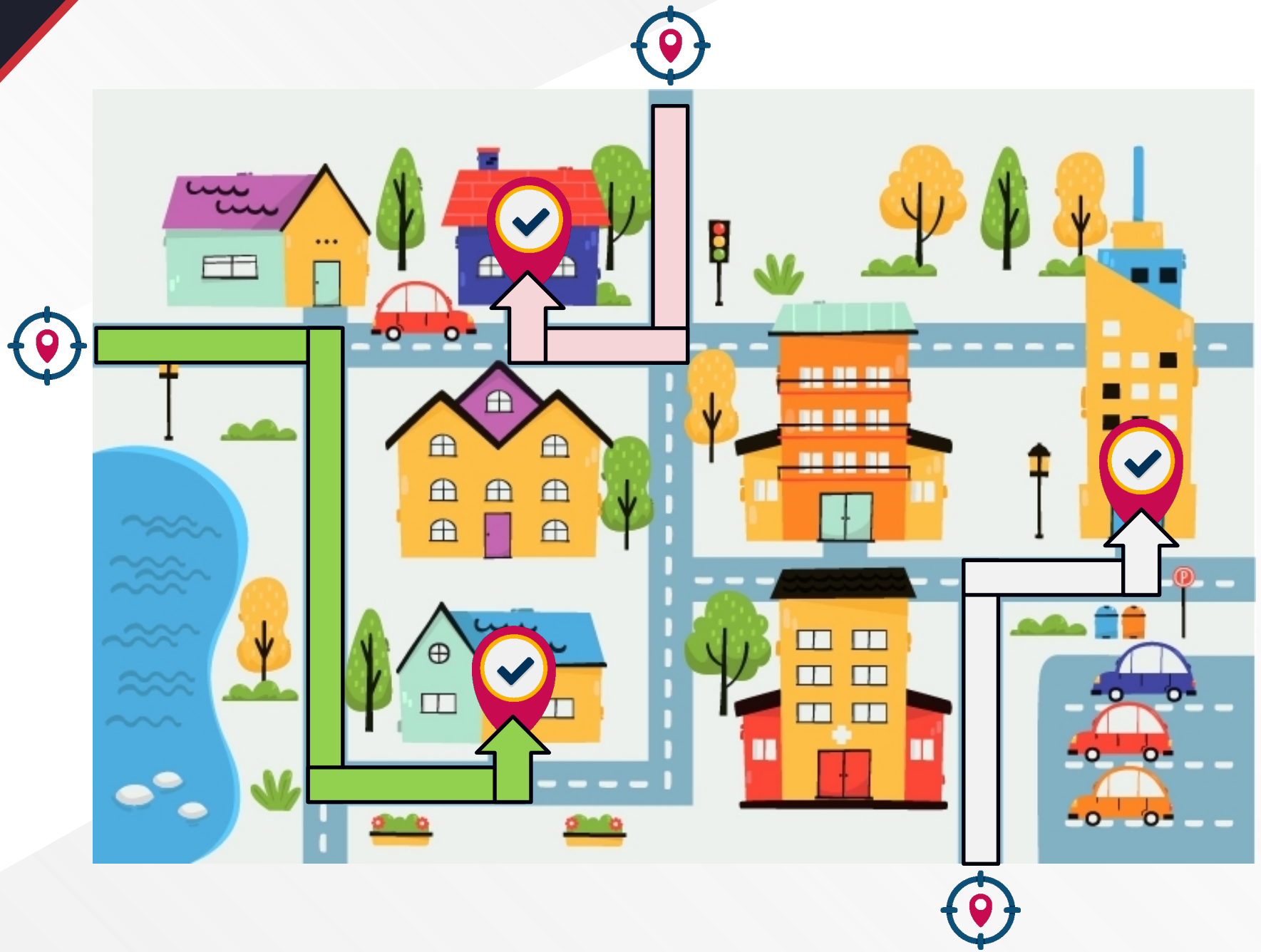
Approved as to Legal Form

By _____
Town Attorney

Smyrna, TN HBP

Presented by National Sign Plazas, Inc

NSP
Our History



Smyrna
Sign Location Plan

Based on the volume of residential development and the geographic area of the City, we are proposing an initial deployment of pocketed programs. This approach will not only provide greater focus in the areas of development, but it will also establish a clear path for scaling the program over time.

Points of Origin

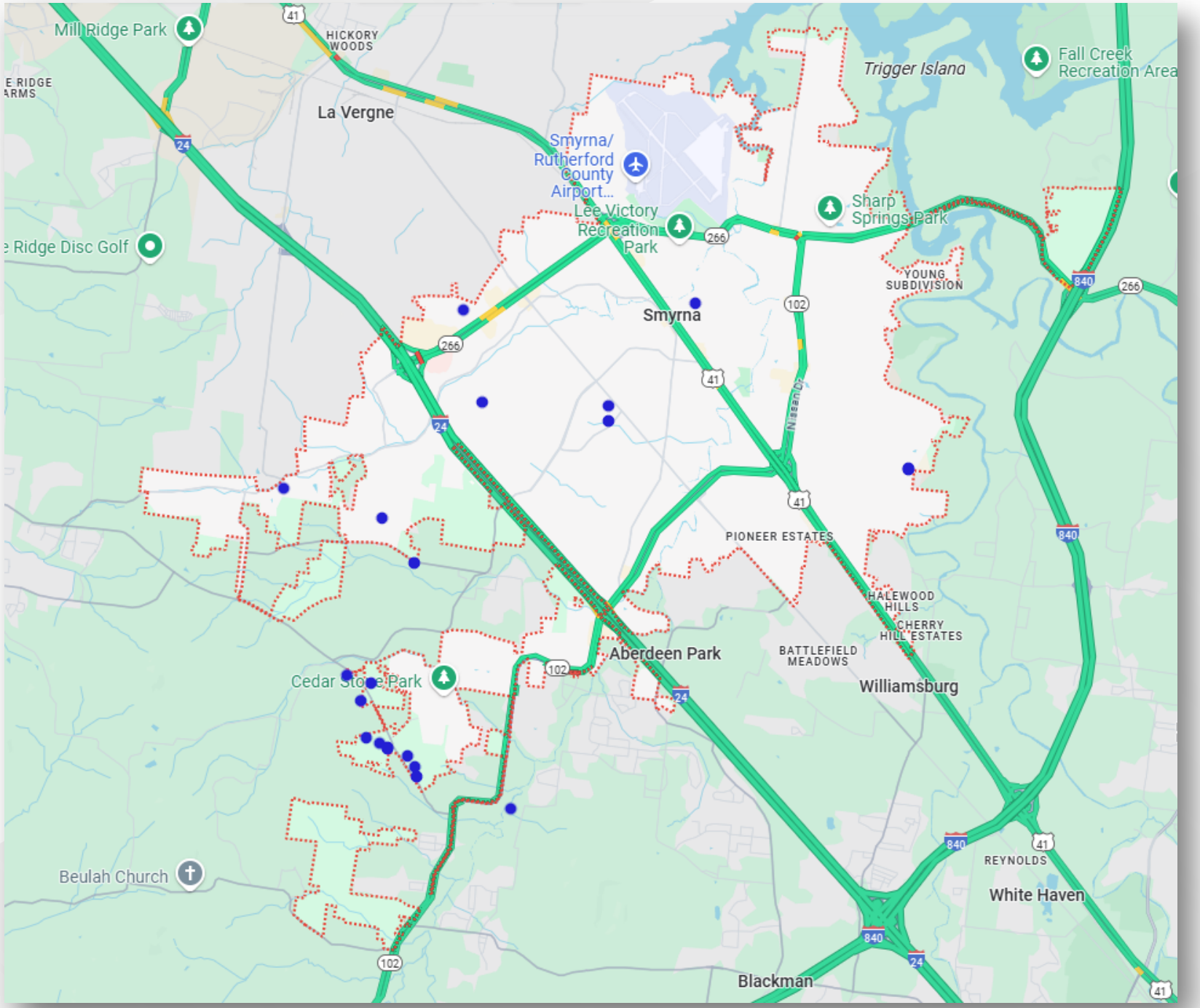
The main arterial pathways through Smyrna are HW 41 and 102, with several other major highways along city limits. If the majority of traffic into Smyrna comes from Nashville in the North, HW 41 and 24 will be the primary points of entry. Plaza locations will be high traffic intersections and high profile exits.

Routes & Pathways

Preliminary research uncovered about nineteen communities within Smyrna, with about half located along Rocky Fork Rd on the SW boundary, and the rest evenly dispersed throughout the southern half of the city. Routes will be focused along State HW 24 and 41, as well as 102 HW and Rocky Fork Rd.

Destinations

Active single family communities in Smyrna are the primary destinations.


Mill Ridge Park
HICKORY WOODS
La Vergne
Trigger Island
Fall Creek Recreation Area
Smyrna/ Rutherford County Airport...
Lee Victory Recreation Park
Sharp Springs Park
Ridge Disc Golf
YOUNG SUBDIVISION
Smyrna
PIONEER ESTATES
HALEWOOD HILLS
CHERRY HILL ESTATES
Aberdeen Park
BATTLEFIELD MEADOWS
Williamsburg
Cedar Stone Park
Beulah Church
REYNOLDS
White Haven
Blackman

The NSP Service Model

City Approved
All program elements are outlined and approved by the City

Working Minimum
Sign plans are built to reduce total sign placement

Homebuilder Approved
We build the system with HB input and feedback

Locally Managed
Our local staff builds, installs and maintains all sign program elements

Turnkey for Smyrna
Our staff handles all aspects of program maintenance and management

Reporting Structure
NSP remits quarterly updates covering all aspects of the HBP

Smyrna

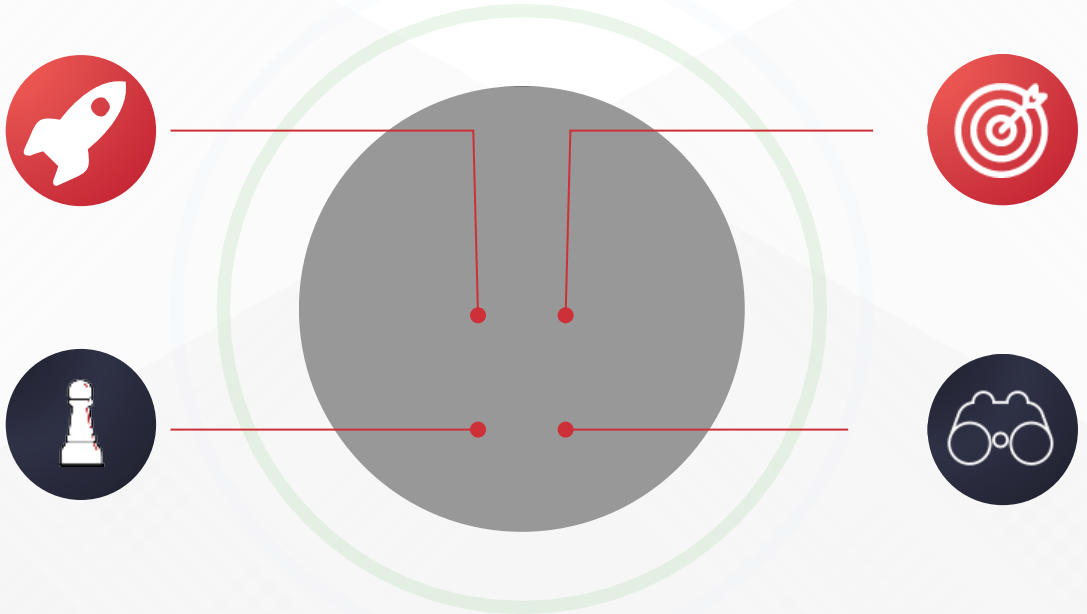
Service Details

24/7/365

The City can contact NSP staff at any time regarding program needs

Zero Liability

The City has no financial responsibility for any aspect of the sign program



Grounds Maintenance

NSP staff maintains the sign structures and the grounds around the sign

ROW Safety

All signs are installed with DOT approved breakaways bases and meet all MUTCD requirements

Homebuilder Marketing

How we engage the Homebuilders

NSP
Marketing Plan

We have developed and refined this process as part of our ongoing commitment to the municipalities we work with and the homebuilders we service through this program.

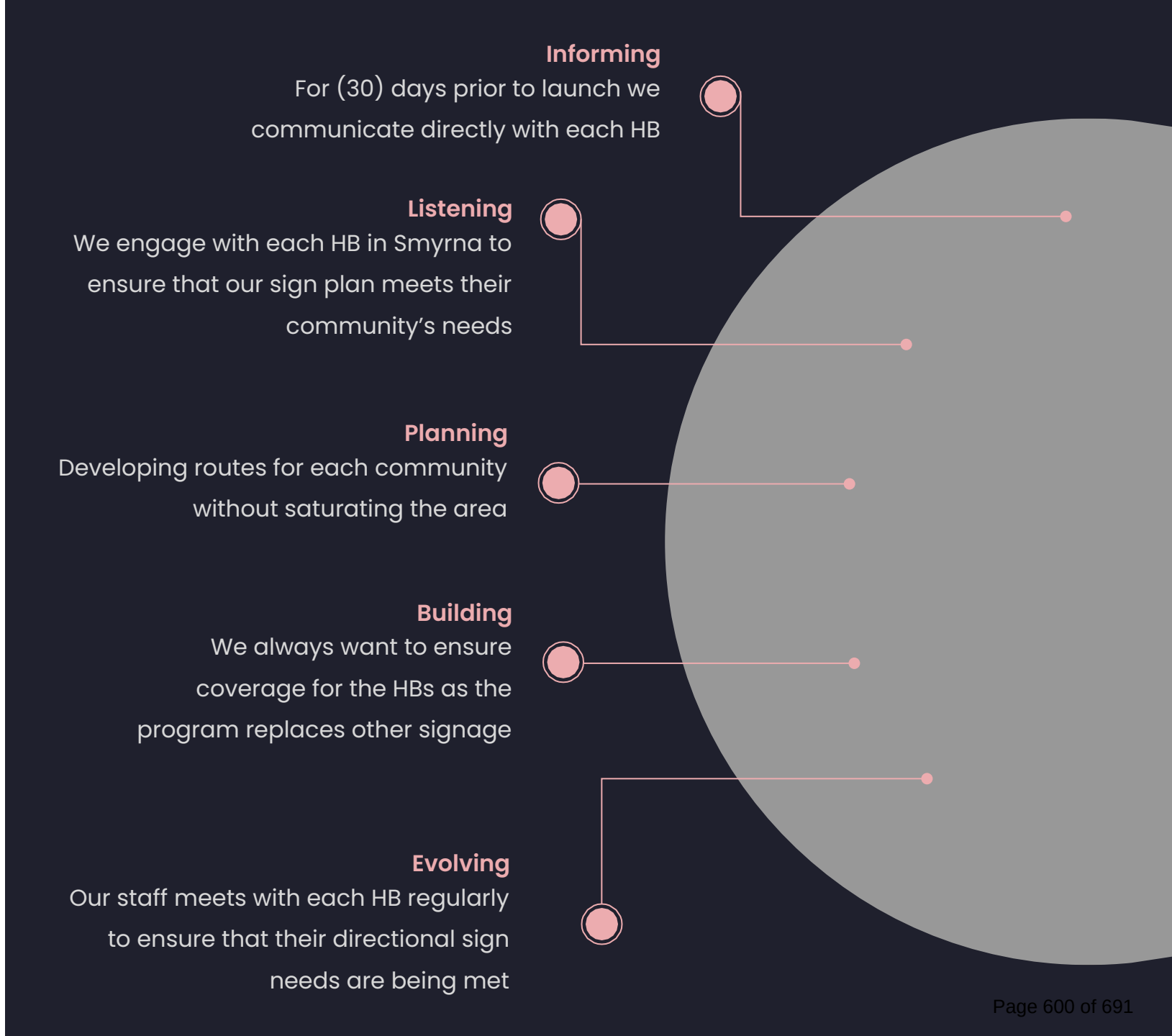
Informing
For (30) days prior to launch we communicate directly with each HB

Listening
We engage with each HB in Smyrna to ensure that our sign plan meets their community's needs

Planning
Developing routes for each community without saturating the area

Building
We always want to ensure coverage for the HBs as the program replaces other signage

Evolving
Our staff meets with each HB regularly to ensure that their directional sign needs are being met



Total Sign Locations

We are projecting about (25) independent sign plaza locations once the program is fully deployed.

HB Participants

NSP works with most the HBs with active communities in Smyrna and are familiar with their marketing strategies.

Averages

An average directional route will have about (8) directional panels and each location will have 5-6 panels installed.

Ramp Up Speed

The (3) month timeline is based on the volume of builders in the City.

Understanding the Metrics

NSP HBP
Smyrna

With over (70) similar programs running in (8) states NSP knows the most efficient way to build and manage directional sign programs for rapidly growing areas like Smyrna.

Smyrna HBP

Remittance to Smyrna

1st year remittance to City ~$16,000

Ongoing annual remittance ~$20,000

No Cost to Smyrna

All fabrication, installation and management expenses are paid by NSP

FAQ & Next Steps

Sign Design
This process starts in conjunction with an agreement for service.

Time to Start
The sign program will be live within (60) days from contracting.

Sign Locations
Smyrna will have final approval of all proposed sign locations prior to any installation.

Sign Ordinance
Some small modifications will need to be made to allow the sign plazas and disallow WEDS.

Contract Review
We will submit a standard operating agreement for the City's review.

Go Live
Our project approach ensures that the City has oversight on all decisions and the HBs don't miss coverage.



NSP Smyrna HBP

Questions

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 14.
Department: Planning
Date: August 28, 2025

Subject:
Consideration of a Resolution relative to a Plan of Services for properties located on Tax Map 20, Parcels 45.00, 61.01, 61.02, and 61.03, and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15.00, 15.01, and 18.01.

Fiscal Impact:

Contract Type:

Contract Term (if applicable):

Background:

Summary:
The attached plan of services details the services that would be provided by the Town upon the effective date of the annexation of the properties. The Town would be providing all services to these properties.

The Planning Commission held a public hearing, reviewed the Plan of Services, and recommended approval.

Recommended Council Action:
Staff recommends approval.

Attachments:
1. Resolution #25-13- Plan of Services Hamilton Dev

RESOLUTION

A RESOLUTION ADOPTING A PLAN OF SERVICE FOR THE ANNEXATION OF CERTAIN AREAS BY THE TOWN OF SMYRNA, TENNESSEE.

WHEREAS, TCA 6-51-102 (a) (2) as amended May 19, 1998, requires that a Plan of Service be adopted by the governing body of a municipality for areas where an annexation ordinance was not final on November 25, 1997.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF SMYRNA, TENNESSEE, AS FOLLOWS:

SECTION 1. Pursuant to the provisions of Section 6-51-102, Tennessee Code Annotated, there is hereby adopted, for the area bounded as described below, the following plan of service:

Hamilton Development, LLC
W. Jefferson Pike/SR 266

Tax Map 20, Parcels 61.01 and 61.03, and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15.00, 15.01, and 18.01, owned by Hollingshead Land, LLC, and requested by Hamilton Development, LLC. Bordered on the west, south, and east by U.S. Army Corps of Engineers; on the east by Tax Map 26, Parcel 14.00, owned by Lawrence A. and Karen Yatuzis; and on the north by Tax Map 20, Parcel 45.00, owned by William S. and Howard S. Thornton, Tax Map 20, Parcel 61.02, owned by Nancy Nelms Gannon, and the existing right-of-way of W. Jefferson Pike/SR 266. Area annexed contains approximately 178.6 acres.

A. Water

Water services will be provided by the Town of Smyrna.

B. Wastewater

Wastewater services will be provided by the Town of Smyrna upon extension of the wastewater mains by the property owner.

C. Streets

1. Emergency maintenance of streets (repair of hazardous chuck holes, measures necessary for traffic flow, etc.) will begin on the effective date of annexation.

2. Routine maintenance, on the same basis as in the present Town limits, will begin in the annexed areas when funds from the State gasoline tax based on the annexed population are received.

3. Reconstruction and resurfacing of streets, installation of storm drainage facilities, construction of curbs and gutters, and other such major improvements, as the need therefore is determined by the governing body, will be accomplished under current policies of the town.

D. Planning and Zoning

The planning and zoning jurisdiction of the Town of Smyrna will extend to the annexed area on the effective date of annexation. Town planning will thereafter encompass the annexed areas.

E. Street Lighting

Street lights will be installed in substantially developed areas within approximately 18 months after the effective date of the annexation, under the standards currently prevailing in the existing Town limits.

F. Recreation

Residents of the annexed areas may use all existing libraries and parks, etc., on and after the effective date of annexation.

G. Street Name Signs

Street name signs where needed will be installed within approximately 18 months after the effective date of annexation.

H. Fire Protection

Fire protection by the present personnel and equipment of the Smyrna Fire Department will be provided on and after the effective date of annexation. Additional personnel and equipment will be provided, if needed, to maintain current standards.

I. Police Protection

Police patrol and response to calls by the Smyrna Police Department will be provided on and after the effective date of the annexation. Police services will be provided with existing personnel and additional personnel will be provided, if needed, to maintain current standards.

J. Traffic Control

Traffic signals, traffic signs, street markings and other traffic control devices will be installed as the need is established by appropriate study and traffic standards.

K. Refuse Collection

Refuse collection and disposal services shall continue to be provided by private contracts with individual residents.

L. Inspection Services

Any inspection services now provided by the Town of Smyrna will begin in the annexed area on the effective date of the annexation.

Section 2. This Resolution shall be effective from and after its adoption.

ADOPTED THIS ____TH DAY OF SEPTEMBER, 2025

TOWN OF SMYRNA, TENNESSEE

_____
Mary Esther Reed, Mayor

ATTEST:

_____
Amber Hobbs, Town Clerk

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 15.
Department: Planning
Date: August 28, 2025

Subject:
Consideration of an Ordinance relative to the annexation and C-2 and I-1 zoning of property on Tax Map 20, Parcels 61.01 and 61.03, and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15.00, 15.01, and 18.01 requested by Hamilton Development, LLC on behalf of Hollingshead Land, LLC containing 178.6 acres. The properties are located south of W. Jefferson Pike/SR 266. Second Reading.

Fiscal Impact:

Contract Type:

Contract Term (if applicable):

Background:
The properties that are the subject of this request are located on W. Jefferson Pike/SR 266 beginning approximately .4 of a mile west of the interchange with I-840. The Land Use Plan for the portion of this request along W. Jefferson Pike/SR 266 is the 840 Gateway character area, which would support hospitality, retail, restaurant, high density residential, and industrial/warehousing uses. This extends from 400 feet to 1200 feet off of W. Jefferson Pike, depending on the location. For the portion of these properties that are south and west of this designation, Low Density Residential development would be supported. The surrounding zoning is PUD (Cornerstone at Smyrna) in Town and RM and CS in Rutherford County. The Town would be providing all services to this area upon annexation.

Summary:
The proposed zoning for this request is approximately 23.6 acres zoned C-2 along W. Jefferson Pike and the remaining 155 acres zoned I-1. This includes an increase of approximately .63 acres zoned C-2 based on discussion at the Planning Commission. The Planning Commission reviewed this request and recommended approval of the revised zoning plan 7 for, 0 against.

In the time since first reading, the developer has amended the area requested to be

zoned C-2 to increase it to approximately 30 acres, leaving approximately 148.6 acres which would be zoned I-1. A revised map has been attached, as well as visual renderings of the site from Jefferson Pike. The item was deferred back to the Planning Commission and will be on the agenda for the 9/4 meeting.

Recommended Council Action:
Staff recommends approval.

Attachments:

1. Ordinance #25-21
2. Rezoning Application
3. Map 1
4. Hamilton Development Updated Map
5. Concept Plan
6. Sewer Conceptual
7. Property Description
8. Hickory Grove Business Park Concept 6
9. Hickory Grove Business Park Concept 6 - Commercial Enlg - Logos
10. Hollingshead Commercial Enlargements
11. Hickory Grove Zoning Map - 20250805
12. Hollingshead Lumion Renderings

TOWN OF SMYRNA, TENNESSEE
ORDINANCE NO. 25-21

AN ORDINANCE relative to the annexation and C-2 & I-1 zoning of property located on Tax Map 20, Parcels 45.00, 61.01, 61.02, and 61.03 and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15,00, 15.01, and 18.01, comprising a total of approximately 180.83 acres.

WHEREAS, the Town Council has determined that it would be in the best interests of its existing residents to annex the above-described property, which borders the current Town limits, and that the failure to annex said property will impede the prosperity of the Town and/or endanger the health, safety and welfare of its inhabitants;

WHEREAS, the Planning Commission has reviewed the proposed annexation and has recommended to the Town Council the proposed annexation; and

WHEREAS, the annexation is in agreement with the general plan for the Town; and

WHEREAS, it has been determined that the legal purposes for which zoning exists are not breached by the annexation and zoning; and

WHEREAS, it has been determined that there will not be an adverse effect upon any specific adjoining property owners and/or any such adverse effect would be justified by the overwhelming public good or welfare; and

WHEREAS, it has been determined that no one property owner or small group of property owners will benefit materially from the change to the detriment of the general public.

Section 1. That the property located on Tax Map 20, Parcels 45.00, 61.01, 61.02, and 61.03 and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15,00, 15.01, and 18.01, comprising a total of approximately 180.83 acres, all of which is identified on Appendix I attached hereto and incorporated herein by reference as if set forth at length verbatim, be, and hereby is, annexed into the corporate limits of the Town of Smyrna, the health and welfare of the Town of Smyrna requiring it.

Section 2. That the property located on Tax Map 20, Parcels 45.00, 61.01, 61.02, and 61.03 and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15,00, 15.01, and 18.01, comprising a total of approximately 180.83 acres, all of which is identified on Appendix I attached hereto and incorporated herein by reference as if set forth at length verbatim, be, and hereby is, zoned C-2 & I-1, the health and welfare of the Town of Smyrna requiring it.

Section 3. This ordinance shall take effect and become operative thirty (30) days after its adoption on second and final reading, the public health and welfare of the Town of Smyrna requiring it.

PASSED on first reading by the Town Council the ____ day of _____, 2025.

PASSED on second reading by the Town Council the ____ day of _____, 2025.

TOWN OF SMYRNA, TENNESSEE

_____
MARY ESTHER REED, Mayor

ATTEST:

_____
AMBER HOBBS, Town Clerk

Town of Smyrna

Rezoning Request Application

APPLICANT INFORMATION:		
Name/Company: Hamilton Development, LLC - Jeff Konieczny		
Street Address: 1 Music Circle South, Suite 110		
City: Nashville	State: TN	ZIP: 37203
Email: jeff@hamilton-devco.com	Phone: (303) 408-7817	
CONTRACTOR/DEVELOPER INFORMATION: CHECK BOX IF SAME AS APPLICANT		
Name/Company: Hamilton Development, LLC - Jeff Konieczny		
Street Address: 1 Music Circle South, Suite 110		
City: Nashville	State: TN	ZIP: 37203
Email: jeff@hamilton-devco.com	Phone: (303) 408-7817	
PROPERTY INFORMATION		
Street Address/Intersecting Streets: West Jefferson Pike & Hickory Grove Road		
Tax Map: Attached	Group: See Attached	Parcel: See Attached
Requested Lot Area (Square feet/Acres): 180.83 (8 parcels)		
Existing Zoning: RM	**Requested Zoning:** C-2 and I-1 (See Attached)	
*Current Property Owner (See Note Below): Hollingshead Land, LLC		
APPLICANT AUTHORIZATION		
Applicant Signature: Jeffrey Konieczny		Date: 6/9/2025
OFFICE USE ONLY		
Staff Initials:	Review Fee:	Date:

- ***If the applicant is not the current property owner, authorization must be provided by the current property owner for the request of rezoning as mandated by State law.***
- Applications are to be submitted no later than 12:00 PM noon on the initial deadline date unless otherwise noted.
- All meetings are held at Smyrna Town Hall - 315 South Lowry Street - at 5:00 PM in the Town Council Chambers.
- All supporting documents must be submitted at the time of application.

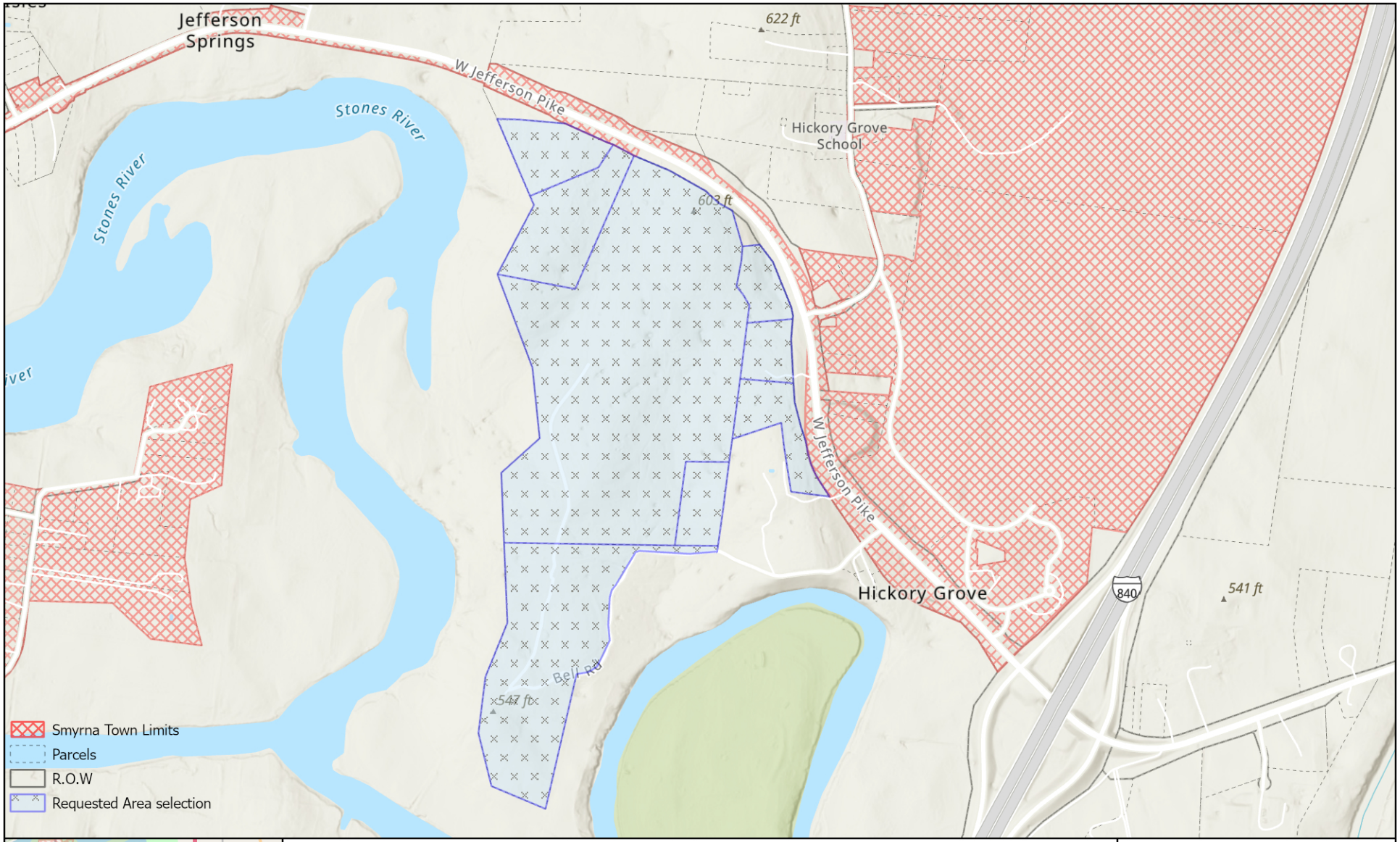
2025 SUBMITTAL AND MEETING CALENDAR

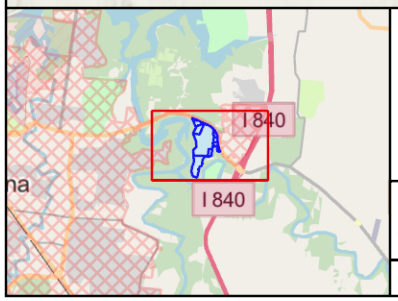
See the full calendar on the Town of Smyrna website

APPLICATION DEADLINE	MEETING DATE
DECEMBER 9, 2024	JANUARY 9
JANUARY 13	FEBRUARY 6
FEBRUARY 10	MARCH 6
MARCH 10	APRIL 3
APRIL 7	MAY 1
MAY 12	JUNE 5
JUNE 9	TUESDAY - JULY 1
JULY 14	AUGUST 7
AUGUST 11	SEPTEMBER 4
SEPTEMBER 8	OCTOBER 2
OCTOBER 13	NOVEMBER 6
NOVEMBER 10	DECEMBER 4
DECEMBER 8	JANUARY 8, 2026

MEMBERS

Name	Term Expiration
Charles Scurr	2025
Tim Morrell	2025
Amy Wise	2025
Matthew Carver	2026
Salena Scott	2026
Marc Adkins, Council Member	Term of Office
Steve Sullivan, Council Member	Term of Office





Annexation - C-2 & I-1 Zoning Request

Tax Map: 20 | Parcels: 61.01, 61.03
Tax Map: 26 | Parcels: 13.00, 13.01, 13.02, 15.00, 15.01, 18.01
Acres: +/- 180.83 | Owners: Hollingshead Land, LLC

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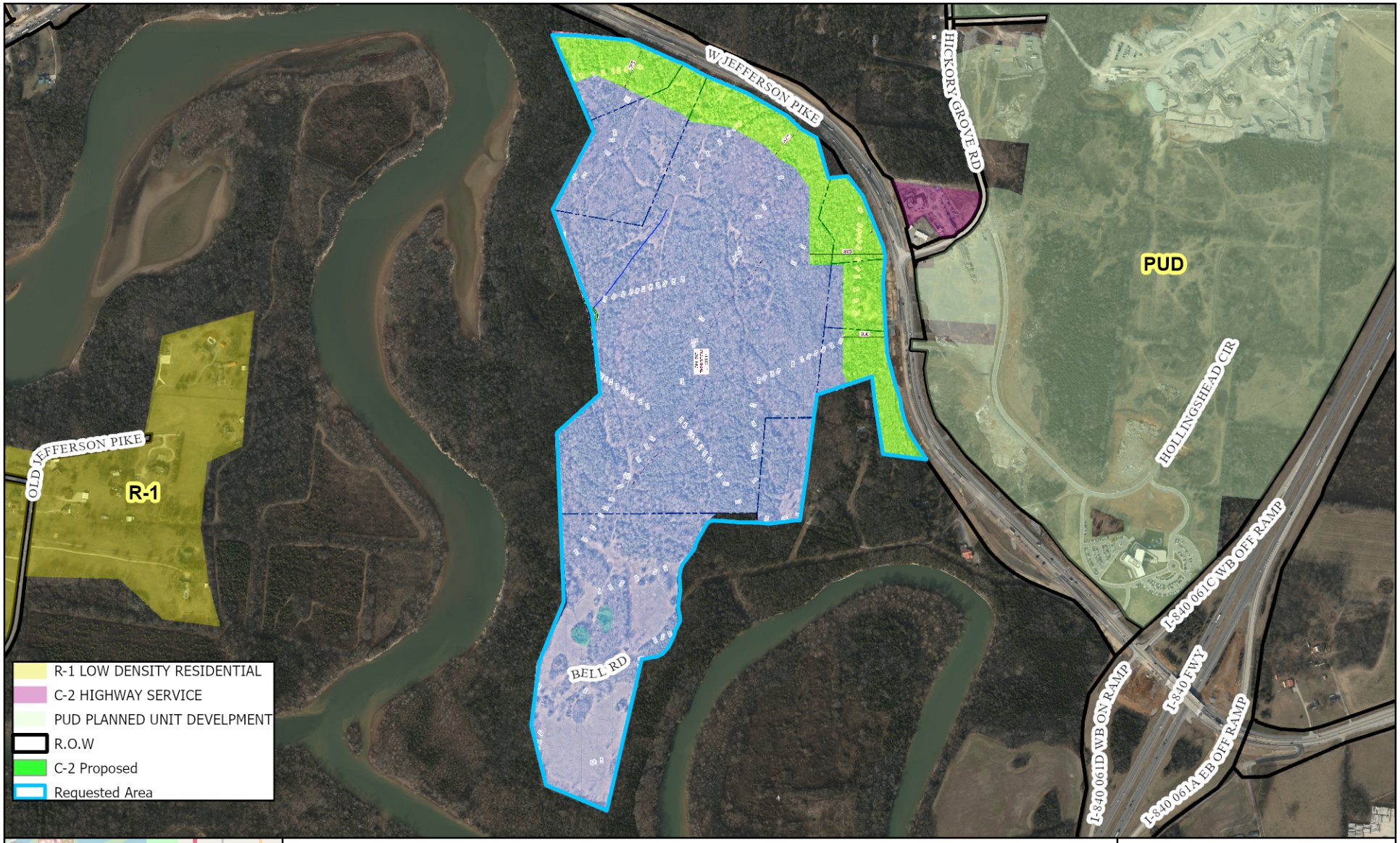
July 2025

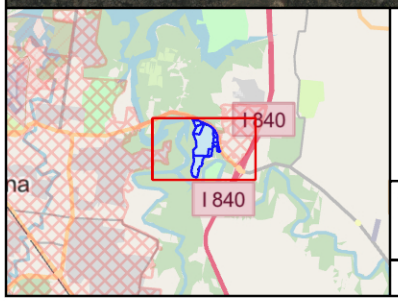
Coordinate System: NAD 1983 StatePlane Tennessee FIPS 4100 Feet

N

0 0.13 0.25 Mi

0 0.25 0.5 Km





Annexation - C-2 & I-1 Zoning Request

Tax Map: 20 | Parcels: 61.01, 61.03
Tax Map: 26 | Parcels: 13.00, 13.01, 13.02, 15.00, 15.01, 18.01
Acres: +/- 180.83 | Owners: Hollingshead Land, LLC

Map data © OpenStreetMap contributors, Microsoft, Facebook, Google, Esri Community Maps contributors, Map layer by Esri

September 2025

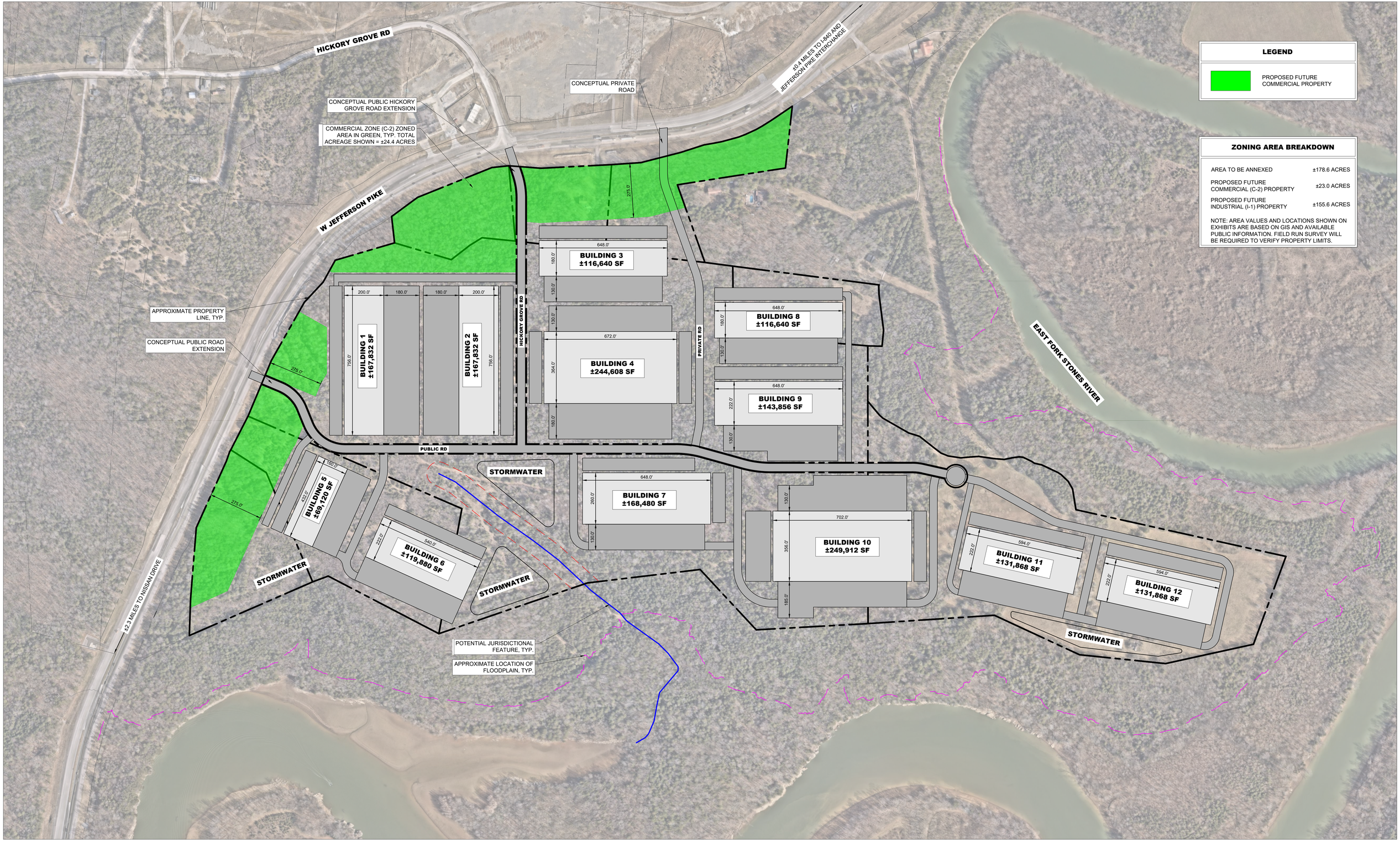
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N

TOWN OF SMYRNA TENNESSEE

0 0.1 0.2 Mi

0 0.23 0.45 Km



LEGEND

PROPOSED FUTURE COMMERCIAL PROPERTY

ZONING AREA BREAKDOWN

AREA TO BE ANNEXED	±178.6 ACRES
PROPOSED FUTURE COMMERCIAL (C-2) PROPERTY	±23.0 ACRES
PROPOSED FUTURE INDUSTRIAL (I-1) PROPERTY	±155.6 ACRES

NOTE: AREA VALUES AND LOCATIONS SHOWN ON EXHIBITS ARE BASED ON GIS AND AVAILABLE PUBLIC INFORMATION. FIELD RUN SURVEY WILL BE REQUIRED TO VERIFY PROPERTY LIMITS.

Kimley»Horn

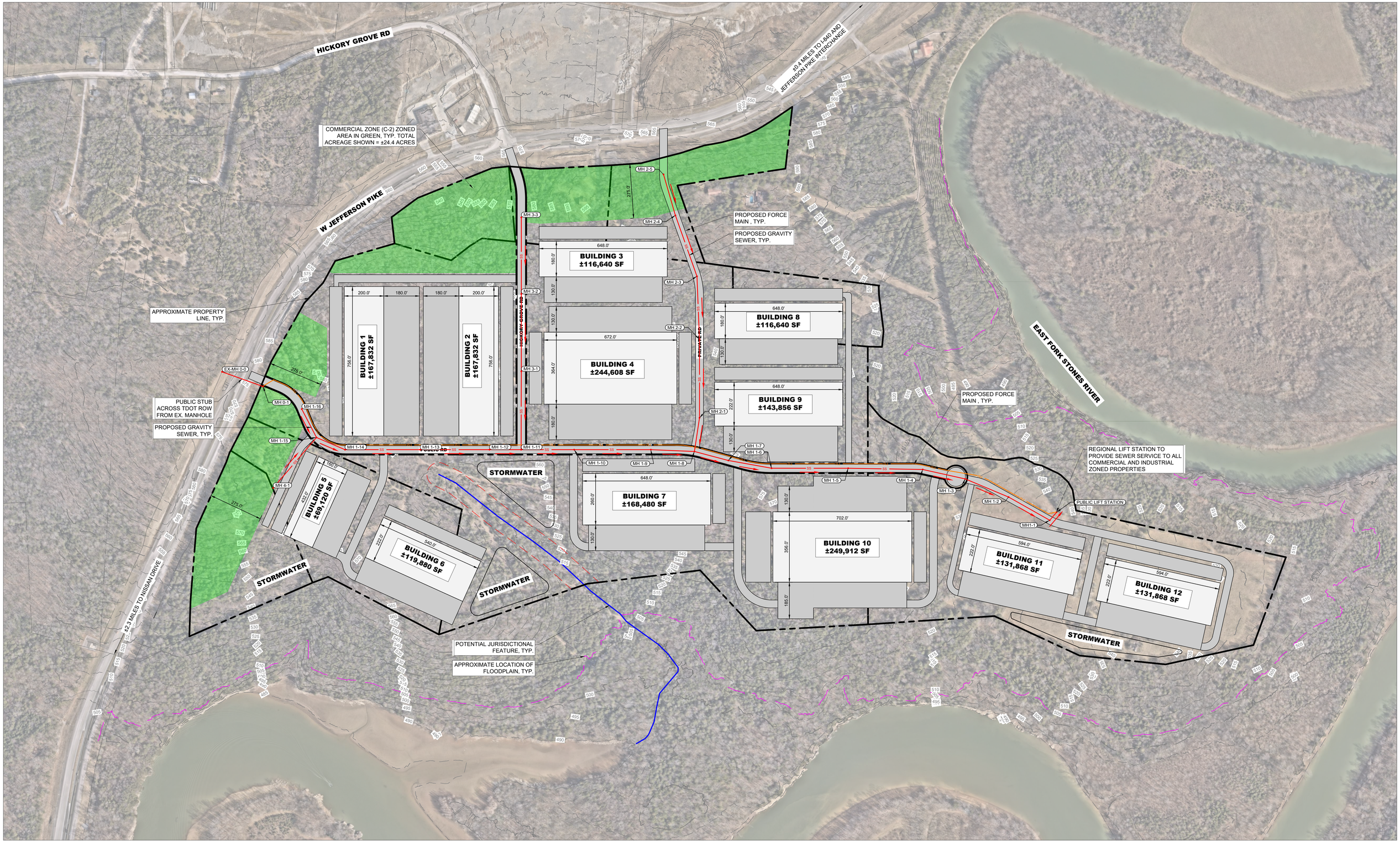
HICKORY GROVE BUSINESS PARK

CONCEPTUAL INDUSTRIAL SITE PLAN

June 16, 2025

0 100 200 400 600

NORTH



Kimley»Horn

HICKORY GROVE BUSINESS PARK

CONCEPTUAL SEWER PLAN

June 16, 2025

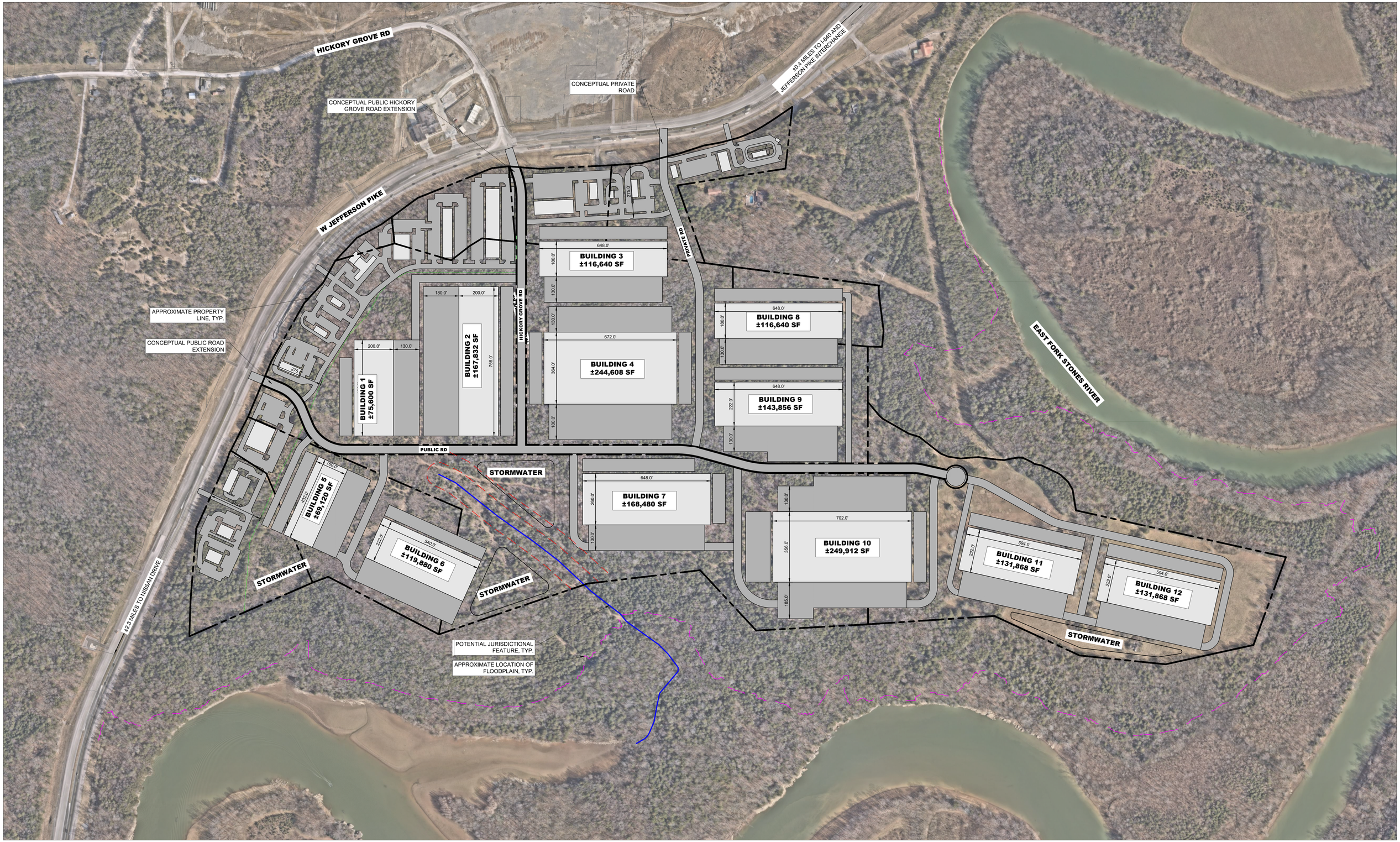
0 100 200 400 600

NORTH

Hamilton Development, LLC – Annexation and I-1 and C-2 Zoning Request

Tax Map 20, Parcels 61.01 and 61.03, and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15.00, 15.01, and 18.01, owned by Hollingshead Land, LLC, and requested by Hamilton Development, LLC.

Bordered on the west, south, and east by U.S. Army Corps of Engineers; on the east by Tax Map 26, Parcel 14.00, owned by Lawrence A. and Karen Yatuzis; and on the north by Tax Map 20, Parcel 45.00, owned by William S. and Howard S. Thornton, Tax Map 20, Parcel 61.02, owned by Nancy Nelms Gannon, and the existing right-of-way of W. Jefferson Pike/SR 266. Area annexed contains approximately 178.6 acres.



Kimley»Horn

HICKORY GROVE BUSINESS PARK

CONCEPTUAL INDUSTRIAL SITE PLAN

July 15, 2025

0 100 200 400 600 NORTH

CATEGORY BREAKDOWN

RESTAURANT = +/- 23,660 SF
HOTEL = +/- 37,000 SF
RETAIL = +/- 49,575 SF
CAR WASH/GAS STATION = 6,900 SF

TOTAL BUILDING SF = 117,135 SF
NOTE: BUILDING SF SHOWN RELATES TO BUILDING FOOTPRINT SHOWN ON THIS CONCEPT WOULD NOT INCLUDE SQUARE FOOTAGE OF MULTI-LEVEL BUILDINGS

GENERIC COMMERCIAL PAD MODELED AFTER ASPEN DENTAL/MATTRESS KING BUILDING ON SAM RIDLEY

HICKORY GROVE RD

W JEFFERSON PIKE

BUILDING 1 ±75,600 SF
BUILDING 2 ±167,832 SF
BUILDING 3 ±116,640 SF
BUILDING 4 ±244,608 SF
BUILDING 5 ±69,120 SF
BUILDING 6 ±119,880 SF
BUILDING 7 ±168,480 SF
BUILDING 8 ±116,640 SF
BUILDING 9 ±143,856 SF

STORMWATER

PUBLIC RD

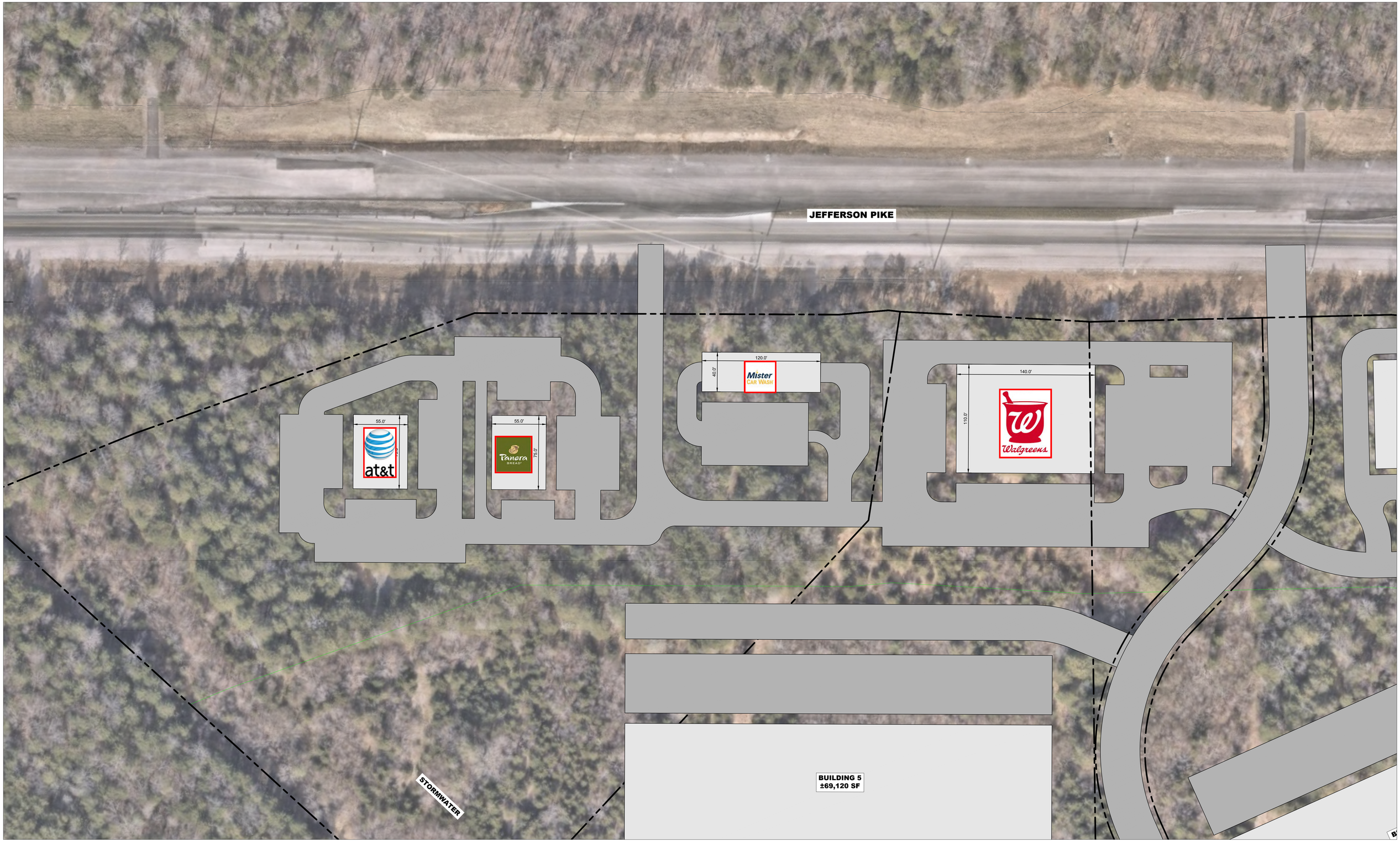
PRIVATE RD

HICKORY GROVE BUSINESS PARK

CONCEPTUAL INDUSTRIAL SITE PLAN

July 15, 2025

0 75 150 300 450 NORTH



Kimley»Horn

HICKORY GROVE BUSINESS PARK

CONCEPTUAL INDUSTRIAL SITE PLAN

July 21, 2025

0 20 40 80 120

NORTH



Kimley»Horn

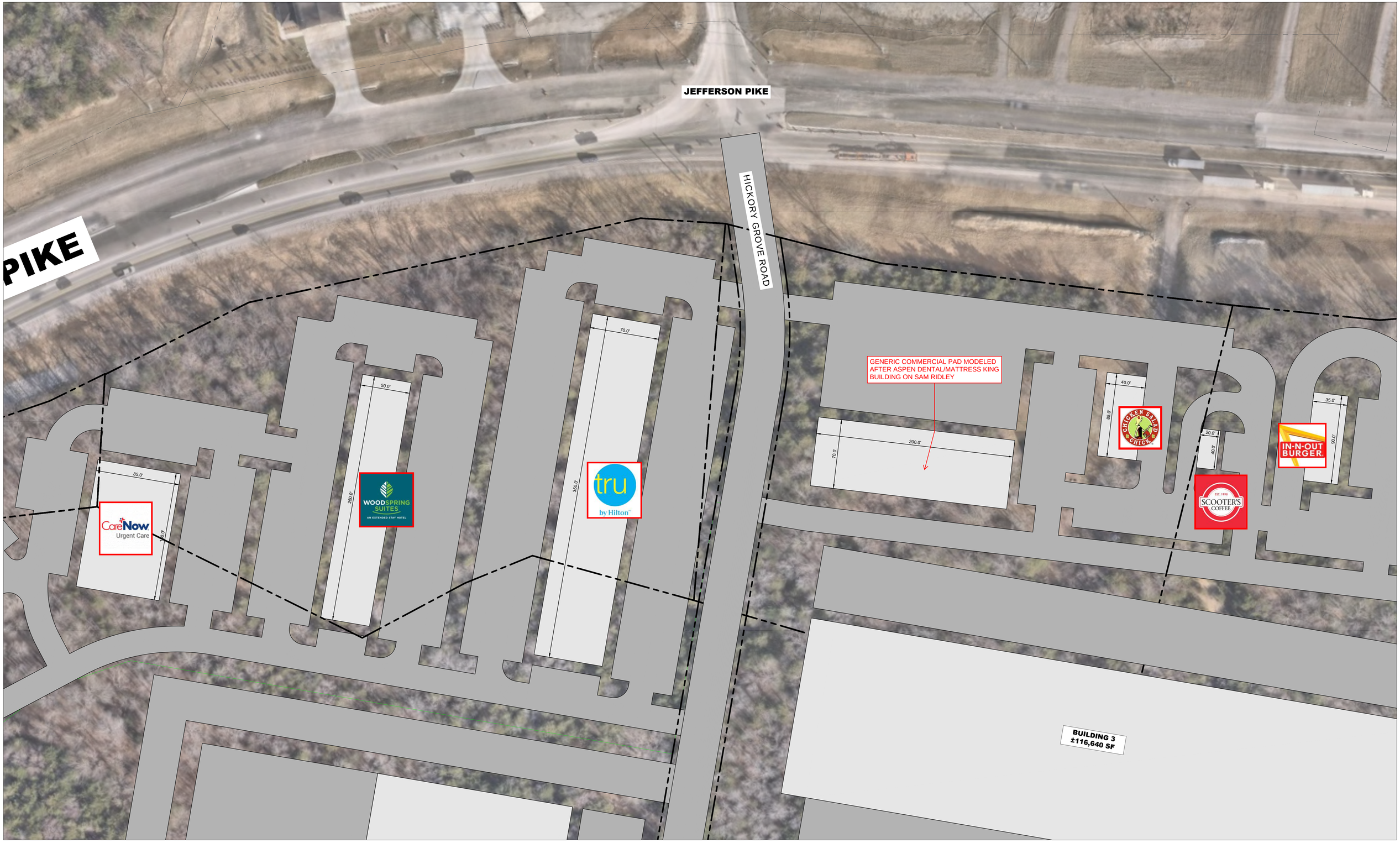
HICKORY GROVE BUSINESS PARK

CONCEPTUAL INDUSTRIAL SITE PLAN

July 21, 2025

0 20 40 80 120

NORTH



Kimley»Horn

HICKORY GROVE BUSINESS PARK

CONCEPTUAL INDUSTRIAL SITE PLAN

July 21, 2025

0 20 40 80 120

NORTH



Kimley»Horn

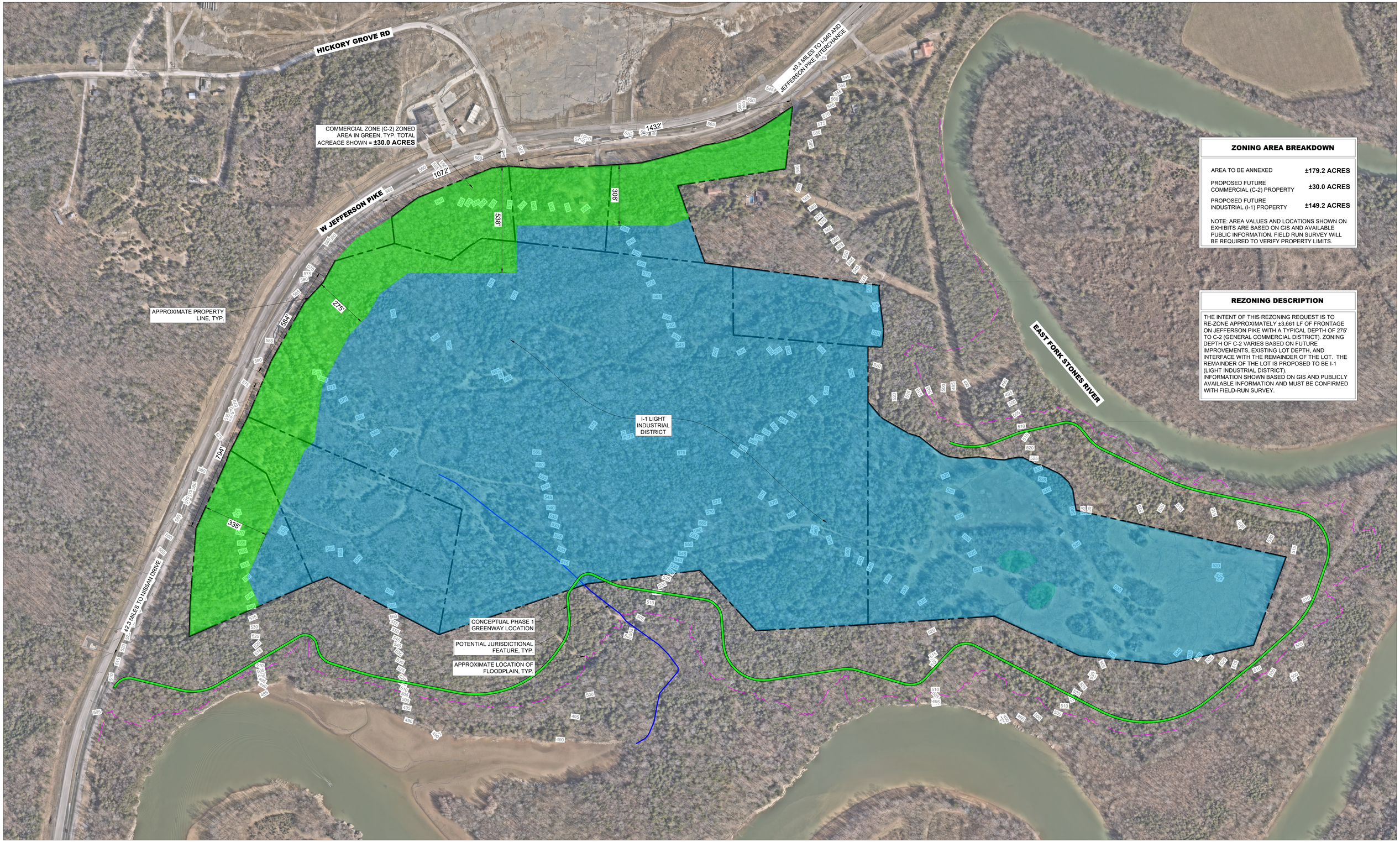
HICKORY GROVE BUSINESS PARK

CONCEPTUAL INDUSTRIAL SITE PLAN

July 21, 2025

0 20 40 80 120

NORTH



ZONING AREA BREAKDOWN

AREA TO BE ANNEXED	**±179.2 ACRES**
PROPOSED FUTURE COMMERCIAL (C-2) PROPERTY	**±30.0 ACRES**
PROPOSED FUTURE INDUSTRIAL (I-1) PROPERTY	**±149.2 ACRES**

NOTE: AREA VALUES AND LOCATIONS SHOWN ON EXHIBITS ARE BASED ON GIS AND AVAILABLE PUBLIC INFORMATION. FIELD RUN SURVEY WILL BE REQUIRED TO VERIFY PROPERTY LIMITS.

REZONING DESCRIPTION

THE INTENT OF THIS REZONING REQUEST IS TO RE-ZONE APPROXIMATELY ±3,661 LF OF FRONTAGE ON JEFFERSON PIKE WITH A TYPICAL DEPTH OF 275' TO C-2 (GENERAL COMMERCIAL DISTRICT). ZONING DEPTH OF C-2 VARIES BASED ON FUTURE IMPROVEMENTS, EXISTING LOT DEPTH, AND INTERFACE WITH THE REMAINDER OF THE LOT. THE REMAINDER OF THE LOT IS PROPOSED TO BE I-1 (LIGHT INDUSTRIAL DISTRICT). INFORMATION SHOWN BASED ON GIS AND PUBLICLY AVAILABLE INFORMATION AND MUST BE CONFIRMED WITH FIELD-RUN SURVEY.

Kimley»Horn

HICKORY GROVE BUSINESS PARK

CONCEPTUAL INDUSTRIAL SITE PLAN

August 5, 2025

0 100 200 400 600

NORTH

HOLLINGSHEAD LAND - VIEW LOCATIONS

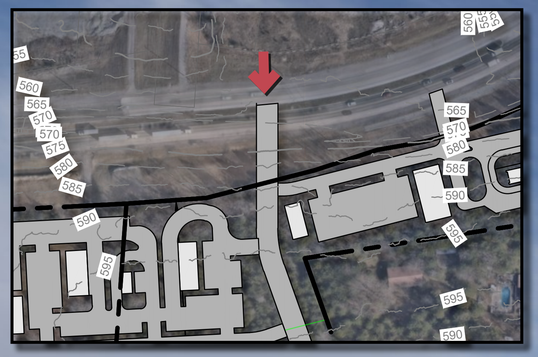
AUGUST 7, 2025

Kimley»Horn



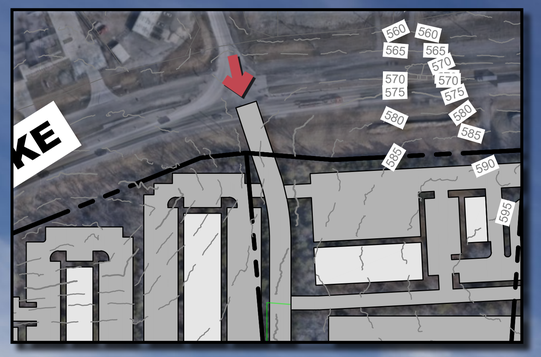
HOLLINGSHEAD LAND - VIEW LOCATION 1

AUGUST 7, 2025



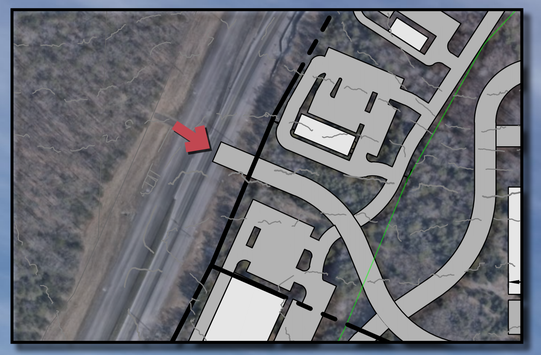
HOLLINGSHEAD LAND - VIEW LOCATION 2

AUGUST 7, 2025



HOLLINGSHEAD LAND - VIEW LOCATION 3

AUGUST 7, 2025



HOLLINGSHEAD LAND - VIEW LOCATION 4

AUGUST 7, 2025



HOLLINGSHEAD LAND - VIEW LOCATION 5

AUGUST 7, 2025

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 16.
Department: Planning
Date: August 28, 2025

Subject:
Consideration of a Resolution in Memorandum of Ordinance #25-21 relative to the annexation and C-2 and I-1 zoning of property requested by Hamilton Development, LLC on behalf of Hollingshead Land, LLC containing 178.6 acres.

Fiscal Impact:

Contract Type:

Contract Term (if applicable):

Background:
A Resolution in Memorandum of Ordinances in which annexation of property takes place is required by statute.

Summary:
This resolution is related to the annexation of property on Tax Map 20, Parcels 61.01 and 61.03, and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15.00, 15.01, and 18.01

Recommended Council Action:
Staff recommends approval of the Resolution #25-14 in Memorandum of Ordinance #25-21.

Attachments:
1. Resolution #25-14

TOWN OF SMYRNA, TENNESSEE
RESOLUTION 25-14

A RESOLUTION in memorandum of Ordinance #25-21 relative to the annexation and C-2 and I-1 zoning of property located on Tax Map 20, Parcels 45.00, 61.01, 61.02, and 61.03 and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15,00, 15.01, and 18.01, comprising a total of approximately 180.83 acres.

WHEREAS, T.C.A. §6-51-104 requires a resolution for the annexation proposed by a property owner; and

WHEREAS, this Resolution shall mirror the intent and effect of Ordinance #25-21 relative to the annexation and C-2 and I-1 zoning of property located on Tax Map 20, Parcels 45.00, 61.01, 61.02, and 61.03 and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15,00, 15.01, and 18.01, comprising a total of approximately 180.83 acres.

WHEREAS, Article II, Section 2.01 (35) authorizes the Town Council to exercise and have all other powers, functions, rights, privileges and immunities granted by general law or necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, morals, and general welfare of the town and its inhabitants, and all implied powers necessary to carry into execution all powers granted in this charter as fully and completely as if such powers were fully enumerated herein.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Smyrna, as follows:

Section 1. The Town Council hereby resolves to pass Ordinance #25-21 relative to the annexation and C-2 and I-1 zoning of property located on Tax Map 20, Parcels 45.00, 61.01, 61.02, and 61.03 and Tax Map 26, Parcels 13.00, 13.01, 13.02, 15,00, 15.01, and 18.01, comprising a total of approximately 180.83 acres.

Section 2. This resolution shall take effect immediately upon its adoption, the public health and welfare of the Town of Smyrna requiring it.

ADOPTED by the Town Council the _____ day of _____, 2025.

TOWN OF SMYRNA, TENNESSEE

_____
MARY ESTHER REED, Mayor

ATTEST: _____
AMBER HOBBS, Town Clerk

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 17.
Department: Planning
Date: August 28, 2025

Subject:
Consideration of an ordinance relative to the amendment of the existing PRD of properties located on Tax Map 54, Parcel 57.02 and Tax Map 73, Parcels 13.00, 13.01, 13.03, 13.04, and 16.00 owned by Southcoast DFH Nashville LLC containing 67.68 acres, and the rezoning of Tax Map 54, part of Parcel 57.00, owned by SCollins 2 Properties, LLC from R-3 to PRD containing .31 acre. The request is from Gamble Design Collaborative on behalf of the property owners and is located along Rocky Fork Almaville Road and Briley Road. Second Reading.

Fiscal Impact:
N/A

Contract Type:

Contract Term (if applicable):
N/A

Background:
The properties that are the subject of this request are located south and east of Briley Road and west of Rocky Fork Almaville Road. The Land Use Plan would support Medium Density Single Family Residential development in this area. The surrounding zoning is PRD (Collins Grove, Alfaro Subdivision, Reverie at Music City, Lyndwood) in Town and RM in Rutherford County.

The existing PRD for Briley Downs approved in April 2023 is for 212 single family lots on 67.68 acres, for a density of 3.13 units/acre. When the provided open space of 15.47 acres is considered, the density is 212 lots on 52.21 acres, for a density of 4.06 units/acre.

Summary:
The requested PRD/PRD amendment would add .31 acre currently zoned R-3 from an adjacent tract. The requested PRD is for 217 single family lots on 67.99 acres, for a density of 3.19 units/acre. When the proposed provided open space of 15.45 acres is considered, the density would be 217 lots on 52.54 acres, for a density of 4.13 units/acre. In addition, the amenities proposed have been changed to add a pool and

clubhouse replacing a pavilion, dog park, and community garden. In addition, it has been requested to amend the front setback from 35’ to 20’ with a 35’ setback to the garage. The overall layout, minimum/maximum house size, etc., has not changed.

The Planning Commission reviewed this request and recommended approval 6 for, 0 against, 1 abstention.

Recommended Council Action:
Staff recommends approval.

Attachments:

1. Ordinance #25-26
2. PRD Amendment Request - Application
3. Briley Downs R-3 to PRD Rezoning Map
4. Briley Downs PRD Amendment Map 1
5. Briley Downs PRD Amendment Map 2
6. 2025-07-14 Briley Downs PRD Amendment 1 Submittal Set
7. Briley Downs August 2025 Rezoning PRD Amendment Description

TOWN OF SMYRNA, TENNESSEE
ORDINANCE NO. 25-26

AN ORDINANCE relative to the existing PRD located on Tax Map 54, parcel 57.02, Tax Map 73, Parcels 13.00, 13.01, 13.03, 13.04 & 16.00, comprising a total of approximately 67.68 acres and the rezoning of part of Tax Map 54, Parcel 57.00, comprising a total of approximately 4.52 acres from R-3 to PRD.

WHEREAS, the Planning Commission has recommended this change based on certain conditions and considerations; and

WHEREAS, the change is in agreement with the general plan for the area; and

WHEREAS, it has been determined that the legal purposes for which zoning exists are not breached by this amendment; and

WHEREAS, it has been determined that there will not be an adverse effect upon adjoining property owners and/or any such adverse effect is justified by the overwhelming public good or welfare; and

WHEREAS, it has been determined that no one property owner or small group of property owners will benefit materially from the change to the detriment of the general public.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SMYRNA:

Section 1. That the existing PRD for property located on Tax Map 54, parcel 57.02, Tax Map 73, Parcels 13.00, 13.01, 13.03, 13.04 & 16.00, comprising a total of approximately 67.68 acres, all of which is identified on Appendix I attached hereto and incorporated herein by reference as if set forth at length verbatim, be and hereby is amended, the public health and welfare of the Town of Smyrna requiring it; and

That the property located on Tax Map 54, Parcel 57.00, comprising a total of approximately 4.52 acres as shown on Appendix I attached hereto and incorporated herein by reference as if set forth at length verbatim, be, and hereby is rezoned from R-3 to PRD, the public health and welfare of the Town of Smyrna requiring it.

Section 2. This ordinance shall take effect immediately upon its adoption on second and final reading, the public health and welfare of the Town of Smyrna requiring it.

PASSED on first reading by the Town Council the ____ day of _____, 2025.

PASSED on second reading by the Town Council the ____ day of _____, 2025.

TOWN OF SMYRNA, TENNESSEE

_____
MARY ESTHER REED, Mayor

ATTEST:

_____
AMBER HOBBS, Town Clerk

Town of Smyrna

Rezoning Request Application

APPLICANT INFORMATION:		
Name/Company: GAMBLE DESIGN COLLABORATIVE		
Street Address: 3020 STRAWBERRY LANE, STE. 201		
City: FRANKLIN	State: TN	ZIP: 37069
Email: MATT.HUFF@GDC-TN.COM	Phone: 615-414-6723	

CONTRACTOR/DEVELOPER INFORMATION: CHECK BOX IF SAME AS APPLICANT		
Name/Company: DREAM FINDERS HOMES		
Street Address: 101 FORREST CROSSING, #107		
City: FRANKLIN	State: TN	ZIP: 37064
Email: CRAIG.YERIAN@DREAMFINDERSHOMES.COM	Phone: 859-625-8960	

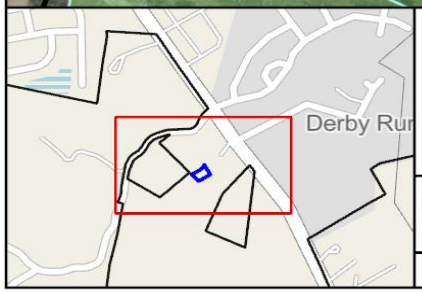
PROPERTY INFORMATION		
Street Address/Intersecting Streets: SOUTH OF THE INTERSECTION OF BRILEY & ROCKY FORK ALMAVILLE RD		
Tax Map: 054 073 073	Group:	Parcel: 57.02 16.00 13.00, 13.01, 13.03, & 13.04
Requested Lot Area (Square feet/Acres): 67.99 AC		
Existing Zoning: PRD 3.13 DUA	**Requested Zoning:** PRD (AMENDMENT) 3.19 DUA	
*Current Property Owner (See Note Below): SOUTHCOAST DFH NASHVILLE, LLC		

APPLICANT AUTHORIZATION	
Applicant Signature: Matt Huff	Date: 7/14/2025

OFFICE USE ONLY		
Staff Initials:	Review Fee:	Date:

- ***If the applicant is not the current property owner, authorization must be provided by the current property owner for the request of rezoning as mandated by State law.***
- Applications are to be submitted no later than 12:00 PM noon on the initial deadline date unless otherwise noted.
- All meetings are held at Smyrna Town Hall - 315 South Lowry Street - at 5:00 PM in the Town Council Chambers.
- All supporting documents must be submitted at the time of application.





R-3 to PRD Rezoning

Tax Map: 54 | P/O Parcel: 57.00 | Acres: +/- 0.31

Requested by: Gamble Design Collaborative on behalf of Southcoast DFH Nashville, LLC

Map data © OpenStreetMap contributors, Microsoft, Facebook, Google, Esri Community Maps contributors, Map layer by Esri

August 2025

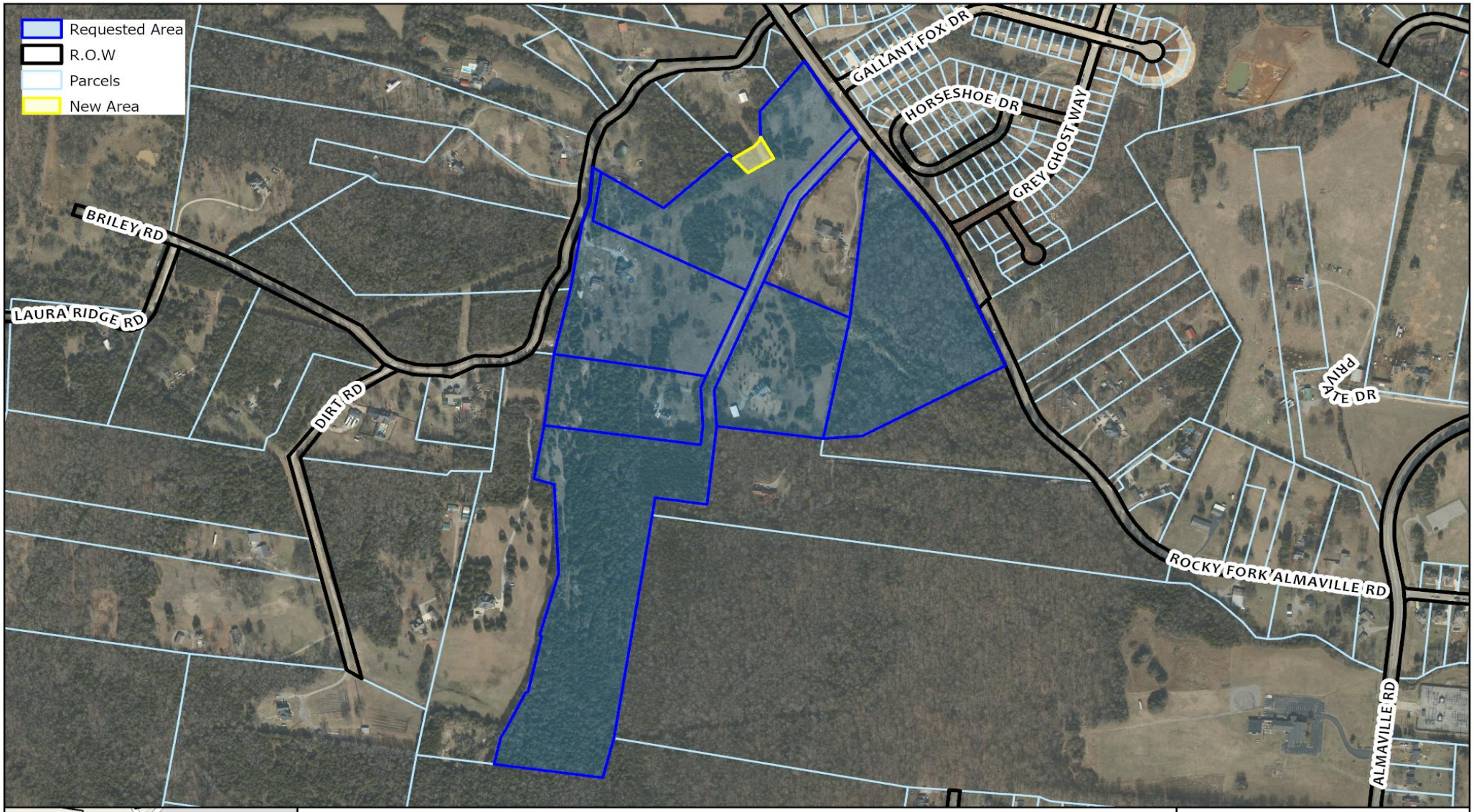
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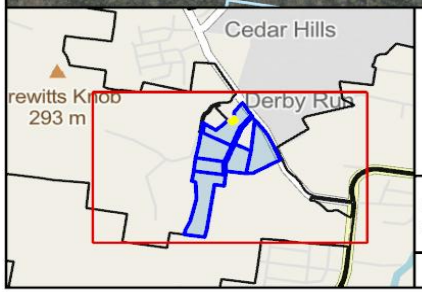
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TOWN OF SMYRNA TENNESSEE

0 0.02 0.04 Mi

0 0.04 0.08 Km





PRD Zoning Amendment Request

Tax Map: 54 | Parcel: 57.02 Acres: +/- 67.99

Tax Map: 73 | Parcels: 13.00, 13.01, 13.03, 13.04, 16.00

Requested by: Gamble Design Collaborative on behalf of Southcoast DFH Nashville, LLC

Map data © OpenStreetMap contributors, Microsoft, Facebook, Google, Esri Community Maps contributors, Map layer by Esri

August 2025

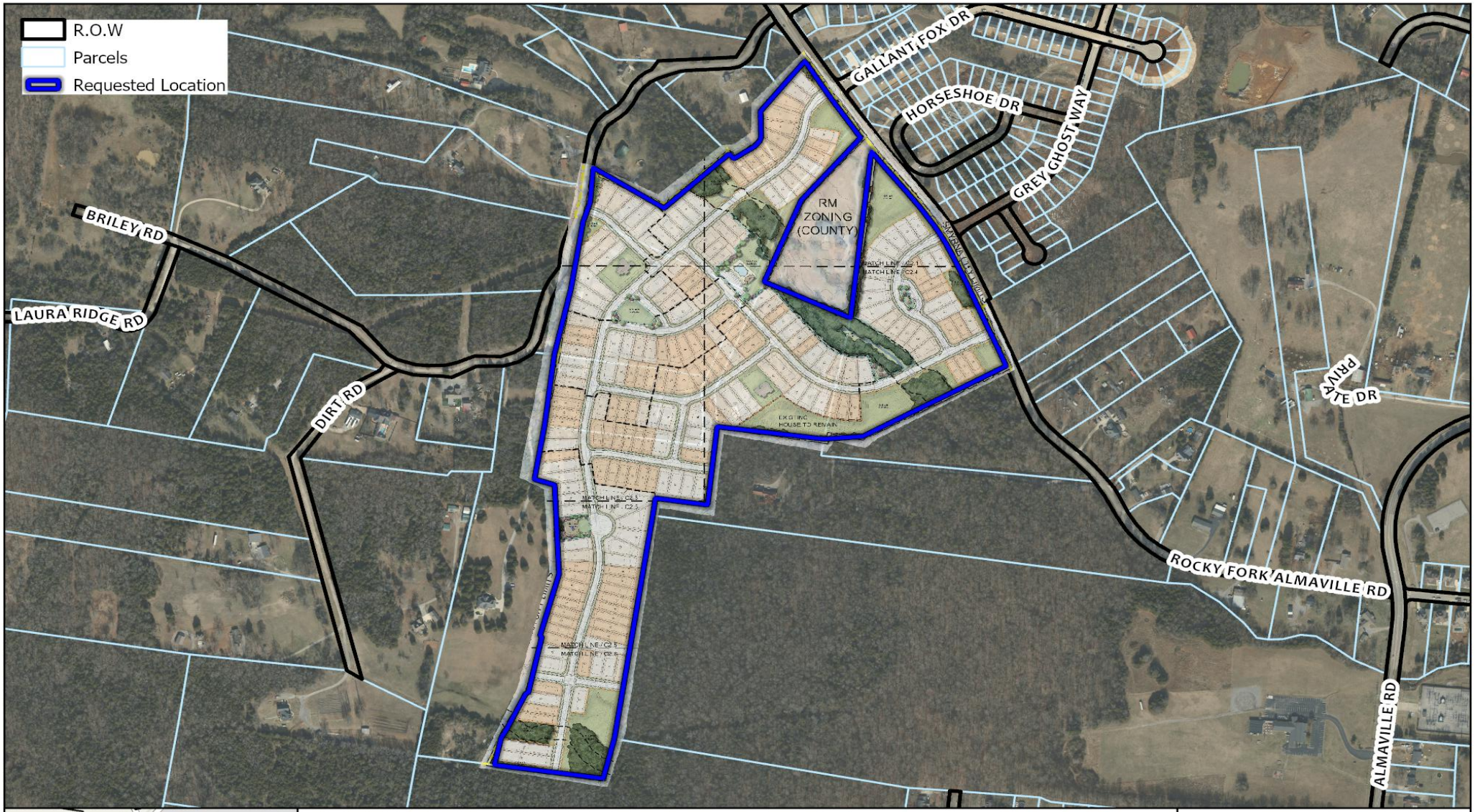
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TOWN OF SMYRNA TENNESSEE

0 0.07 0.15 Mi

0 0.15 0.3 Km



PRD Zoning Amendment Request

Tax Map: 54 | Parcel: 57.02 Acres: +/- 67.99

Tax Map: 73 | Parcels: 13.00, 13.01, 13.03, 13.04, 16.00

Requested by: Gamble Design Collaborative on behalf of Southcoast DFH Nashville, LLC

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August 2025

Coordinate System: NAD 1983 StatePlane Tennessee FIPS 4100 Feet

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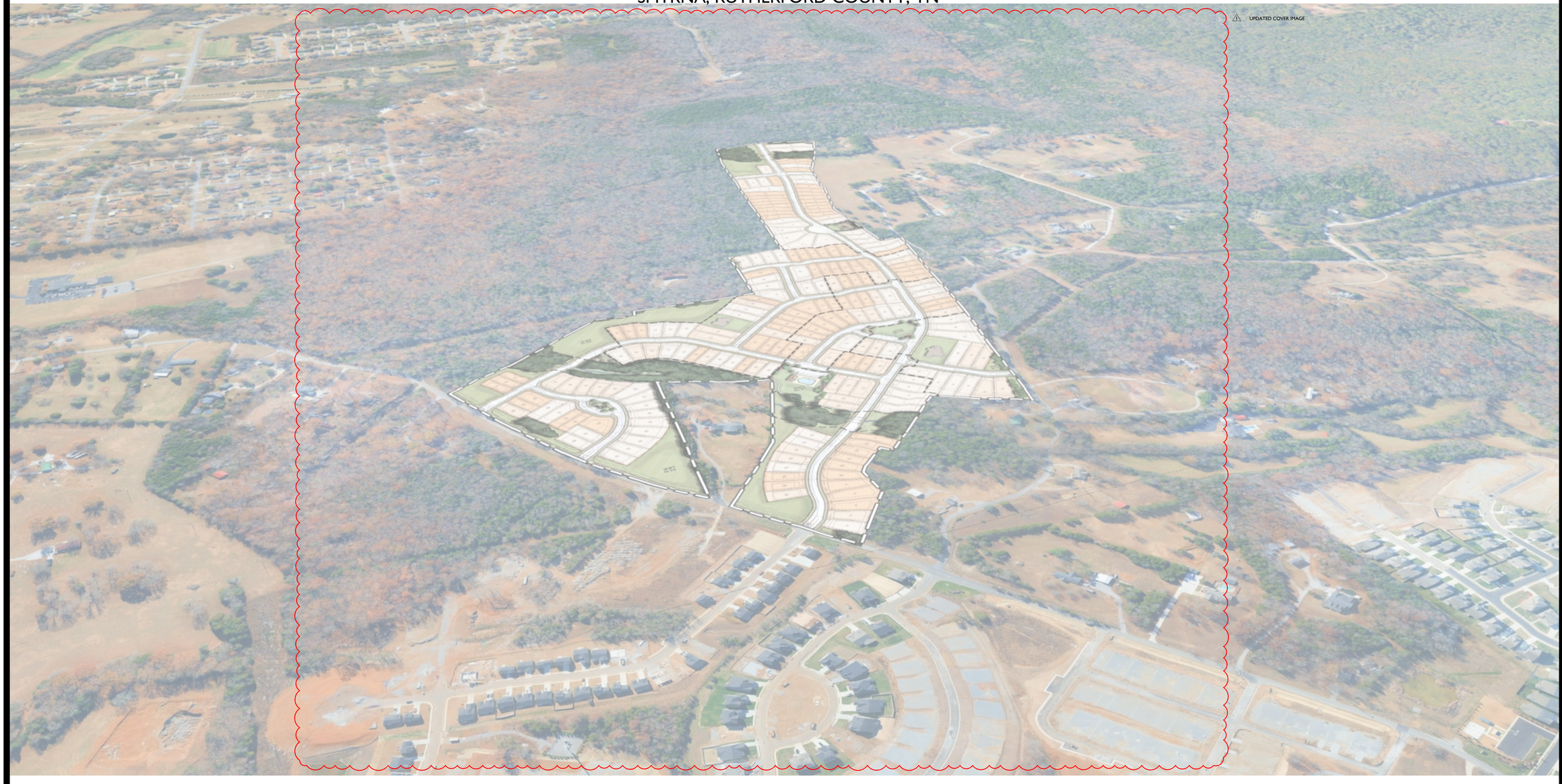
0 0.07 0.15 Mi

0 0.15 0.3 Km

BRILEY DOWNS SUBDIVISION

ANNEXATION AND REZONING REQUEST - AMENDMENT 1

SMYRNA, RUTHERFORD COUNTY, TN



⚠ UPDATED COVER IMAGE

APPLICANT & LANDSCAPE ARCHITECT:

GAMBLE DESIGN COLLABORATIVE
GREG GAMBLE
324 LIBERTY PIKE
SUITE 145
FRANKLIN, TN 37064
615-975-5765
greg.gamble@gdc-tn.com

ENGINEER:

CIVIL SITE DESIGN GROUP
KYLE GRIFFIN
2305 KLINE AVENUE, SUTE 300
NASHVILLE, TN 37211
615-248-9999
kyleg@csdgtn.com

SHEET INDEX

C0.0	COVER
C1.0-C1.6	EXISTING CONDITIONS
C2A	APPROVED MASTER PLAN
C2.0-C2.6	CONCEPTUAL MASTER PLAN
C3.0	PHASING PLAN
C4.0-C4.1	OPEN SPACE PLAN
C5.0	TYPICAL ARCHITECTURE

GAMBLE DESIGN COLLABORATIVE

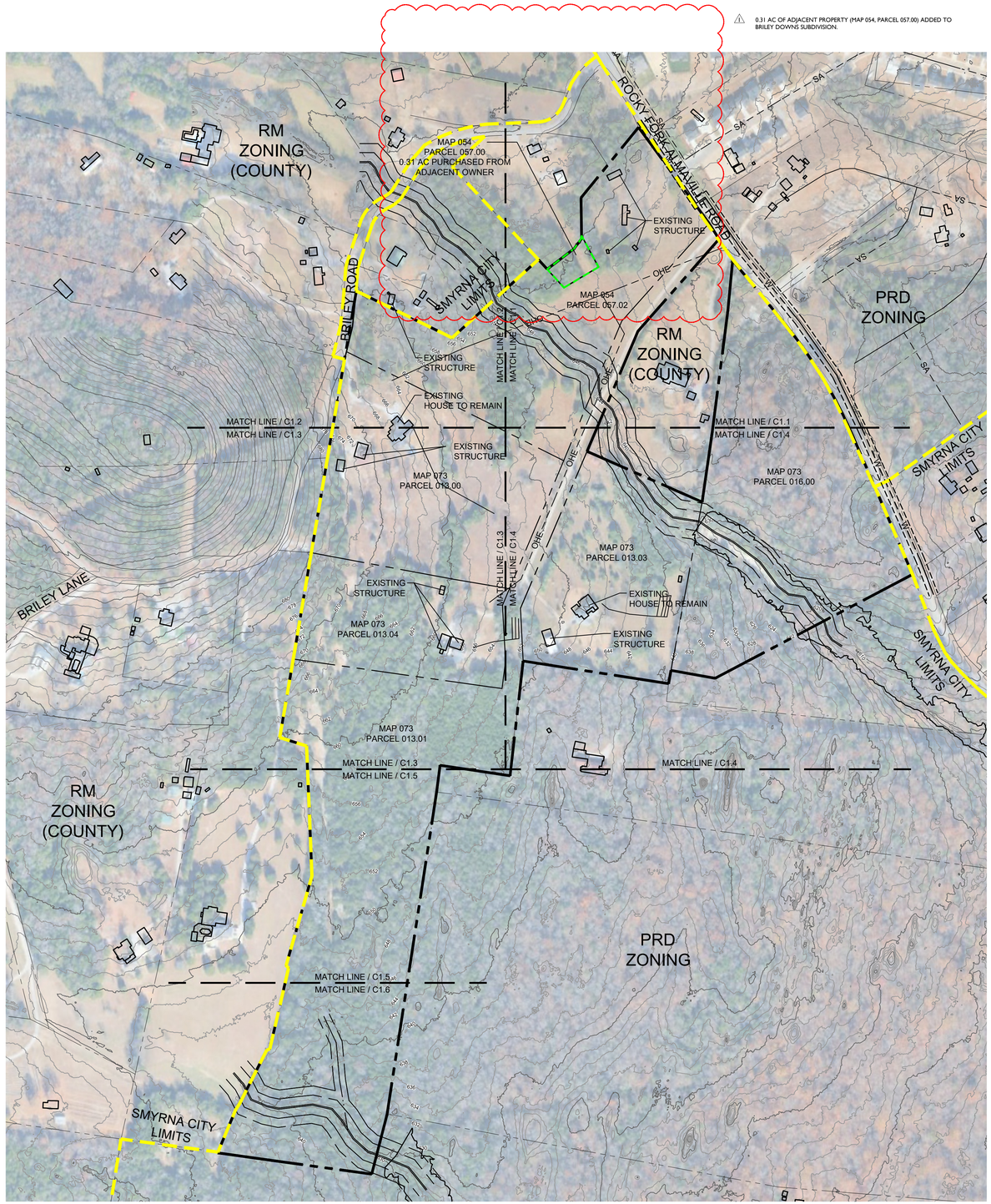
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

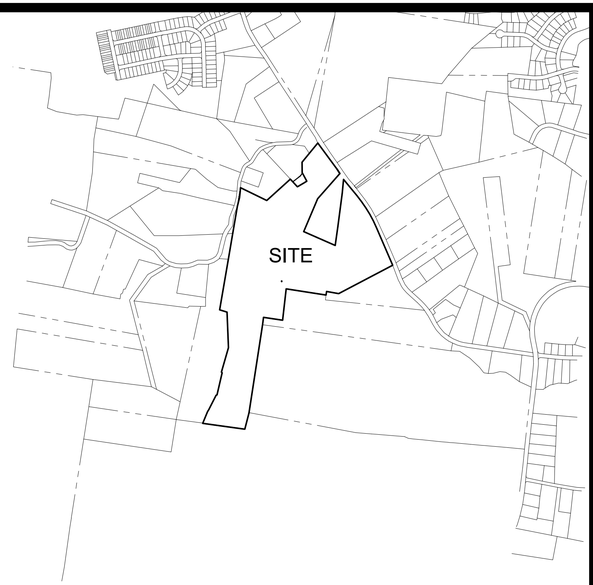
BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1
Smyrna, Rutherford County, Tennessee

STATE OF TENNESSEE
DEPARTMENT OF AGRICULTURE
COMMERCE
TENNESSEE NO. 1115
LANDSCAPE ARCHITECT
7/14/25

Revision Date
⚠ JULY 14, 2025
△
△
△

SHEET
C0.0





CONTEXT MAP NTS

GAMBLE DESIGN COLLABORATIVE
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1
Smyrna, Rutherford County, Tennessee

Revision Date
1 JULY 14, 2025

OVERALL EXISTING CONDITIONS

SHEET
C1.0

RM
ZONING
(COUNTY)

0.31 AC OF ADJACENT PROPERTY (MAP 054, PARCEL 057.00) ADDED TO BRILEY DOWNS SUBDIVISION.

EXISTING STRUCTURE

MAP 054
PARCEL 057.00
0.31 AC PURCHASED FROM
ADJACENT OWNER

30' WATERLINE EASEMENT

ROCKY FORK ALMAVILLE ROAD

MAP 073
PARCEL 013.01

MAP 054
PARCEL 057.02

RIPARIAN BUFFER ZONE 2
RIPARIAN BUFFER ZONE 1
RIPARIAN BUFFER ZONE 1
RIPARIAN BUFFER ZONE 2

648
646
644
642

MATCH LINE / C1.2
MATCH LINE / C1.1

RM
ZONING
(COUNTY)

MAP 073
PARCEL 016.00

SMYRNA CITY
LIMITS

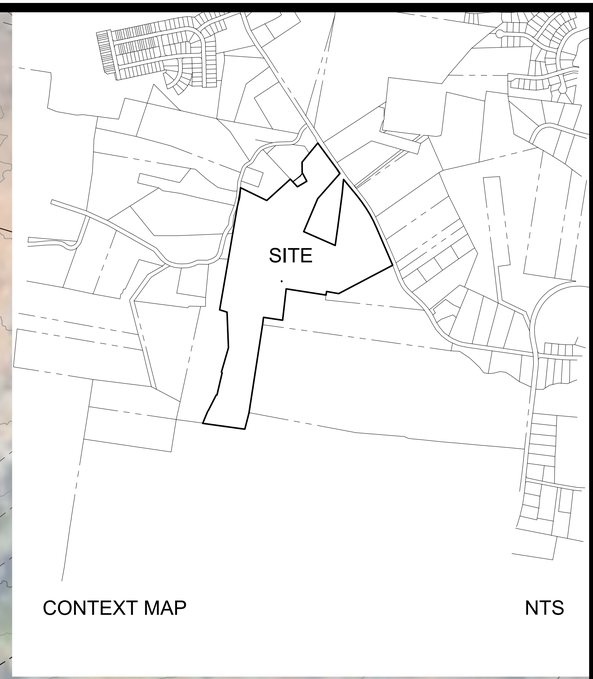
PRD
ZONING

MATCH LINE / C1.1
MATCH LINE / C1.4

W
SA
OHE

0 50 100 150

N



CONTEXT MAP NTS

GAMBLE DESIGN COLLABORATIVE

DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1

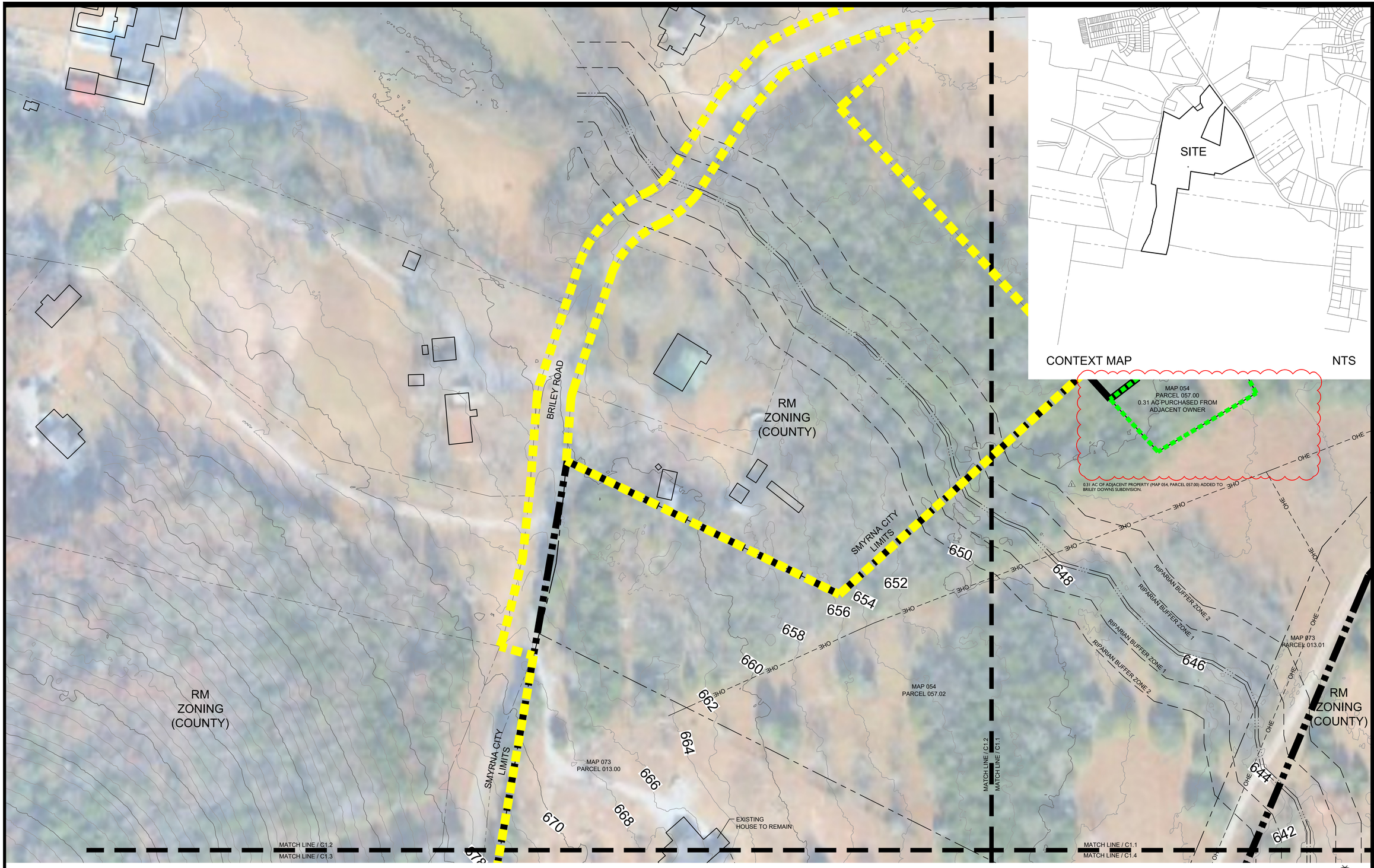
Smyrna, Rutherford County, Tennessee

STATE OF TENNESSEE
MATTHEW GAMBLE
REGISTERED
DEPARTMENT OF AGRICULTURE
COMMERCE
TENNESSEE NO. 1418
LANDSCAPE ARCHITECT
7/14/25

Revision Date
1 JULY 14, 2025

EXISTING CONDITIONS ENLARGEMENT SHEET

C1.1



CONTEXT MAP NTS

GAMBLE DESIGN COLLABORATIVE

DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1

Smyrna, Rutherford County, Tennessee

7/14/25

Revision Date

1. JULY 14, 2025

EXISTING CONDITIONS ENLARGEMENT SHEET

C1.2

MATCH LINE / C1.2
MATCH LINE / C1.3

RM
ZONING
(COUNTY)

BRILEY ROAD

SMYRNA CITY LIMITS

EXISTING HOUSE TO REMAIN

EXISTING STRUCTURE

EXISTING STRUCTURE

MAP 073
PARCEL 013.00

MAP 073
PARCEL 013.04

MAP 073
PARCEL 013.01

RM
ZONING
(COUNTY)

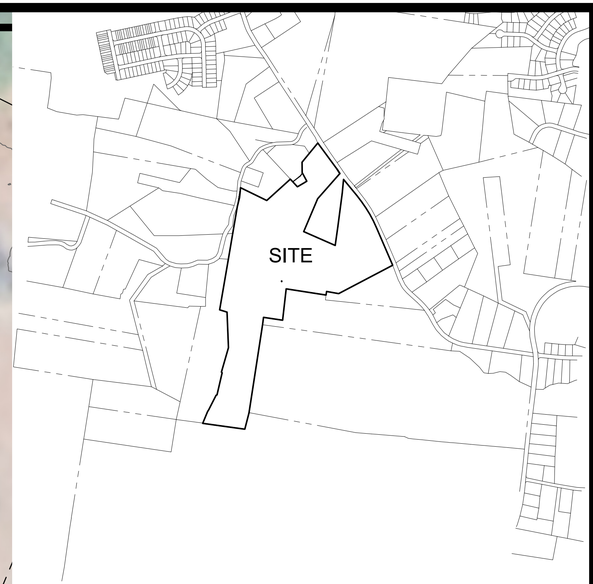
PRD
ZONING

SA

OHE

MATCH LINE / C1.3
MATCH LINE / C1.2

MATCH LINE / C1.3
MATCH LINE / C1.5



CONTEXT MAP NTS

0 50 100 150

N

GAMBLE DESIGN COLLABORATIVE

DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1

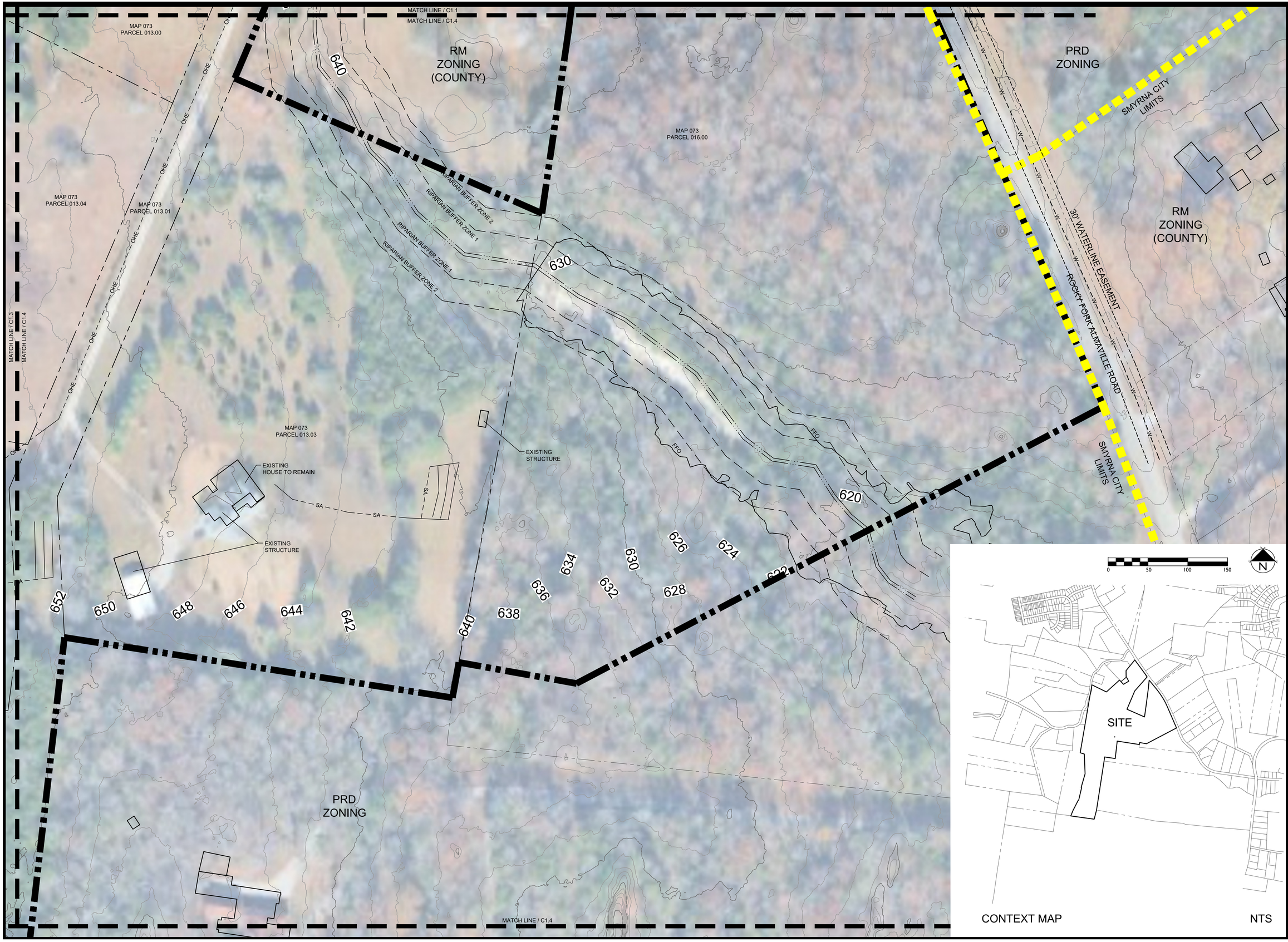
Smyrna, Rutherford County, Tennessee

TENNESSEE LICENSED LANDSCAPE ARCHITECT
7/14/25

Revision Date

1 JULY 14, 2025

EXISTING CONDITIONS ENLARGEMENT
SHEET
C1.3



GAMBLE DESIGN COLLABORATIVE

DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1

Smyrna, Rutherford County, Tennessee

STATE OF TENNESSEE
AGRICULTURE
COMMERCE
TENNESSEE NO. 1418
LANDSCAPE ARCHITECT
7/14/25

Revision Date

1. JULY 14, 2025
2.
3.
4.

EXISTING CONDITIONS ENLARGEMENT
SHEET
C1.4

MATCH LINE / C1.3
MATCH LINE / C1.5

658
656
654
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646

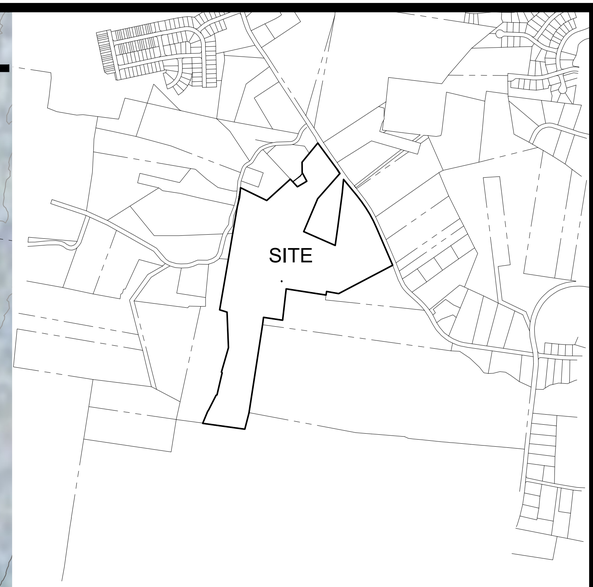
MAP 073
PARCEL 013.01

SMYRNA CITY LIMITS

RM
ZONING
(COUNTY)

RM
ZONING
(COUNTY)

MATCH LINE / C1.5
MATCH LINE / C1.6



CONTEXT MAP NTS

0 50 100 150

N

GAMBLE DESIGN COLLABORATIVE

DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1

Smyrna, Rutherford County, Tennessee

7/14/25

TENNESSEE REGISTERED LANDSCAPE ARCHITECT
AGRICULTURE COMMERCE
TENNESSEE NO. 1413

Revision Date
1 JULY 14, 2025
2
3
4

EXISTING CONDITIONS ENLARGEMENT
SHEET
C1.5

MATCH LINE / C1.5
MATCH LINE / C1.6

RM
ZONING
(COUNTY)

MAP 073
PARCEL 013.01

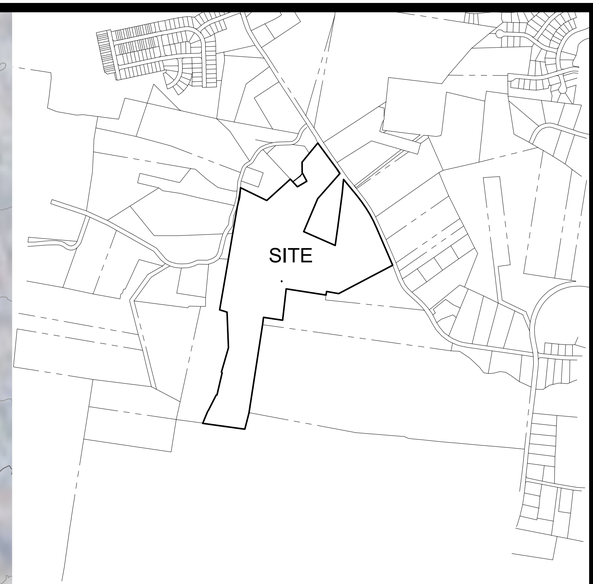
RM
ZONING
(COUNTY)

646
644
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640
630

RIPARIAN BUFFER ZONE 2
RIPARIAN BUFFER ZONE 1
RIPARIAN BUFFER ZONE 1
RIPARIAN BUFFER ZONE 2

SMYRNA CITY
LIMITS

FFO
FFO



CONTEXT MAP NTS

0 50 100 150

N

GAMBLE DESIGN COLLABORATIVE
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1
Smyrna, Rutherford County, Tennessee

STATE OF TENNESSEE
AGRICULTURE
COMMERCE
LANDSCAPE ARCHITECT
7/14/25

Revision Date
1 JULY 14, 2025

EXISTING
CONDITIONS
ENLARGEMENT
SHEET
C1.6





CONTEXT MAP NTS

KEY

- 55' LOTS
- 50' LOTS
- 45' LOTS
- PROVIDED OPEN SPACE
- IMPROVED OPEN SPACE

SITE NARRATIVE

BRILEY DOWNS WILL BE A SINGLE FAMILY NEIGHBORHOOD WITH HIGH QUALITY RESIDENTIAL ARCHITECTURE AND DESIGNED COMMUNITY OPEN SPACES. WITH ACCESS POINTS TO ROCKY FORK ALMAVILLE ROAD TO THE NORTHEAST, AND BRILEY ROAD TO THE WEST, BRILEY DOWNS PROPOSES 210 LOTS ON 67.68 ACRES OF LAND. LOT WIDTHS WILL BE 55', 50', AND 45', THE LATTER BEING INCLUDED IN ORDER TO AVOID ADDING TOWNHOMES TO THE MIX. THE RESULT OF THIS ADDITION IS A BIT LESS DENSITY THAN COULD BE ACHIEVED WITH TOWNHOMES, BUT BETTER OVERALL NEIGHBORHOOD COHESION.

THE 6 EXISTING PROPERTIES ASSOCIATED WITH BRILEY DOWNS ARE CURRENTLY LOCATED OUTSIDE SMYRNA'S CITY LIMITS, HOWEVER, THEY BORDER THE CITY LIMITS AT BOTH THE NORTHERN AND SOUTHERN ENDS OF THE PROPOSED DEVELOPMENT. THIS DOCUMENT IS TO REQUEST THAT ALL 6 PROPERTIES BE ANNEXED INTO THE TOWN, AND ZONED PRD. THIS ZONING WOULD MATCH THE DIRECTLY ADJACENT SMYRNA PROPERTIES TO THE NORTH AND SOUTH.

THE FUTURE LAND USE PLAN CALLS OUT THIS PROPERTY AS MEDIUM DENSITY SINGLE-FAMILY RESIDENTIAL. THE COMPREHENSIVE PLAN DEFINES MEDIUM DENSITY AS HAVING LOT SIZES RANGING FROM 5,000 TO 15,000 SQUARE FEET AND HAVING A GROSS DENSITY UP TO 5 SINGLE-FAMILY DWELLING UNITS PER ACRE. BRILEY DOWNS MEETS THESE GUIDELINES WITH MINIMUM LOT SIZE OF 5,850 SQUARE FEET, AN AVERAGE LOT SIZE OF 8,135 SQUARE FEET, AND A TOTAL GROSS DENSITY OF 3.10 UNITS PER ACRE.

BRILEY DOWNS WILL PROVIDE A VARIETY OF OPEN SPACE AND AMENITY OPTIONS SPRINKLED THROUGHOUT THE DEVELOPMENT THAT WILL BE A SELLING POINT FOR ITS FUTURE RESIDENTS. PUBLIC OPEN SPACES ARE WHERE COMMUNITY IS CREATED AND THIS PLAN INCORPORATES A NUMBER OF BOTH PASSIVE AND ACTIVE OPEN SPACES FOR ITS RESIDENTS TO MEET THEIR NEIGHBORS, OR JUST EXPERIENCE THE OUTDOORS WITHIN A STONES THROW OF THEIR HOME.

SITE DATA

SITE ACREAGE:		67.68 AC
DENSITY (UNITS/AC):		3.13 DUA
RESIDENTIAL UNITS:		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	75
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	72
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	63
EXISTING HOMES TO REMAIN		2
TOTAL SINGLE FAMILY HOMES		212
OPEN SPACE	(+/- AC)	
REQUIRED:	10.15 AC (15%)	
PROVIDED:	15.47 AC (22.86%)	
IMPROVED OPEN SPACE REQUIRED:	3.05 AC (30% OF REQUIRED)	
IMPROVED OPEN SPACE PROVIDED:	3.22 AC (31.7% OF REQUIRED)	

GAMBLE DESIGN COLLABORATIVE
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS
ANNEXATION AND REZONING REQUEST
Smyrna, Rutherford County, Tennessee

SCOTT ALAN GAMBLE REGISTERED LANDSCAPE ARCHITECT 7-11-25

Revision Date
- △ _____
- △ _____
- △ _____
- △ _____

CONCEPTUAL MASTER PLAN
SHEET
C2.0

GAMBLE DESIGN COLLABORATIVE
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1
Smyrna, Rutherford County, Tennessee

MATTHEW S. BROOKS LICENSED LANDSCAPE ARCHITECT 7-11-25

Revision Date
- ⚠ JULY 14, 2025
- △ _____
- △ _____
- △ _____

APPROVED MASTER PLAN
SHEET
C2A

⚠ REVISED SITE NARRATIVE

SITE NARRATIVE

BRILEY DOWNS WILL BE A SINGLE FAMILY NEIGHBORHOOD WITH HIGH QUALITY RESIDENTIAL ARCHITECTURE AND DESIGNED COMMUNITY OPEN SPACES. WITH ACCESS POINTS TO ROCKY FORK ALMAVILLE ROAD TO THE NORTHEAST, AND BRILEY ROAD TO THE WEST, BRILEY DOWNS PROPOSES 217 LOTS ON 67.99 ACRES OF LAND. LOT WIDTHS WILL BE 55', 50', AND 45', THE LATTER BEING INCLUDED IN ORDER TO AVOID ADDING TOWNHOMES TO THE MIX. THE RESULT OF THIS ADDITION IS A BIT LESS DENSITY THAN COULD BE ACHIEVED WITH TOWNHOMES, BUT BETTER OVERALL NEIGHBORHOOD COHESION.

THE ORIGINAL PRD WAS APPROVED IN MARCH OF 2023. THE ORIGINAL PRD CONSISTED OF 212 LOTS, WAS 67.68 AC IS SIZE, AND HAD A DUA OF 3.13. THIS AMENDMENT ADDED 0.31 AC FROM THE ADJACENT PROPERTY MAP 054, PARCEL 057.00. THIS ALLOWS THE PROPERTY TO ADD 5 MORE SINGLE FAMILY LOTS. THE UPDATED SITE ACREAGE IS 67.99 AC AND THE UPDATED DUA IS 3.19.

THE FUTURE LAND USE PLAN CALLS OUT THIS PROPERTY AS MEDIUM DENSITY SINGLE-FAMILY RESIDENTIAL. THE COMPREHENSIVE PLAN DEFINES MEDIUM DENSITY AS HAVING LOT SIZES RANGING FROM 5,000 TO 15,000 SQUARE FEET AND HAVING A GROSS DENSITY UP TO 5 SINGLE-FAMILY DWELLING UNITS PER ACRE. BRILEY DOWNS MEETS THESE GUIDELINES WITH MINIMUM LOT SIZE OF 5,850 SQUARE FEET, AN AVERAGE LOT SIZE OF 8,135 SQUARE FEET, AND A TOTAL GROSS DENSITY OF 3.10 UNITS PER ACRE.

BRILEY DOWNS WILL PROVIDE A VARIETY OF OPEN SPACE AND AMENITY OPTIONS SPRINKLED THROUGHOUT THE DEVELOPMENT THAT WILL BE A SELLING POINT FOR ITS FUTURE RESIDENTS. PUBLIC OPEN SPACES ARE WHERE COMMUNITY IS CREATED AND THIS PLAN INCORPORATES A NUMBER OF BOTH PASSIVE AND ACTIVE OPEN SPACES FOR ITS RESIDENTS TO MEET THEIR NEIGHBORS, OR JUST EXPERIENCE THE OUTDOORS WITHIN A STONES THROW OF THEIR HOME.

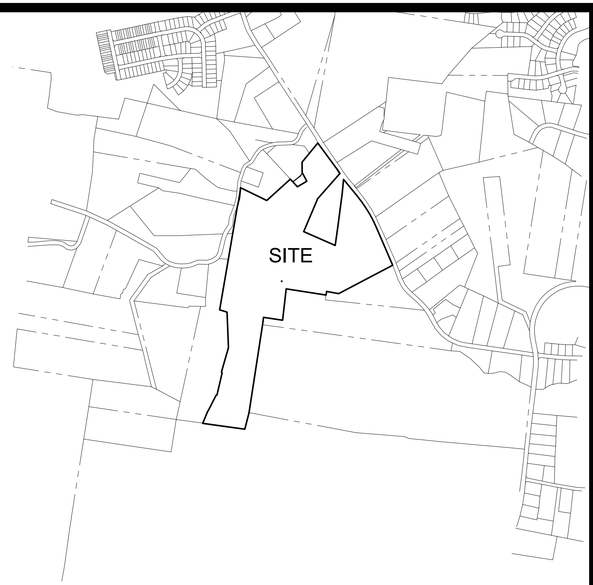
⚠ 0.31 AC OF ADJACENT PROPERTY (MAP 054, PARCEL 057.00) ADDED TO BRILEY DOWNS SUBDIVISION. 5 ADDITIONAL LOTS ADDED TO OVERALL DEVELOPMENT.



⚠ REVISED LAYOUT

0 200 400 600

N



CONTEXT MAP NTS

KEY

- 55' LOTS
- 50' LOTS
- 45' LOTS
- PROVIDED OPEN SPACE
- IMPROVED OPEN SPACE

⚠ REVISED SITE DATA CHART

SITE DATA

SITE ACREAGE:		67.99 AC
DENSITY (UNITS/AC):		3.19 DUA
RESIDENTIAL UNITS:		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	81
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	43
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	91
EXISTING HOMES TO REMAIN		2
TOTAL SINGLE FAMILY HOMES		217
OPEN SPACE		(+/- AC)
REQUIRED:		10.20 AC (15%)
PROVIDED:		15.45 AC (22.72%)
IMPROVED OPEN SPACE REQUIRED:		3.06 AC (30% OF REQUIRED)
IMPROVED OPEN SPACE PROVIDED:		4.05 AC (39.7% OF REQUIRED)

GAMBLE DESIGN COLLABORATIVE
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1

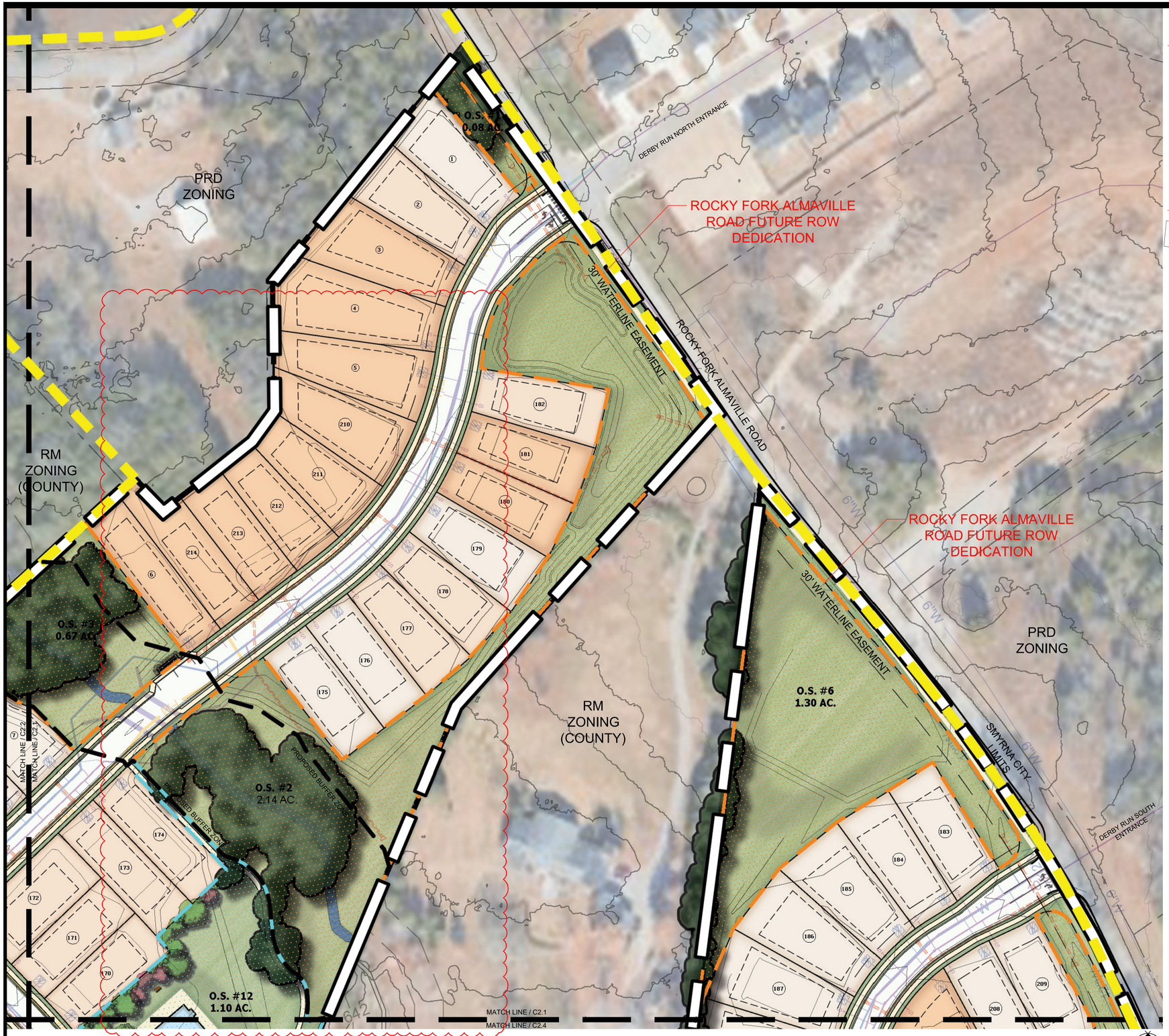
Smyrna, Rutherford County, Tennessee

7/14/25

Revision Date
⚠ JULY 14, 2025
⚠
⚠
⚠

CONCEPTUAL MASTER PLAN

SHEET
C2.0



⚠ 0.31 AC OF ADJACENT PROPERTY (MAP 054, PARCEL 057.00) ADDED TO BRILEY DOWNS SUBDIVISION. 5 ADDITIONAL LOTS ADDED TO OVERALL DEVELOPMENT.



CONTEXT MAP NTS

KEY

- 55' LOTS
- 50' LOTS
- 45' LOTS
- PROVIDED OPEN SPACE
- IMPROVED OPEN SPACE

⚠ REVISED SITE DATA CHART

SITE DATA

SITE ACREAGE:		67.99 AC
DENSITY (UNITS/AC):		3.19 DUA
RESIDENTIAL UNITS:		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	81
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	43
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	91
EXISTING HOMES TO REMAIN		2
TOTAL SINGLE FAMILY HOMES		217
OPEN SPACE		(+/- AC)
REQUIRED:		10.20 AC (15%)
PROVIDED:		15.45 AC (22.72%)
IMPROVED OPEN SPACE REQUIRED:		3.06 AC (30% OF REQUIRED)
IMPROVED OPEN SPACE PROVIDED:		4.05 AC (39.7% OF REQUIRED)

GAMBLE DESIGN COLLABORATIVE
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1

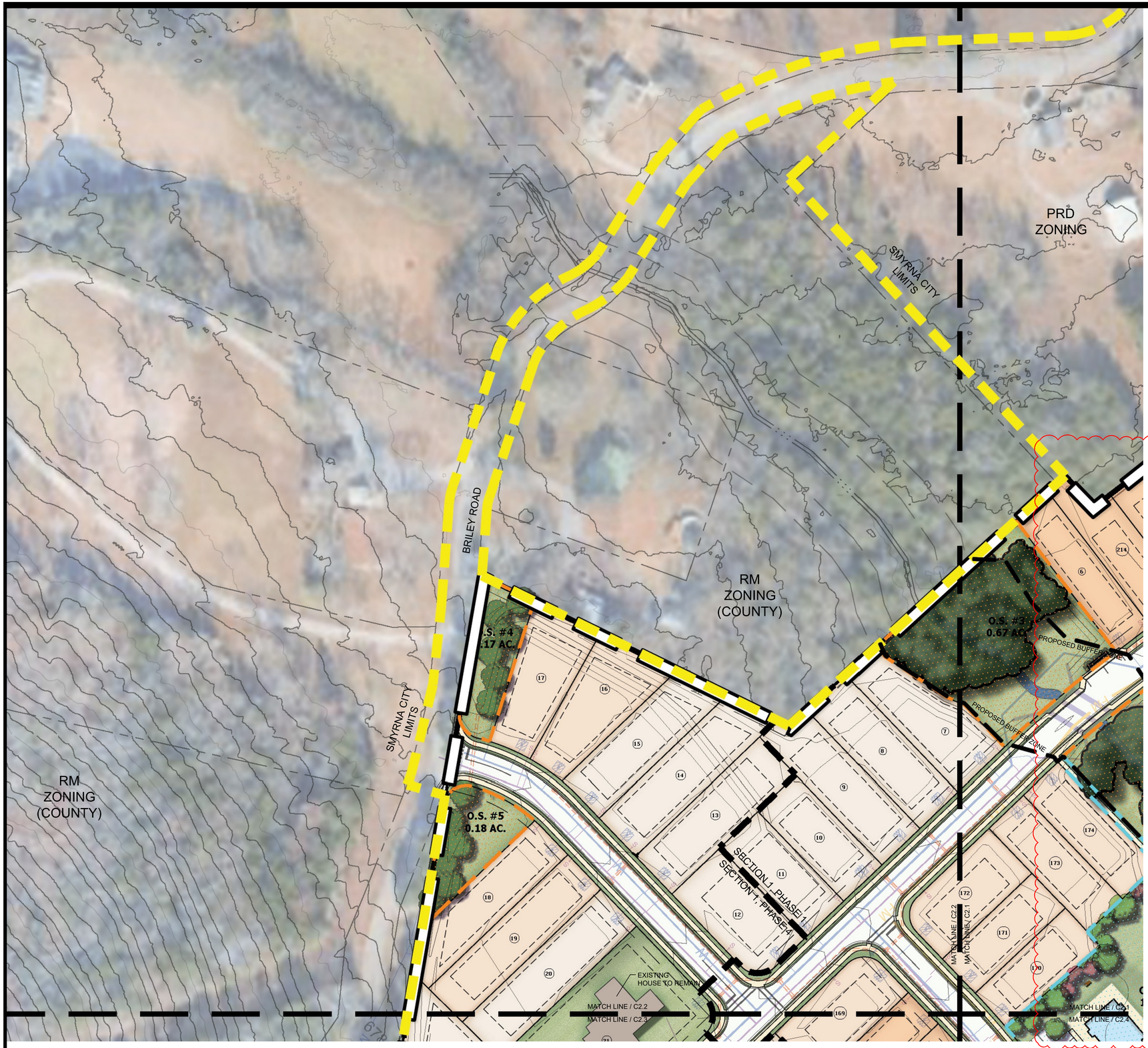
Smyrna, Rutherford County, Tennessee

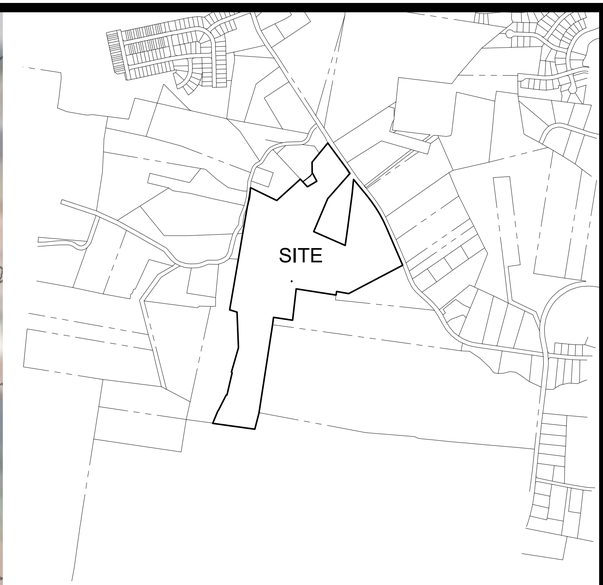
STATE OF TENNESSEE
DEPARTMENT OF AGRICULTURE
COMMERCE
TENNESSEE NO. 3447
LANDSCAPE ARCHITECT
7/14/25

Revision Date
⚠ JULY 14, 2025

CONCEPTUAL MASTER PLAN

SHEET
C2.1





CONTEXT MAP NTS

KEY

- 55' LOTS
- 50' LOTS
- 45' LOTS
- PROVIDED OPEN SPACE
- IMPROVED OPEN SPACE

⚠1 0.31 AC OF ADJACENT PROPERTY (MAP 054, PARCEL 057.00) ADDED TO BRILEY DOWNS SUBDIVISION. 5 ADDITIONAL LOTS ADDED TO OVERALL DEVELOPMENT.

⚠1 REVISED SITE DATA CHART

SITE DATA

SITE ACREAGE:		67.99 AC
DENSITY (UNITS/AC):		3.19 DUA
RESIDENTIAL UNITS:		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	81
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	43
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	91
EXISTING HOMES TO REMAIN		2
TOTAL SINGLE FAMILY HOMES		217
OPEN SPACE		(+/- AC)
REQUIRED:		10.20 AC (15%)
PROVIDED:		15.45 AC (22.72%)
IMPROVED OPEN SPACE REQUIRED:		3.06 AC (30% OF REQUIRED)
IMPROVED OPEN SPACE PROVIDED:		4.05 AC (39.7% OF REQUIRED)

GAMBLE DESIGN COLLABORATIVE
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1
Smyrna, Rutherford County, Tennessee

STATE OF TENNESSEE
DEPARTMENT OF AGRICULTURE
COMMERCE
TENNESSEE NO. 3418
LANDSCAPE ARCHITECT
7/14/25

Revision Date
⚠1 JULY 14, 2025
⚠2
⚠3
⚠4

CONCEPTUAL MASTER PLAN
SHEET
C2.2

MATCH LINE / C2.2
MATCH LINE / C2.3

RM
ZONING
(COUNTY)

BRILEY ROAD

SMYRNA CITY LIMITS

EXISTING HOUSE TO REMAIN

O.S. #11
0.34 AC.

SECTION 1, PHASE 1
SECTION 1, PHASE 4
SECTION 1, PHASE 4
SECTION 1, PHASE 3
SECTION 1, PHASE 4
SECTION 1, PHASE 3
SECTION 1, PHASE 3
SECTION 2
SECTION 2
SECTION 3

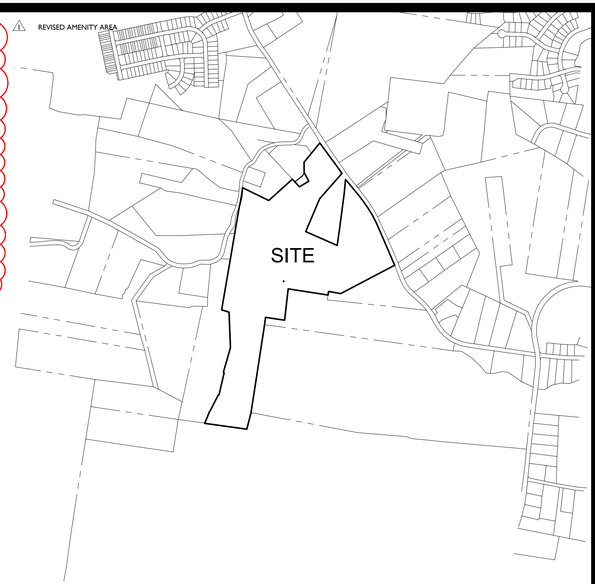
RM
ZONING
(COUNTY)

PRD
ZONING

MATCH LINE / C2.3
MATCH LINE / C2.4

MATCH LINE / C2.3
MATCH LINE / C2.5

REVISED AMENITY AREA



CONTEXT MAP NTS

KEY

- 55' LOTS
- 50' LOTS
- 45' LOTS
- PROVIDED OPEN SPACE
- IMPROVED OPEN SPACE

REVISED SITE DATA CHART

SITE DATA

SITE ACREAGE:		67.99 AC
DENSITY (UNITS/AC):		3.19 DUA
RESIDENTIAL UNITS:		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	81
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	43
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	91
EXISTING HOMES TO REMAIN		2
TOTAL SINGLE FAMILY HOMES		217
OPEN SPACE		(+/- AC)
REQUIRED:		10.20 AC (15%)
PROVIDED:		15.45 AC (22.72%)
IMPROVED OPEN SPACE REQUIRED:		3.06 AC (30% OF REQUIRED)
IMPROVED OPEN SPACE PROVIDED:		4.05 AC (39.7% OF REQUIRED)

0 50 100 150

N

GAMBLE DESIGN COLLABORATIVE
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1
Smyrna, Rutherford County, Tennessee

MATTHEW S. HILL
AGRICULTURE
COMMERCE, LLC
TENNESSEE NO. 1413
LANDSCAPE ARCHITECT
7/14/25

Revision Date
1 JULY 14, 2025

CONCEPTUAL MASTER PLAN
SHEET
C2.3



REVISED SITE DATA CHART

KEY

- 55' LOTS
- 50' LOTS
- 45' LOTS
- PROVIDED OPEN SPACE
- IMPROVED OPEN SPACE

SITE DATA

SITE ACREAGE:		67.99 AC
DENSITY (UNITS/AC):		3.19 DUA
RESIDENTIAL UNITS:		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	81
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	43
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	91
EXISTING HOMES TO REMAIN		2
TOTAL SINGLE FAMILY HOMES		217
OPEN SPACE		(+/- AC)
REQUIRED:		10.20 AC (15%)
PROVIDED:		15.45 AC (22.72%)
IMPROVED OPEN SPACE REQUIRED:		3.06 AC (30% OF REQUIRED)
IMPROVED OPEN SPACE PROVIDED:		4.05 AC (39.7% OF REQUIRED)

CONTEXT MAP NTS

0 50 100 150

GAMBLE DESIGN COLLABORATIVE

DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1

Smyrna, Rutherford County, Tennessee

TENNESSEE AGRICULTURE COMMERCE & 1412 LANDSCAPE ARCHITECT

7/14/25

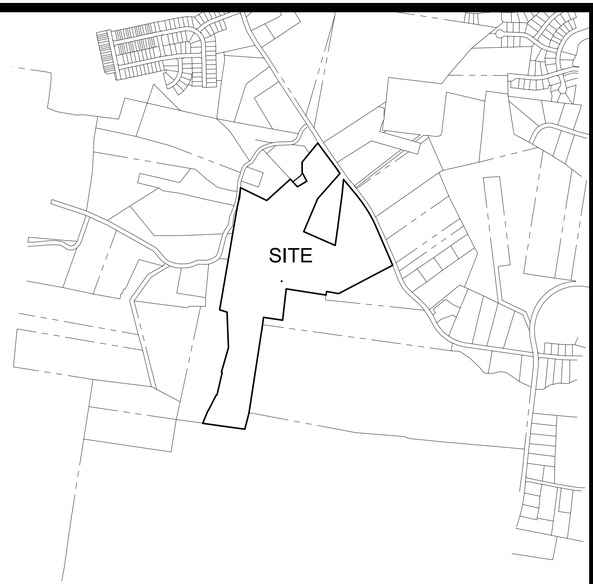
Revision Date

⚠ JULY 14, 2025

CONCEPTUAL MASTER PLAN

SHEET C2.4





CONTEXT MAP NTS

KEY

- 55' LOTS
- 50' LOTS
- 45' LOTS
- PROVIDED OPEN SPACE
- IMPROVED OPEN SPACE

⚠ REVISED SITE DATA CHART

SITE DATA

SITE ACREAGE:		67.99 AC
DENSITY (UNITS/AC):		3.19 DUA
RESIDENTIAL UNITS:		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	81
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	43
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	91
EXISTING HOMES TO REMAIN		2
TOTAL SINGLE FAMILY HOMES		217
OPEN SPACE		(+/- AC)
REQUIRED:		10.20 AC (15%)
PROVIDED:		15.45 AC (22.72%)
IMPROVED OPEN SPACE REQUIRED:		3.06 AC (30% OF REQUIRED)
IMPROVED OPEN SPACE PROVIDED:		4.05 AC (39.7% OF REQUIRED)

GAMBLE DESIGN COLLABORATIVE
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

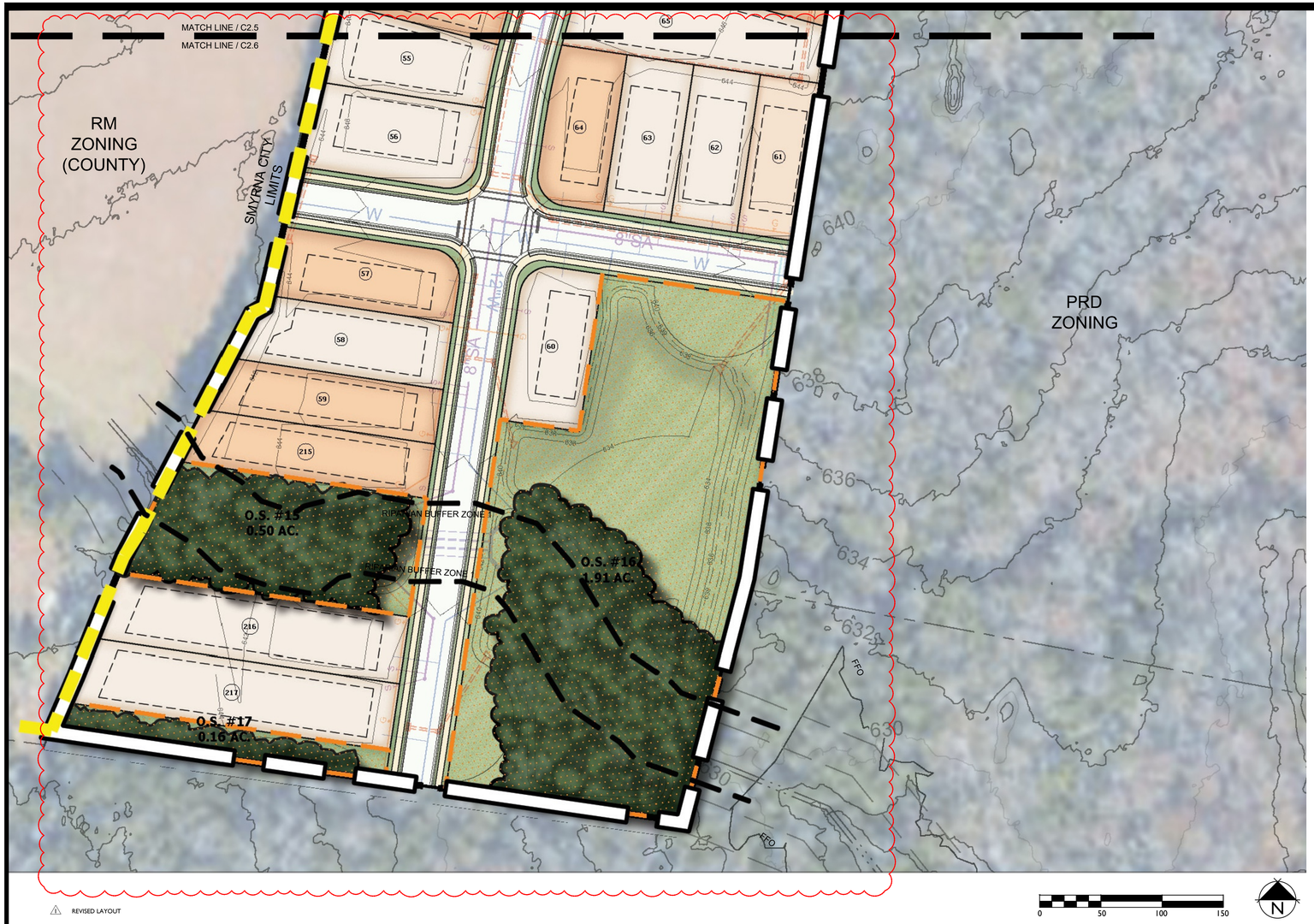
BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1
Smyrna, Rutherford County, Tennessee

TENNESSEE STATE OF AGRICULTURE COMMERCE LANDSCAPE ARCHITECT TENNESSEE NO. 1413
7/14/25

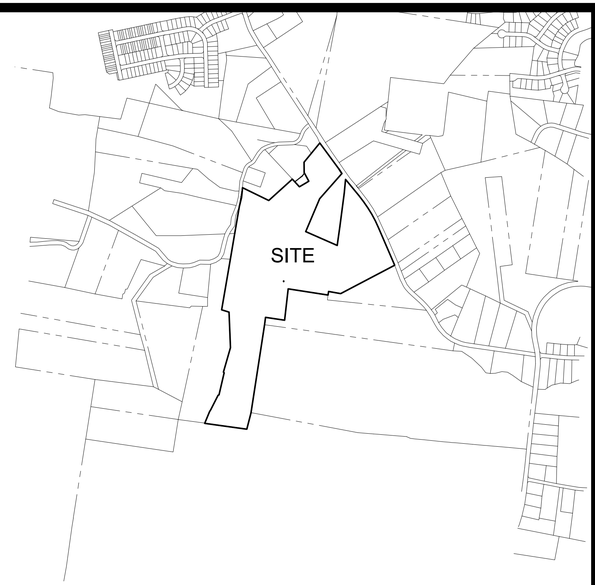
Revision Date
⚠ JULY 14, 2025

CONCEPTUAL MASTER PLAN

SHEET
C2.5



⚠ REVISED LAYOUT



CONTEXT MAP NTS

KEY

- 55' LOTS
- 50' LOTS
- 45' LOTS
- PROVIDED OPEN SPACE
- IMPROVED OPEN SPACE

⚠ REVISED SITE DATA CHART

SITE DATA

SITE ACREAGE:		67.99 AC
DENSITY (UNITS/AC):		3.19 DUA
RESIDENTIAL UNITS:		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	81
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	43
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	91
EXISTING HOMES TO REMAIN		2
TOTAL SINGLE FAMILY HOMES		217
OPEN SPACE		(+/- AC)
REQUIRED:		10.20 AC (15%)
PROVIDED:		15.45 AC (22.72%)
IMPROVED OPEN SPACE REQUIRED:		3.06 AC (30% OF REQUIRED)
IMPROVED OPEN SPACE PROVIDED:		4.05 AC (39.7% OF REQUIRED)

GAMBLE DESIGN COLLABORATIVE

DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1

Smyrna, Rutherford County, Tennessee

STATE OF TENNESSEE DEPARTMENT OF AGRICULTURE COMMERCE NO. 1417 TENNESSEE NO. 3441 LANDSCAPE ARCHITECT

7/14/25

Revision Date

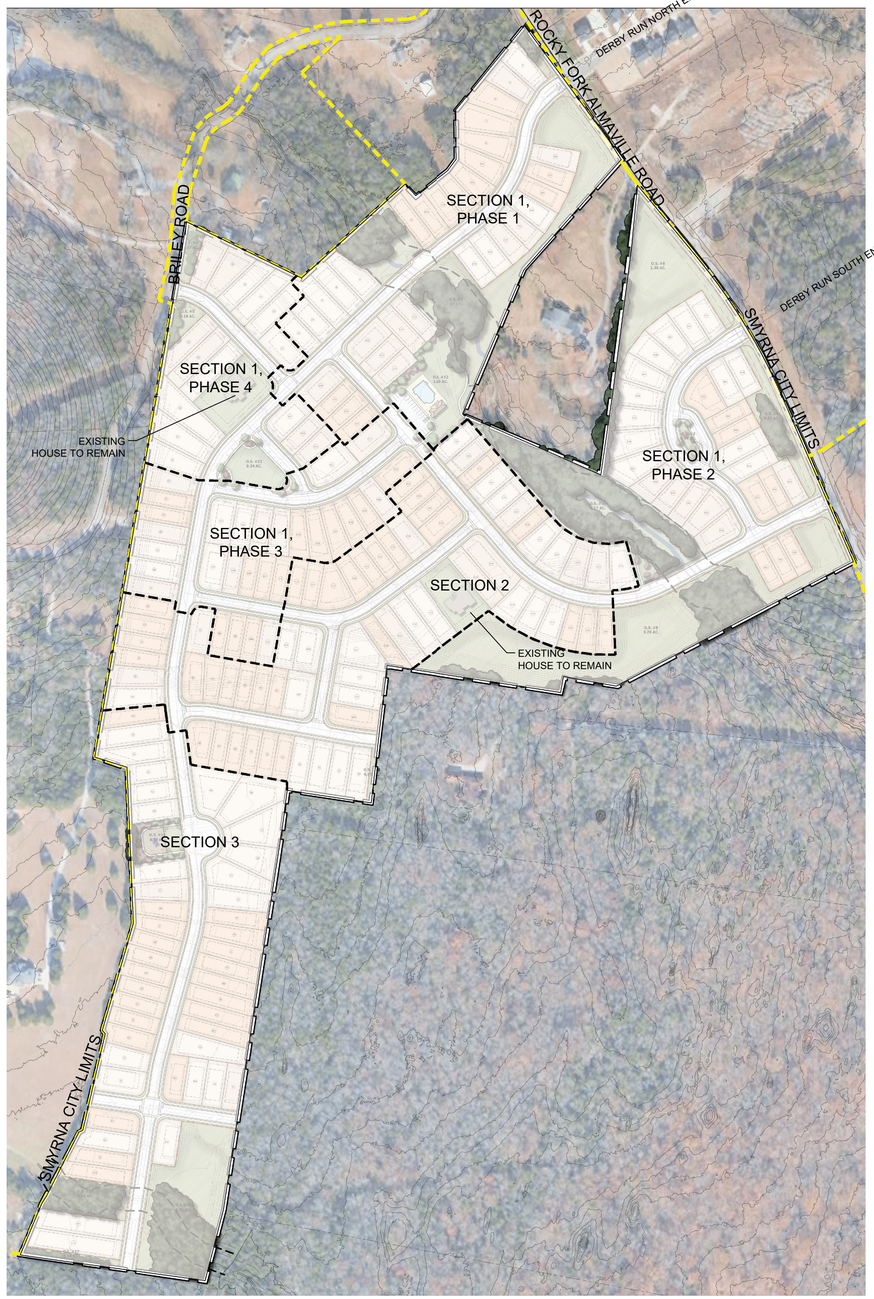
⚠ JULY 14, 2025

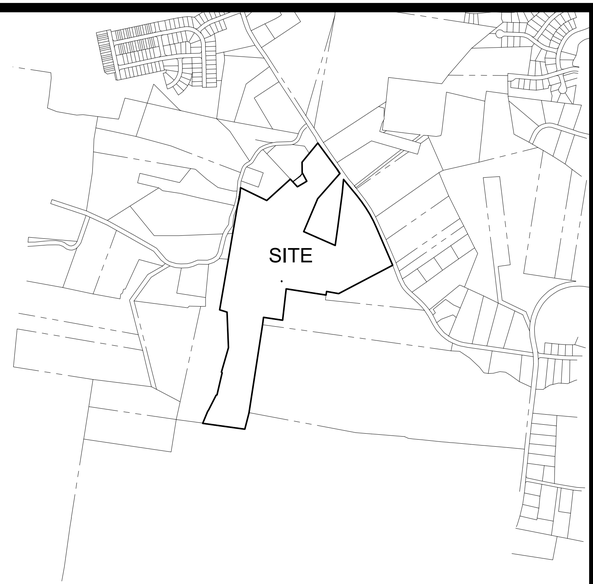
CONCEPTUAL MASTER PLAN

SHEET

C2.6

⚠ REVISED PHASING PLAN





CONTEXT MAP NTS

⚠ REVISED PHASING CHART

PHASING CHART

SECTION 1, PHASE 1		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	9
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	10
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	14
TOTAL		33

SECTION 1, PHASE 2		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	13
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	6
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	8
TOTAL		27

SECTION 1, PHASE 3		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	6
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	9
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	14
TOTAL		29

SECTION 1, PHASE 4		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	9
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	6
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	0
EXISTING HOME TO REMAIN		1
TOTAL		16

SECTION 2		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	22
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	10
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	34
EXISTING HOME TO REMAIN		1
TOTAL		67

SECTION 3		QTY
SINGLE FAMILY DETACHED	55' MIN. LOT WIDTH	22
SINGLE FAMILY DETACHED	50' MIN. LOT WIDTH	2
SINGLE FAMILY DETACHED	45' MIN. LOT WIDTH	21
TOTAL		45

NOTE: PHASING PLAN IS CONCEPTUAL AT THIS TIME AND SUBJECT TO CHANGE AS MORE DETAILED SITE INFORMATION IS GATHERED.

0 200 400 600

N

GAMBLE DESIGN COLLABORATIVE
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

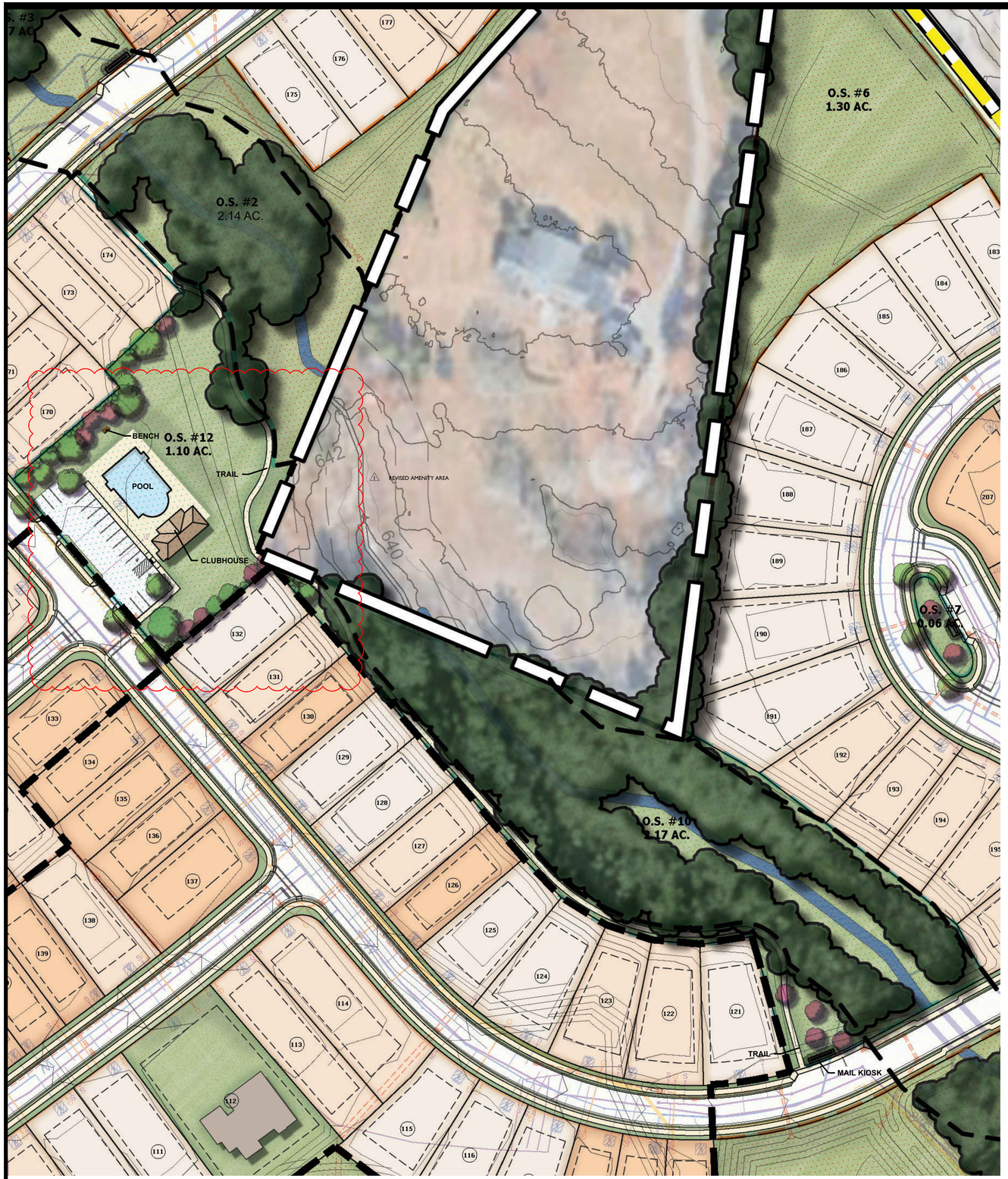
BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1
Smyrna, Rutherford County, Tennessee



Revision Date
⚠ JULY 14, 2025

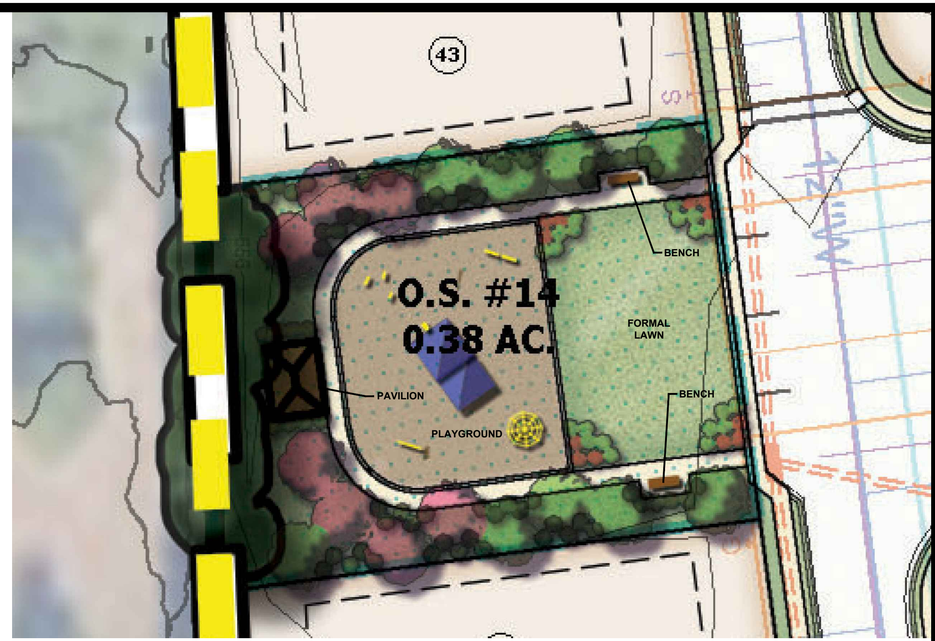
PHASING PLAN

SHEET
C3.0



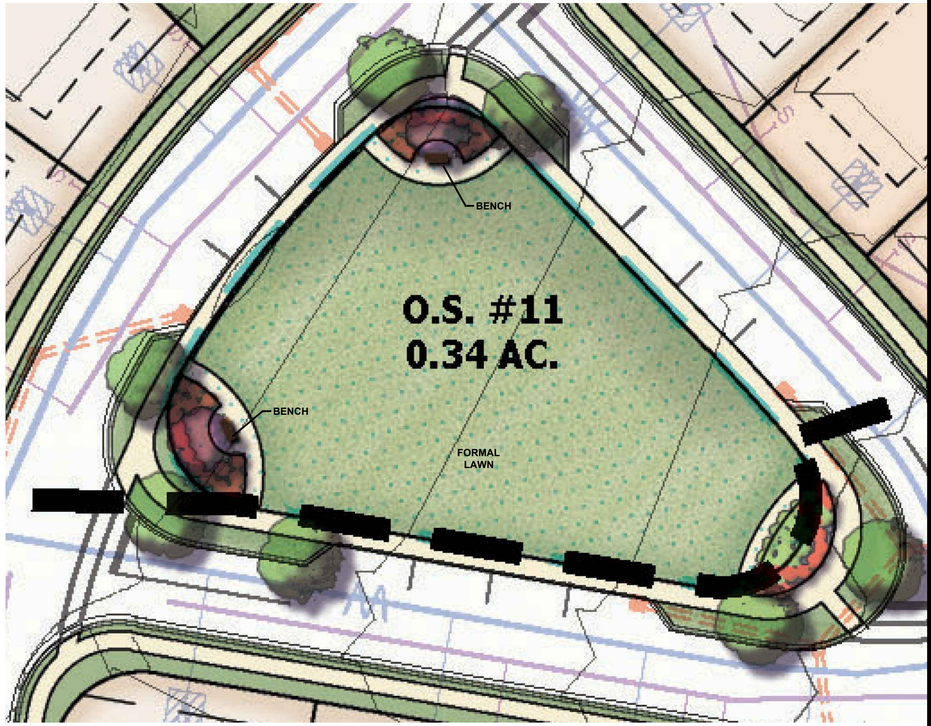
1 C4.0 OPEN SPACE 10 AND 12

0 50 100 150 N



2 C4.0 OPEN SPACE 14

0 20 40 80 N



3 C4.0 OPEN SPACE 11

0 20 40 80 N

NOTE: ALL AMENITY AND OPEN SPACE AREAS ARE TO BE MANAGED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION. THE HOA SHALL CONTRACT A THIRD PARTY MANAGEMENT COMPANY TO MAINTAIN OPEN SPACE.

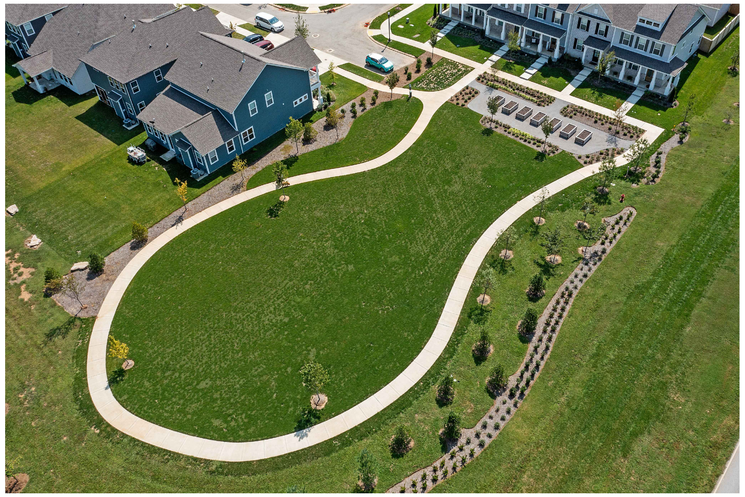
GAMBLE DESIGN COLLABORATIVE
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1
Smyrna, Rutherford County, Tennessee

Revision Date
1 JULY 14, 2025

OPEN SPACE PLAN
SHEET
C4.0

COMMUNITY CHARACTER IMAGES



GREEN SPACE



TRAIL



PAVILION



CLUBHOUSE



MAIL KIOSK



PLAYGROUND

⚠ REVISED CHARACTER IMAGES

GAMBLE DESIGN COLLABORATIVE

DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1
Smyrna, Rutherford County, Tennessee

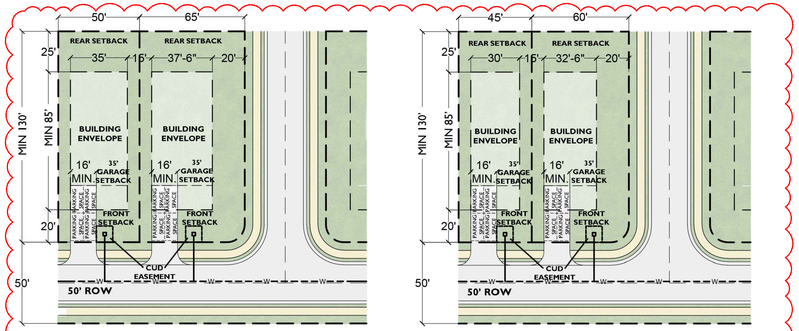
7/14/25

Revision Date

⚠ JULY 14, 2025

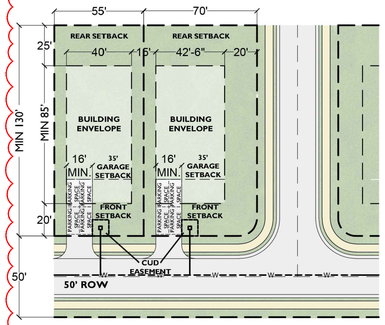
OPEN SPACE CHARACTER

SHEET C4.1



50' LOT DIAGRAM

45' LOT DIAGRAM



55' LOT DIAGRAM

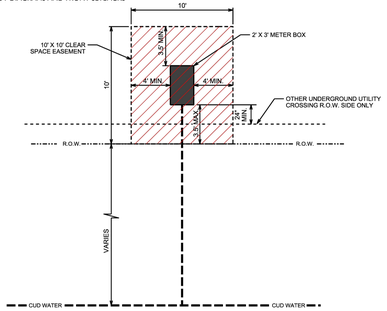
MAXIMUM BUILDING SQUARE FOOTAGE:
3,021 SF HEATED / 3,523 UNDER ROOF

BUILDING SQUARE FOOTAGE RANGE:
2,191 SF UNDER ROOF - 3,523 SF UNDER ROOF

SETBACKS

FRONT FACADE:	20'
FRONT GARAGE:	35'
SIDE:	7.5'
SIDE STREET:	20'
REAR:	25'

⚠ REVISED LOT DIAGRAMS AND FRONT SETBACKS



NOTES:

1. CLEAR SPACE TO BE VOID OF DRAINAGE FACILITIES, STRUCTURES, DRIVEWAYS, MAILBOXES, SIDEWALKS, TREES, PUBLIC UTILITIES AND UTILITY SERVICE CONNECTIONS.
2. SEWER SERVICE LINE AND TREES TO BE LOCATED A MINIMUM 10 FT. AWAY FROM WATER SERVICE.
3. OTHER UNDERGROUND UTILITY CROSSINGS SHALL COMPLY WITH SEPARATION REQUIREMENTS OUTLINED IN C.U.D. TECHNICAL SPECIFICATIONS.

CLEAR SPACE

SINGLE FAMILY RESIDENTIAL
METER CLEAR SPACE REQUIREMENT
N.T.S.

CONTACTS:

BRANDON HUNTER: 615-225-3319
WILLIAM STEELE: 615-225-3313

CONSOLIDATED UTILITY DISTRICT
Rutherford County, Tennessee

ARCHITECTURAL NOTES:

PRIMARY MATERIALS - A MINIMUM OF 75% SURFACE AREA OF STREET FACING FACADES SHALL BE CLAD IN BRICK, STONE, MANUFACTURED STONE, OR FIBER-CEMENT MATERIALS INCLUDING BOARD AND BATTEN, SHAKE OR LAP SIDING STYLES.

SECONDARY / TRIM MATERIALS - WOOD, COMPOSITE, MEDIUM DENSITY OVERLAY (MDO) PANELS MAY BE USED AS SECONDARY AND TRIM MATERIALS COMPRISING A MAXIMUM OF 25% OF STREET-FACING FACADES.

FOUNDATION MATERIALS - EXPOSED FOUNDATIONIS SHALL BE CONCRETE, PARGED CONCRETE, DECORATIVE CONCRETE BLOCK OR CLAD WITH BRICK, STONE OR MANUFACTURED STONE.

OTHER MATERIALS - MATERIALS NOT SPECIFICALLY ALLOWED AS PRIMARY, SECONDARY OR FOUNDATION MATERIALS ARE NOT ALLOWED TO BE MORE THAN 10% OF THE ENTIRE BUILDING.

NOTE: ALL PROVIDED HOME ELEVATIONS ARE CONCEPTUAL IN NATURE AND NOT MEANT FOR CONSTRUCTION. THESE ELEVATIONS REPRESENT THE MASSING AND CHARACTER OF THE PROPOSED HOMES IN BRILEY DOWNS, BUT DO NOT NECESSARILY INCLUDE ALL MATERIALS LISTED ABOVE. FINAL HOME ELEVATIONS TO BE SUBMITTED AT SITE PLAN STAGE AND TO COMPLY WITH THE TOWN OF SMYRNA'S ARCHITECTURAL STANDARDS LISTED ABOVE.







2 C5.0 TYPICAL ARCHITECTURE

ALL PROVIDED HOME ELEVATIONS ARE CONCEPTUAL IN NATURE AND NOT MEANT FOR CONSTRUCTION. THESE ELEVATIONS REPRESENT THE MASSING AND CHARACTER OF THE PROPOSED HOMES IN BRILEY DOWNS, BUT DO NOT NECESSARILY INCLUDE ALL MATERIALS LISTED ABOVE. FINAL HOME ELEVATIONS TO BE SUBMITTED AT SITE PLAN STAGE AND TO COMPLY WITH THE TOWN OF SMYRNA'S ARCHITECTURAL STANDARDS LISTED ABOVE.

GAMBLE DESIGN COLLABORATIVE
DEVELOPMENT PLANNING AND LANDSCAPE ARCHITECTURE

BRILEY DOWNS SUBDIVISION
ANNEXATION AND REZONING REQUEST - AMENDMENT 1
Smyrna, Rutherford County, Tennessee

STATE OF TENNESSEE
DEPARTMENT OF AGRICULTURE
COMMERCE NO. 1437
LANDSCAPE ARCHITECT
7/14/25

Revision Date
⚠ JULY 14, 2025

TYPICAL ARCHITECTURE

SHEET
C5.0

Gamble Design Collaborative – Rezoning R-3 to PRD/PRD Amendment Request

Tax Map 54, Parcel 57.02 and Tax Map 73, Parcels 13.00, 13.01, 13.03, 13.04, and 16.00 owned by Southcoast DFH Nashville, LLC, and Tax Map 54, part of Parcel 57.00, owned by SCollins2 Properties, LLC. All properties requested by Gamble Design Collaborative on behalf of the owners.

Bordered on the west by Tax Map 54, Parcel 57.04, owned by Porfirio Alfaro and Francisca Solis, the remainder of Parcel 57.00, owned by SCollins2 Properties, LLC, Parcel 57.01, owned by Valerie Blanks, Tax Map 73, Parcel 12.00, owned by Herman D. and Virginia W. Tolbert, Parcel 11.01, owned by Lien Choue Ho Jui, Parcel 11.02, owned by William P. and Jena F. Sweeney, and the existing right-of-way of Briley Road; on the south by Tax Map 73, Parcel 18.00, owned by Stars and Stripes 30, LLC; on the east by Parcel 17.00, owned by the First Baptist Church of Smyrna, Tennessee, Parcels 16.01 and 16.02, owned by Delery D. and Teresa Sivils, and the existing right-of-way of Rocky Fork Almaville Road; and on the north by the existing right-of-way of Rocky Fork Almaville Road.

Area requested to be rezoned from R-3 to PRD contains approximately .31 acres and the total of all parcels for the PRD amendment contains approximately 67.99 acres.

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 18.
Department: Planning
Date: August 28, 2025

Subject:
Consideration of an Ordinance relative to the rezoning of Tax Map 18, part of Parcel 10.01, from C-2 to PUD, and for the amendment of the existing PUD on Tax Map 18, part of Parcel 10.01 as well as Parcels 10.02, 10.03, 10.04, and 10.05, and Tax Map 28, Parcels 44.29, 44.30, and 44.31, owned and requested by Sewarts Landing LP. The property requested to be rezoned from C-2 to PUD contains approximately 3 acres, and the parcels requested to have the PUD amended contain approximately 37.94 acres for a total of 40.94 acres. Properties are located on Sam Ridley Parkway, West and Motlow College Boulevard. Second Reading.

Fiscal Impact:

Contract Type:

Contract Term (if applicable):

Background:

Summary:
The properties that are the subject of this request are located in the northeast corner of Sam Ridley Parkway, West and Motlow College Boulevard. The Land Use Plan for this area is the Sam Ridley Corridor character area, which would support a combination of retail uses and services that provide markets for both local and regional customers. The surrounding zoning is C-2 in Town and Ag (Agriculture) in LaVergne.

The existing approved PUD would allow for 280,400 square feet of commercial buildings, 245,500 square feet of office space, 240 hotel rooms, and 75 for sale condominiums. The requested PUD/PUD amendment would add 3 acres in the extreme northwest corner of this parcel which was excluded originally with a note that use would be coordinated with the Town and Motlow State Community College. This portion of the parcel is still zoned C-2, but has been requested to be incorporated into the PUD with this amendment. In addition, the PUD amendment would include the

following:

1. Remove the 75 for sale condominiums and replace them with 268 for rent apartments.
2. The requirement of a minimum of 75% brick, stone, and glass exterior has been requested to be amended to a minimum of 64.31% masonry and glass.
3. The list of primary materials would be amended to add authentic stucco, composite metal panels, prefinished wood, and painted wood, and the list of secondary materials would be amended to add cementuous siding, fabric awnings, architectural metal panels, and smooth faced concrete masonry.

The overall road layout has not changed, but the location, orientation, and uses of some of the buildings have changed.

The Planning Commission reviewed this request and recommended approval 7 for, 0 against, with the following conditions:

1. Provide details for the proposed recreational amenities for the plazas/parks.
2. Provide a signage plan as required by the Sign Ordinance.
3. Nonresidential buildings are required to meet the requirements of Design Review including a minimum of 75% brick/stone/glass for any elevation visible from a public street. Residential and mixed use buildings are required to meet the requirements of Design Review for residential buildings, with the exception that the first floor of any mixed use building is required to meet the requirements for nonresidential buildings.

Recommended Council Action:
Staff recommends approval.

Attachments:
1. Ordinance #25-27
2. Rezoning Application
3. Sewart's Landing_Site Plan & Plat Application 2025_Signed
4. Sewarts Landing C-2 to PUD Rezoning Map
5. Sewarts Landing PUD Amendment Map 1
6. Sewarts Landing PUD Amendment Map 2
7. Sewarts Landing PUD Amendment_25.08.06
8. Vision Book
9. Shared Parking Analysis
10. Property Description

TOWN OF SMYRNA, TENNESSEE
ORDINANCE NO. 25-27

AN ORDINANCE relative to the rezoning of property located on Tax Map 18, Parcels 10.01, 10.02, 10.03, 10.04 and 10.05 and Tax Map 28, Parcels 44.29, 44.30 and 44.31, comprising of approximately 43.9 acres, from C-2/PUD to PUD.

WHEREAS, the Planning Commission has recommended this change based on certain conditions and considerations; and

WHEREAS, the change is in agreement with the general plan for the area; and

WHEREAS, it has been determined that the legal purposes for which zoning exists are not breached by this amendment; and

WHEREAS, it has been determined that there will not be an adverse effect upon adjoining property owners and/or any such adverse effect is justified by the overwhelming public good or welfare; and

WHEREAS, it has been determined that no one property owner or small group of property owners will benefit materially from the change to the detriment of the general public.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SMYRNA:

Section 1. That the property located on Tax Map 18, Parcels 10.01, 10.02, 10.03, 10.04 and 10.05 and Tax Map 28, Parcels 44.29, 44.30 and 44.31, comprising of approximately 43.9 acres as shown on Appendix I attached hereto and incorporated herein by reference as if set forth at length verbatim, be, and hereby is rezoned from C-2/PUD to PUD, the public health and welfare of the Town of Smyrna requiring it.

Section 2. This ordinance shall take effect immediately upon its adoption on second and final reading, the public health and welfare of the Town of Smyrna requiring it.

PASSED on first reading by the Town Council the ____ day of _____, 2025.

PASSED on second reading by the Town Council the ____ day of _____, 2025.

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TOWN OF SMYRNA, TENNESSEE

_____
MARY ESTHER REED, Mayor

ATTEST:

_____
AMBER HOBBS, Town Clerk

Town of Smyrna

Rezoning Request Application

APPLICANT INFORMATION:		
Name/Company: Sewart's Landings, LP		
Street Address: 3201 Trevor Street, Suite 200		
City: Nashville	State: TN	ZIP: 37209
Email: Victoria@EquitableTN.com	Phone: (615) 424-4350	
CONTRACTOR/DEVELOPER INFORMATION: CHECK BOX IF SAME AS APPLICANT		
Name/Company: Equitable Property Company, LLC		
Street Address: 3201 Trevor Street, Suite 200		
City: Nashville	State: TN	ZIP: 37209
Email: Victoria@EquitableTN.com	Phone: (615) 424-4350	
PROPERTY INFORMATION		
Street Address/Intersecting Streets: 2001 Motlow College Blvd & Sam Ridley Pkwy W		
Tax Map: 18	Group:	Parcel: 10.01
Requested Lot Area (Square feet/Acres): 43.897 Acres / 1,912,143 Sq Ft		
Existing Zoning: C-2	**Requested Zoning:** PUD	
*Current Property Owner (See Note Below): Sewart's Landing, LP		
APPLICANT AUTHORIZATION		
Applicant Signature: Victoria Leeds		Date: 7/23/2025
OFFICE USE ONLY		
Staff Initials:	Review Fee:	Date:

- ***If the applicant is not the current property owner, authorization must be provided by the current property owner for the request of rezoning as mandated by State law.***
- Applications are to be submitted no later than 12:00 PM noon on the initial deadline date unless otherwise noted.
- All meetings are held at Smyrna Town Hall - 315 South Lowry Street - at 5:00 PM in the Town Council Chambers.
- All supporting documents must be submitted at the time of application.

2025 SUBMITTAL AND MEETING CALENDAR
See the full calendar on the Town of Smyrna website

APPLICATION DEADLINE	MEETING DATE
DECEMBER 9, 2024	JANUARY 9
JANUARY 13	FEBRUARY 6
FEBRUARY 10	MARCH 6
MARCH 10	APRIL 3
APRIL 7	MAY 1
MAY 12	JUNE 5
JUNE 9	TUESDAY - JULY 1
JULY 14	AUGUST 7
AUGUST 11	SEPTEMBER 4
SEPTEMBER 8	OCTOBER 2
OCTOBER 13	NOVEMBER 6
NOVEMBER 10	DECEMBER 4
DECEMBER 8	JANUARY 8, 2026

MEMBERS

Name	Term Expiration
Charles Scurr	2025
Tim Morrell	2025
Amy Wise	2025
Matthew Carver	2026
Salena Scott	2026
Marc Adkins, Council Member	Term of Office
Steve Sullivan, Council Member	Term of Office

EQUITABLE PROPERTY COMPANY | Custom Real Estate Solutions

PLANNED UNIT DEVELOPMENT (PUD) AMENDMENT

Town of Smyrna, Tennessee

Amendment Request to the Approved PUD

Developer:	Equitable Property Company, LLC 3201 Trevor Street, Suite 200 Nashville, TN 37209
Project/PUD Name:	Sewart's Landing
Subject Property:	2050 Motlow College Blvd Smyrna, TN
Parcel:	018-010.00-000
Original PUD Approval:	May 2023

Purpose of Amendment:

This amendment request is submitted to revise the previously approved Planned Unit Development (PUD) Master Plan for the subject site. The proposed amendment includes: (1) increasing the number of multifamily residential units from 75 for-sale condominiums to 268 market-rate apartment units to better align with current housing demand and development feasibility; and (2) the approved exterior building material amended from 75% glazing and brick to 64.31% Masonry and Glazing. These changes maintain consistency with the intent and quality of the original PUD.

Amended Development Proposal:

1. **Multifamily Unit Increase**
    - Replace 75 approved for-sale condominium units with 268 market-rate apartment units.
    - No change to total land area or general use type.

- **Material Composition Update**
    - Modify approved exterior building material percentage of 75%:
        - 64.31% Masonry and Glazing

Submitted this 11th day of July, 2025.

DEVELOPER

Equitable Property Company, LLC:

Signature: _____

Name: Land Deleot, President

Town of Smyrna

Site Plan & Plat Review Application

APPLICANT INFORMATION:		
Name/Company: Sewart's Landing		
Street Address: 3201 Trevor Street, Suite 200		
City: Nashville	State: TN	ZIP: 37209
Email: Victoria@EquitableTN.com	Phone: 615.424.4350	

CONTRACTOR/DEVELOPER INFORMATION: CHECK BOX IF SAME AS APPLICANT ☑		
Name/Company:		
Street Address:		
City:	State:	ZIP:
Email:	Phone:	

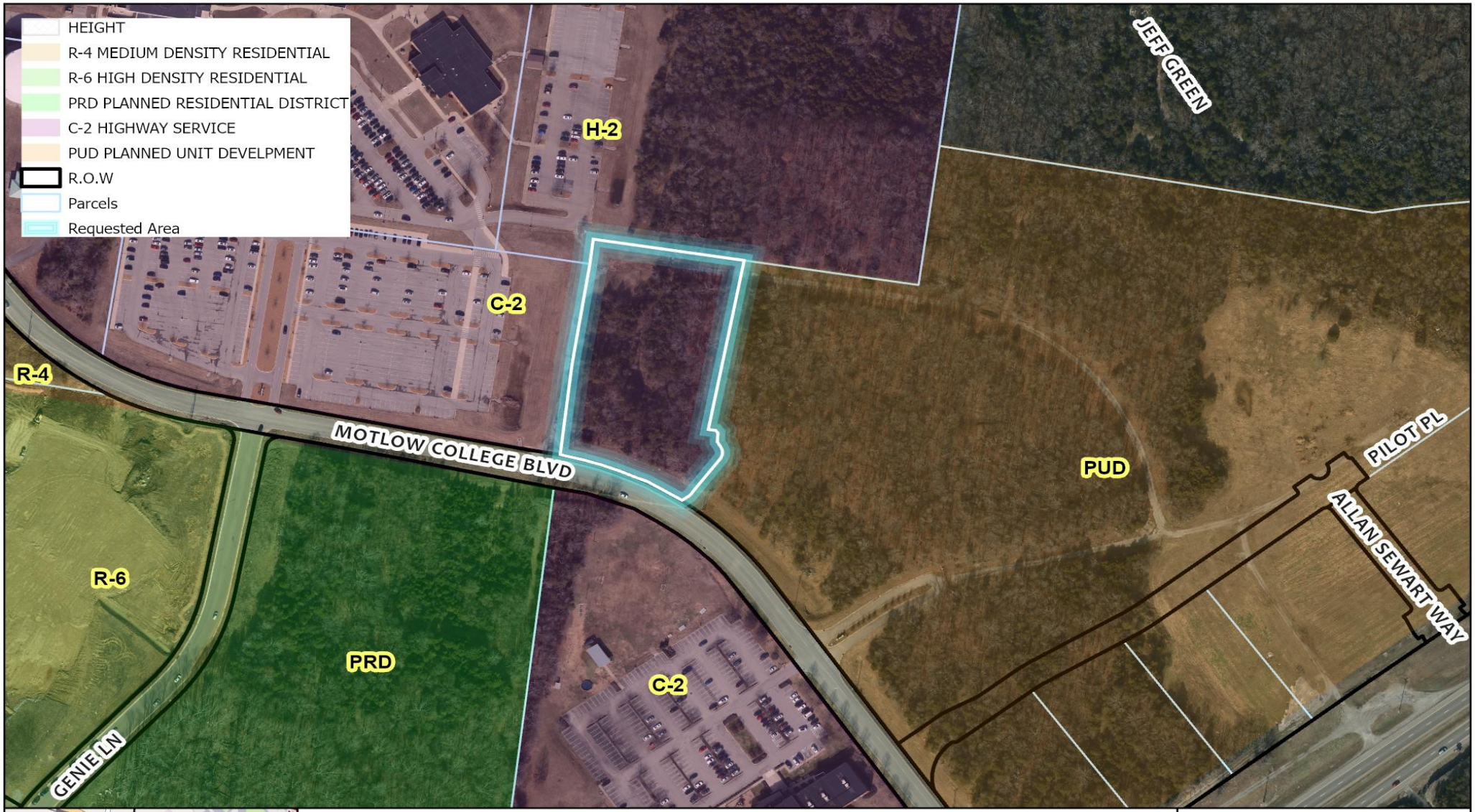
REQUEST INFORMATION		
Project Name: Sewart's Landing		
Street Address/Intersecting Streets: 2001 Motlow College Blvd & Sam Ridley Pkwy West		
Tax Map: 18	Group:	Parcel: 10
Requested Lot Area (Square feet/Acres):	Lots:	Units: 268 Multi-Family Units
Zoning: CS	Building Square Footage:	

SUBMITTAL TYPE & REVIEW FEE	
Sketch Plat: $150 ☐	Concept Plan: $150 ☐
Preliminary Plat: $400 + $75/Lot ☐	Site Plan: $500 ☐
Final Plat: $200 + $50/Lot ☐	Site Plan Renewal/Extension: $200 ☐

APPLICANT AUTHORIZATION	
Applicant Signature:	Date: 7.11.2025

OFFICE USE ONLY		
Staff Initials:	Review Fee:	Date:

- By signing above, the developer acknowledges that it is their responsibility to ensure that submittals comply with all Town of Smyrna development requirements. If plans, as submitted for second staff review, do not comply with all Town of Smyrna development requirements and adequately addresses staff's comments, then the application will be removed from the Planning Commission agenda.
- Construction drawings must be submitted at the same time as the preliminary plat for the preliminary plat to be included on the Planning Commission agenda.



C-2 to PUD Zoning Request

Tax Map: 18 | P/O Parcel: 10.01 | Acres: +/- 3.00

Requested by: Equitable Property Company, LLC on behalf of Sewarts Landing Partners LP

Map data © OpenStreetMap contributors, Microsoft, Facebook, Google, Esri Community Maps contributors, Map layer by Esri

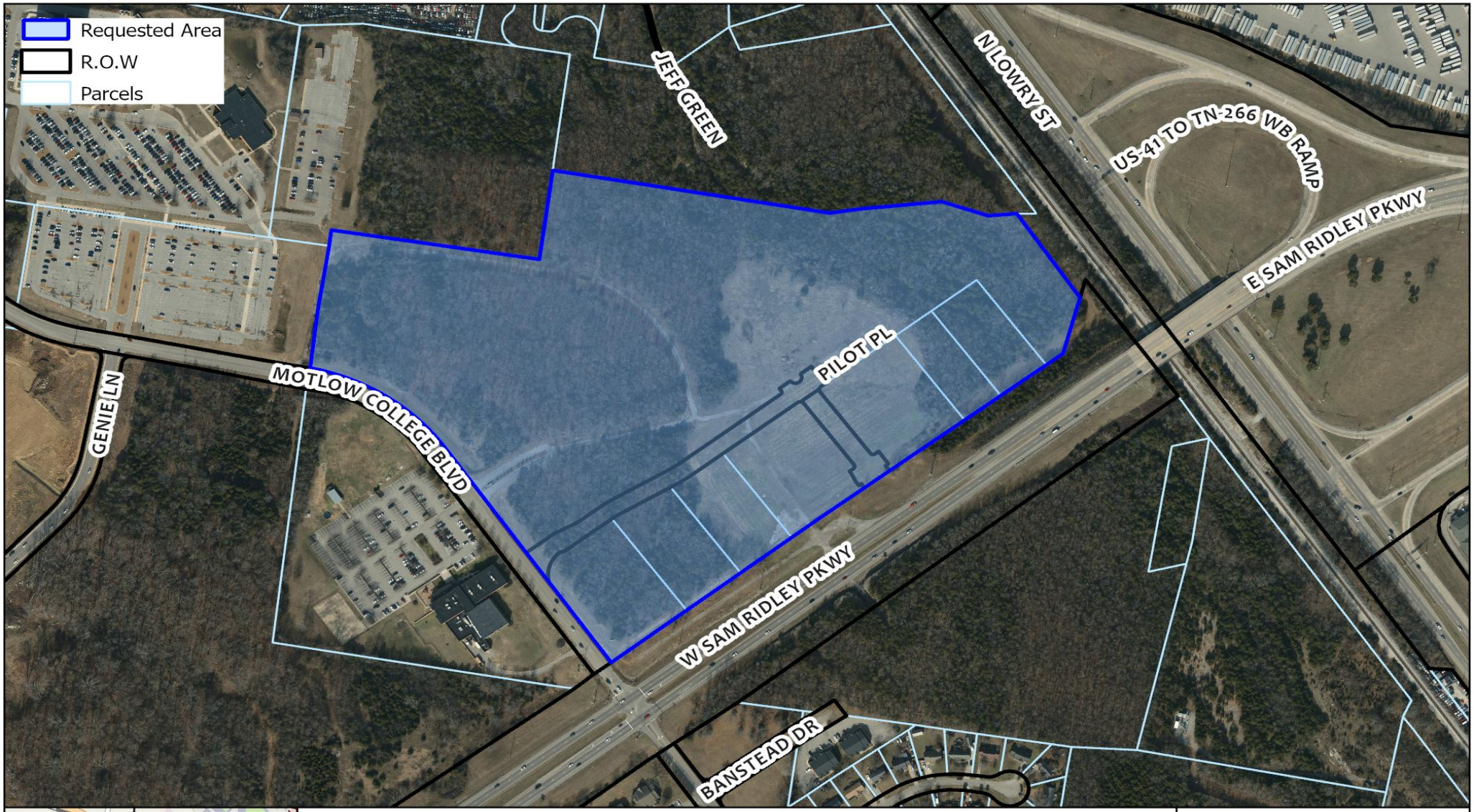
August 2025

Coordinate System: NAD 1983 StatePlane Tennessee FIPS 4100 Feet

N

0 0.03 0.07 Mi

0 0.05 0.1 Km





PUD Zoning Amendment Request

Tax Map: 28 | Parcels: 44.29, 44.30, 44.31 Acres: +/- 40.94

Tax Map: 18 | Parcels: 10.01, 10.02, 10.03, 10.04, 10.05

Requested by: Equitable Property Company, LLC on behalf of Sewarts Landing Partners LP

Map data © OpenStreetMap contributors, Microsoft, Facebook, Google, Esri Community Maps contributors, Map layer by Esri

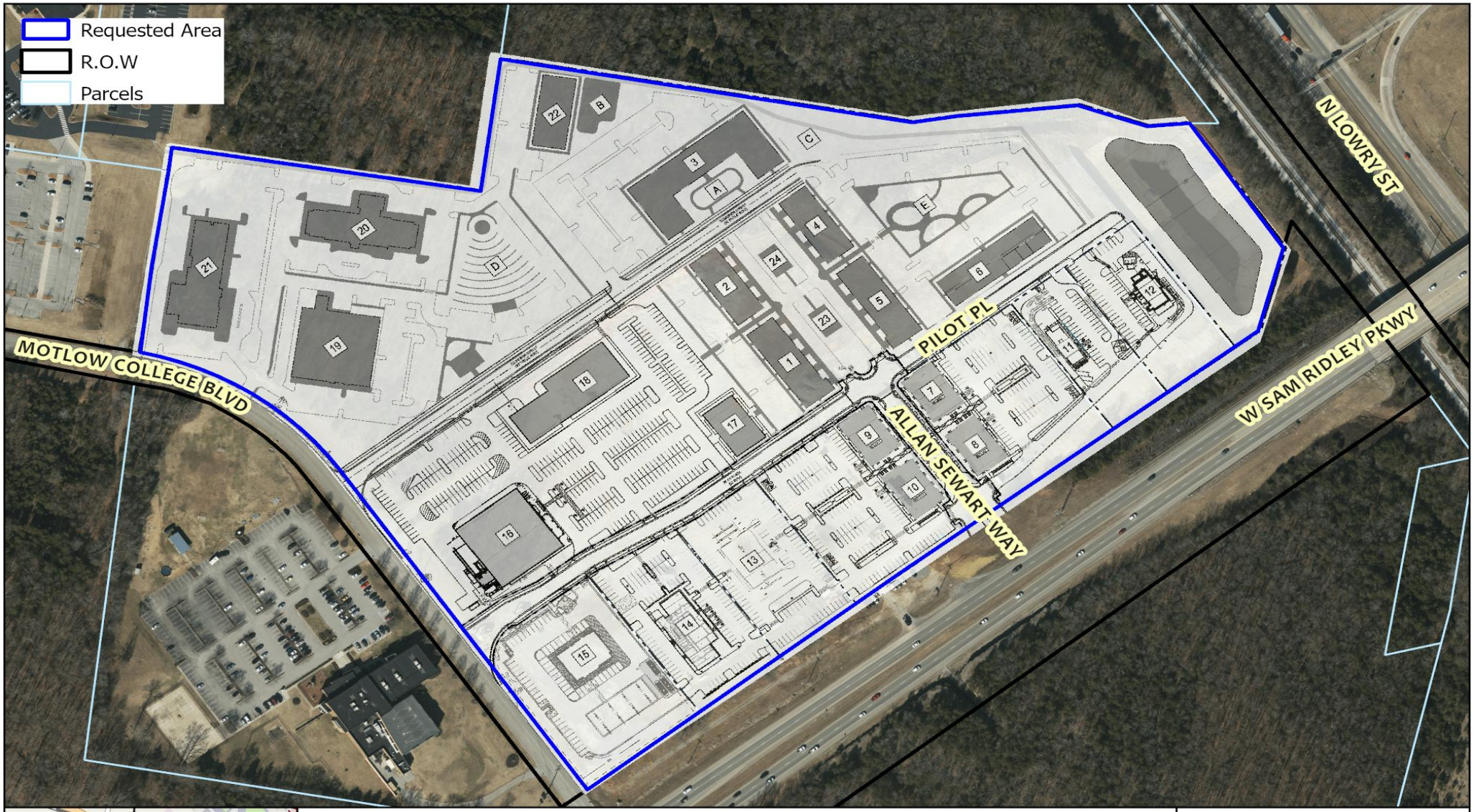
August 2025

Coordinate System: NAD 1983 StatePlane Tennessee FIPS 4100 Feet

N

0 0.05 0.1 Mi

0 0.07 0.15 Km





PUD Zoning Amendment Request

Tax Map: 28 | Parcels: 44.29, 44.30, 44.31 Acres: +/- 40.94

Tax Map: 18 | Parcels: 10.01, 10.02, 10.03, 10.04, 10.05

Requested by: Equitable Property Company, LLC on behalf of Sewarts Landing Partners LP

Map data © OpenStreetMap contributors, Microsoft, Facebook, Google, Esri Community Maps contributors, Map layer by Esri

August 2025

Coordinate System: NAD 1983 StatePlane Tennessee FIPS 4100 Feet

N

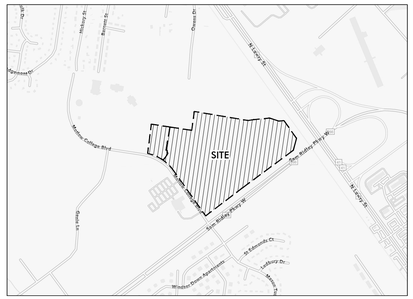
0 0.04 0.07 Mi

0 0.05 0.1 Km

SEWART'S LANDING

PUD SUBMITTAL

2001 MOTLOW COLLEGE BLVD
SMYRNA, RUTHERFORD COUNTY,TN
PARCEL ID 018-010.00-000



SITE VICINITY MAP (NTS)

OWNER/DEVELOPER

SEWART'S LANDING

EQUITABLE PROPERTY COMPANY | Custom Real Estate Solutions

Equitable Property Company, LLC
3201 Trevor Street
Suite 200
Nashville, TN 37209
Contact: Land Deleot
615.403.1144
land@equitabletn.com

LANDSCAPE ARCHITECT / APPLICANT

KV+D KISER VOGRIN DESIGN

Kiser+Vogrin Design
5005 Meridian Blvd
Suite 100
Franklin, TN 37067
Contact: Gary M. Vogrin
615.708.0567
gary@kiservogrin.com

CIVIL ENGINEER

FULMER LUCAS

Fulmer Lucas
2002 Richard Jones Road
Suite B200
Nashville, Tennessee 37215
Contact: Jay Fulmer
615.345.3771
jay@fulmerlucas.com

TRAFFIC ENGINEER

BURCH TRANSPORTATION

Burch Transportation, LLC
1114 17th Ave S
Suite 103
Nashville, TN 37212
Contact: Amy Burch
615.258.8551
amyburch@burchtransportation.com

ARCHITECT

LOWEN+ASSOCIATES, LLC

Lowen+Associates, Llc
2700 Belmont Blvd Ste A
Nashville, TN 37212
Contact: James Lowen
615.386.3357
jim@lowen-associates.com

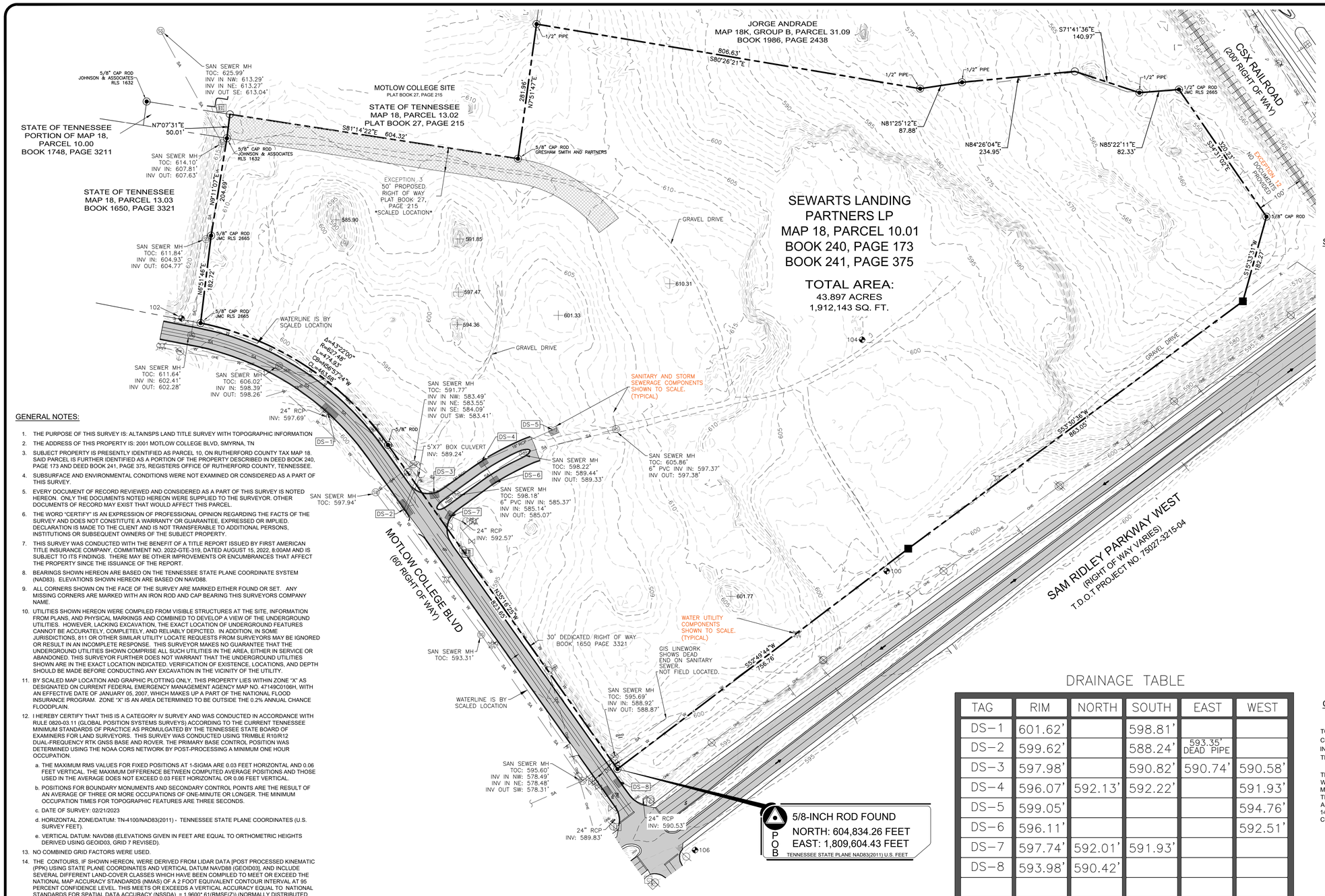
SHEET INDEX:		PUD Submittal	PUD Resubmittal	PUD Resubmittal 2	PUD Amendment	PUD Amendment Resubmittal	PUD Amendment Resubmittal 2
L0.0	COVER SHEET	03-20-2023	03-28-2023	04-05-2023	7/11/2023	7/23/2025	8/06/2025
L1.0	EXISTING CONDITIONS	03-20-2023	03-28-2023	04-05-2023	7/11/2023	7/23/2025	8/06/2025
L2.0	DEVELOPMENT PLAN	03-20-2023	03-28-2023	04-05-2023	7/11/2023	7/23/2025	8/06/2025
C1.0	SITE PHASING PLAN	03-20-2023	03-28-2023	04-05-2023	7/11/2023	7/23/2025	8/06/2025
C2.0	SCHEMATIC UTILITY PLAN	03-20-2023	03-28-2023	04-05-2023	7/11/2023	7/23/2025	8/06/2025
C3.0	FIRE CODE COMPLIANCE PLAN	03-20-2023	03-28-2023	04-05-2023	7/11/2023	7/23/2025	8/06/2025

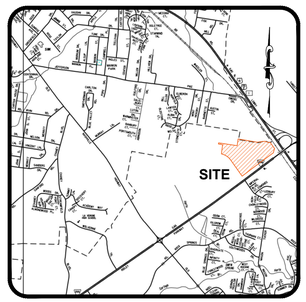
KVD PROJECT# : 22088

Sheet #:

L0.0

DATE: 04-05-2023





VICINITY MAP
NOT TO SCALE

GENERAL NOTES:

1. THE PURPOSE OF THIS SURVEY IS: ALTA/NSPS LAND TITLE SURVEY WITH TOPOGRAPHIC INFORMATION
2. THE ADDRESS OF THIS PROPERTY IS: 2001 MOTLOW COLLEGE BLVD, SMYRNA, TN
3. SUBJECT PROPERTY IS PRESENTLY IDENTIFIED AS PARCEL 10, ON RUTHERFORD COUNTY TAX MAP 18. SAID PARCEL IS FURTHER IDENTIFIED AS A PORTION OF THE PROPERTY DESCRIBED IN DEED BOOK 240, PAGE 173 AND DEED BOOK 241, PAGE 375, REGISTERS OFFICE OF RUTHERFORD COUNTY, TENNESSEE.
4. SUBSURFACE AND ENVIRONMENTAL CONDITIONS WERE NOT EXAMINED OR CONSIDERED AS A PART OF THIS SURVEY.
5. EVERY DOCUMENT OF RECORD REVIEWED AND CONSIDERED AS A PART OF THIS SURVEY IS NOTED HEREON. ONLY THE DOCUMENTS NOTED HEREON WERE SUPPLIED TO THE SURVEYOR. OTHER DOCUMENTS OF RECORD MAY EXIST THAT WOULD AFFECT THIS PARCEL.
6. THE WORD "CERTIFY" IS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING THE FACTS OF THE SURVEY AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED. DECLARATION IS MADE TO THE CLIENT AND IS NOT TRANSFERABLE TO ADDITIONAL PERSONS, INSTITUTIONS OR SUBSEQUENT OWNERS OF THE SUBJECT PROPERTY.
7. THIS SURVEY WAS CONDUCTED WITH THE BENEFIT OF A TITLE REPORT ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY, COMMITMENT NO. 2022-GTE-319, DATED AUGUST 15, 2022, 8:00AM AND IS SUBJECT TO ITS FINDINGS. THERE MAY BE OTHER IMPROVEMENTS OR ENCUMBRANCES THAT AFFECT THE PROPERTY SINCE THE ISSUANCE OF THE REPORT.
8. BEARINGS SHOWN HEREON ARE BASED ON THE TENNESSEE STATE PLANE COORDINATE SYSTEM (NAD83). ELEVATIONS SHOWN HEREON ARE BASED ON NAVD88.
9. ALL CORNERS SHOWN ON THE FACE OF THE SURVEY ARE MARKED EITHER FOUND OR SET. ANY MISSING CORNERS ARE MARKED WITH AN IRON ROD AND CAP BEARING THIS SURVEYORS COMPANY NAME.
10. UTILITIES SHOWN HEREON WERE COMPILED FROM VISIBLE STRUCTURES AT THE SITE, INFORMATION FROM PLANS, AND PHYSICAL MARKINGS AND COMBINED TO DEVELOP A VIEW OF THE UNDERGROUND UTILITIES. HOWEVER, LACKING EXCAVATION, THE EXACT LOCATION OF UNDERGROUND FEATURES CANNOT BE ACCURATELY, COMPLETELY, AND RELIABLY DEPICTED. IN ADDITION, IN SOME JURISDICTIONS, 811 OR OTHER SIMILAR UTILITY LOCATE REQUESTS FROM SURVEYORS MAY BE IGNORED OR RESULT IN AN INCOMPLETE RESPONSE. THIS SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THIS SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED. VERIFICATION OF EXISTENCE, LOCATIONS, AND DEPTH SHOULD BE MADE BEFORE CONDUCTING ANY EXCAVATION IN THE VICINITY OF THE UTILITY.
11. BY SCALED MAP LOCATION AND GRAPHIC PLOTTING ONLY, THIS PROPERTY LIES WITHIN ZONE "X" AS DESIGNATED ON CURRENT FEDERAL EMERGENCY MANAGEMENT AGENCY MAP NO. 47149C0106H, WITH AN EFFECTIVE DATE OF JANUARY 05, 2007, WHICH MAKES UP A PART OF THE NATIONAL FLOOD INSURANCE PROGRAM. ZONE "X" IS AN AREA DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.
12. I HEREBY CERTIFY THAT THIS IS A CATEGORY IV SURVEY AND WAS CONDUCTED IN ACCORDANCE WITH RULE 0820-03.11 (GLOBAL POSITION SYSTEMS SURVEYS) ACCORDING TO THE CURRENT TENNESSEE MINIMUM STANDARDS OF PRACTICE AS PROMULGATED BY THE TENNESSEE STATE BOARD OF EXAMINERS FOR LAND SURVEYORS. THIS SURVEY WAS CONDUCTED USING TRIMBLE R10/R12 DUAL-FREQUENCY RTK GNSS BASE AND ROVER. THE PRIMARY BASE CONTROL POSITION WAS DETERMINED USING THE NOAA CORS NETWORK BY POST-PROCESSING A MINIMUM ONE HOUR OCCUPATION.
    a. THE MAXIMUM RMS VALUES FOR FIXED POSITIONS AT 1-SIGMA ARE 0.03 FEET HORIZONTAL AND 0.06 FEET VERTICAL. THE MAXIMUM DIFFERENCE BETWEEN COMPUTED AVERAGE POSITIONS AND THOSE USED IN THE AVERAGE DOES NOT EXCEED 0.03 FEET HORIZONTAL OR 0.06 FEET VERTICAL.
    b. POSITIONS FOR BOUNDARY MONUMENTS AND SECONDARY CONTROL POINTS ARE THE RESULT OF AN AVERAGE OF THREE OR MORE OCCUPATIONS OF ONE-MINUTE OR LONGER. THE MINIMUM OCCUPATION TIMES FOR TOPOGRAPHIC FEATURES ARE THREE SECONDS.
    c. DATE OF SURVEY: 02/21/2023
    d. HORIZONTAL ZONE/DATUM: TN-4100/NAD83(2011) - TENNESSEE STATE PLANE COORDINATES (U.S. SURVEY FEET).
    e. VERTICAL DATUM: NAVD88 (ELEVATIONS GIVEN IN FEET ARE EQUAL TO ORTHOMETRIC HEIGHTS DERIVED USING GEOID03, GRID 7 REVISED).
13. NO COMBINED GRID FACTORS WERE USED.
14. THE CONTOURS, IF SHOWN HEREON, WERE DERIVED FROM LIDAR DATA [POST PROCESSED KINEMATIC (PPK) USING STATE PLANE COORDINATES AND VERTICAL DATUM NAVD88 (GEOID03], AND INCLUDE SEVERAL DIFFERENT LAND-COVER CLASSES WHICH HAVE BEEN COMPILED TO MEET OR EXCEED THE NATIONAL MAP ACCURACY STANDARDS (NMAS) OF A 2 FOOT EQUIVALENT CONTOUR INTERVAL AT 95 PERCENT CONFIDENCE LEVEL. THIS MEETS OR EXCEEDS A VERTICAL ACCURACY EQUAL TO NATIONAL STANDARDS FOR SPATIAL DATA ACCURACY (NSSDA) = 1.9600*.61(RMSE(Z)) (NORMALLY DISTRIBUTED ERROR) = 1.19 FT, AS SET FORTH BY THE AMERICAN SOCIETY FOR PHOTOGRAMMETRY AND REMOTE SENSING (ASPRS) VERSION 1.0. RANDOM SHOTS TAKEN ACROSS THE SITE YIELD AN ACTUAL VERTICAL ACCURACY OF +/- 0.12 FT.
15. THERE WAS NO EVIDENCE OF RECENT EARTH MOVING AT THE TIME OF SURVEY.
16. THERE ARE NO KNOWN CHANGES TO THE STREET ROW AT THE TIME OF SURVEY.
17. THIS IS A VACANT TRACT OF LAND.

SCHEDULE B-II EXCEPTIONS:

1. TAXES OR ASSESSMENTS THAT ARE NOT SHOWN AS EXISTING LIENS BY THE RECORDS OF ANY TAXING AUTHORITY THAT LEVIES TAXES OR ASSESSMENTS ON REAL PROPERTY OR BY THE PUBLIC RECORDS; (B) PROCEEDINGS BY A PUBLIC AGENCY THAT MAY RESULT IN TAXES OR ASSESSMENTS, OR NOTICES OF SUCH PROCEEDINGS, WHETHER OR NOT SHOWN BY THE RECORDS OF SUCH AGENCY OR BY THE PUBLIC RECORDS. NOT A PLOTTABLE SURVEY MATTER.
2. ANY FACTS, RIGHTS, INTEREST OR CLAIMS THAT ARE NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY AN INSPECTION OF THE LAND OR THAT MAY BE ASSERTED BY PERSONS IN POSSESSION OF THE LAND. NONE OBSERVED
3. EASEMENTS, LIENS OR ENCUMBRANCES OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS. ALL OBSERVED ARE SHOWN
4. ANY ENCROACHMENT, ENCUMBRANCE, VIOLATION, VARIATION, OR ADVERSE CIRCUMSTANCE AFFECTING THE TITLE THAT WOULD BE DISCLOSED BY AN ACCURATE AND COMPLETE LAND SURVEY OF THE LAND AND NOT SHOWN BY THE PUBLIC RECORDS. NONE OBSERVED
5. ANY LIEN OR RIGHTS TO A LIEN, FOR LABOR, SERVICES OR MATERIALS IMPOSED BY LAW AND NOT SHOWN BY THE PUBLIC RECORDS. NOT A PLOTTABLE SURVEY MATTER.
6. ANY CLAIMS TO (A) OWNERSHIP OF OR RIGHTS TO MINERALS AND SIMILAR SUBSTANCES, INCLUDING BUT NOT LIMITED TO ORES, METALS, COAL, LIGNITE, OIL, GAS, URANIUM, LIMESTONE, CLAY, ROCK, SAND, AND GRAVEL LOCATED IN, ON, OR UNDER THE LAND OR PRODUCED FROM THE LAND, WHETHER SUCH OWNERSHIP OR RIGHTS ARISE BY LEASE, GRANT, EXCEPTION, CONVEYANCE, RESERVATION, OR OTHERWISE; AND (B) ANY RIGHTS, PRIVILEGES, IMMUNITIES, RIGHTS OF WAY, AND EASEMENTS ASSOCIATED THEREWITH OR APPURTENANT THERETO, WHETHER OR NOT THE RIGHTS OR RIGHTS EXCEPTED IN (A) OR (B) APPEAR IN THE PUBLIC RECORDS OR ARE SHOWN IN SCHEDULE B. NOT A PLOTTABLE SURVEY MATTER.
7. TAXES AND ASSESSMENTS FOR THE YEAR 2022 AND SUBSEQUENT YEARS, NOT YET DUE AND PAYABLE. NOT A PLOTTABLE SURVEY MATTER.
8. LIABILITY AS TO TAXES RESULTING FROM SUPPLEMENTAL, REVISED OR CORRECTION ASSESSMENTS PURSUANT TO THE PROVISIONS OF TENNESSEE CODE ANN _ 67-5-603, ET SEQ. NOT A PLOTTABLE SURVEY MATTER.
9. CITY OF SMYRNA TAXES FOR THE YEAR 2022 AND THEREAFTER, FOR TAX PARCEL IDENTIFICATION NUMBER 018-010.00, NOT YET DUE AND PAYABLE. NOT A PLOTTABLE SURVEY MATTER.
10. DEDICATION OF PERMANENT UTILITY EASEMENT RECORDED IN BOOK 658, PAGE 481. DOES NOT AFFECT SURVEYED PROPERTY.
11. RIGHTS OR CLAIMS OF TENANTS UNDER UNRECORDED LEASES. NONE OBSERVED
12. POSSIBLE RIGHT OF RAILROAD TO INCREASE ITS RIGHT-OF-WAY TO THE FULL EXTENT OF ITS CHARTER. RAILROAD RIGHTS OF WAY ARE CORRECTLY SHOWN TO FULL EXTENT BASED ON RAILROAD PLAN NO.: 075-003-N.T. & SLR.
13. NO COVERAGE IS PROVIDED AS TO THE AMOUNT OF ACREAGE OR SQUARE FOOTAGE OF THE LAND. SURVEYED AREA VALUES ARE CORRECTLY NOTED

DRAINAGE TABLE

TAG	RIM	NORTH	SOUTH	EAST	WEST
DS-1	601.62'		598.81'		
DS-2	599.62'		588.24'	593.35' DEAD PIPE	
DS-3	597.98'		590.82'	590.74'	590.58'
DS-4	596.07'	592.13'	592.22'		591.93'
DS-5	599.05'				594.76'
DS-6	596.11'				592.51'
DS-7	597.74'	592.01'	591.93'		
DS-8	593.98'	590.42'			

CERTIFICATION OF SURVEY FOR ALTA/NSPS LAND TITLE SURVEYS

TO: (I) TD HOLDINGS LLC, A TENNESSEE LIMITED LIABILITY COMPANY, (II) SILVERTON MORTGAGE, (III) FIRST AMERICAN TITLE INSURANCE COMPANY, (IV) SEWARTS LANDING PARTNERS, L.P., A TENNESSEE LIMITED PARTNERSHIP, AND (V) OLD NATIONAL BANK.

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, 5, 8, 11(OBSERVED), 13, 14, 16, 17, 18, AND 19, OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON 02/21/2023.

JOEY C. WILSON, II
TN RLS NO. 2089
4/27/23

CONTROL TABLE

100	N 605,244.92	E 1,810,162.82	EL 600.79'	CAP ROD SET
101	N 606,572.04	E 1,808,878.41	EL 616.36'	NAIL SET
102	N 605,769.13	E 1,808,700.76	EL 613.28'	NAIL SET
103	N 606,543.78	E 1,810,897.48	EL 559.36'	CAP ROD SET
104	N 605,725.10	E 1,810,111.78	EL 600.17'	CAP ROD SET
105	N 606,057.31	E 1,811,232.16	EL 561.12'	CAP ROD SET
106	N 604,666.08	E 1,809,765.41	EL 592.29'	CAP ROD SET
107	N 605,680.07	E 1,811,069.53	EL 596.51'	CAP ROD SET

PROJECT CONTROL: TENNESSEE STATE PLANE COORDINATES; NAD83(2011); NAVD88 (GEOID03 GRID 7 REVISED); U.S. SURVEY FEET; NO DATUM ADJUSTMENT.

GRAPHIC SCALE: 1" = 100'

LEGEND

PIPE, ROD, ETC. FOUND (SEE DESC.)		BENCH MARK		ELECTRIC METER-BOX	E	EVERGREEN TREE		UNDERGROUND ELEC	UGE
5/8" CAPPED ROD SET		WATER METER	W	ELECTRIC MH	E	DECIDUOUS TREE		OVERHEAD ELEC	OHE
FENCE POST FOUND		WATER VALVE		LIGHT POLE		HANDICAP PARKING		GAS	GAS
FENCE POST SET		FIRE HYDRANT		UTILITY POLE		SIGN		COMMUNICATIONS	COM
CONC. MON. FOUND		SANITARY SEWER MH		GUY ANCHOR		TURN LANE MARKING		BOUNDARY	
CONC. MON. SET		SANITARY SEWER CO	CO	COMMUNICATION BOX	C	MAIL BOX		CENTERLINE	
PK FOUND		AREA DRAIN		COMMUNICATION MH	C	CEMETERY		FENCE	X
PK SET		CURB INLET		GAS METER	G	SANITARY SEWER	8" SA	WATER FEATURE	
NON MONUMENTED POINT		STORM MH	ST	GAS VALVE		WATER	W	TREE LINE	

NO.	DATE	COMMENT
1	1/16/24	SIGNED & SEALED
2	3/7/24	REMOVED PORTION MISSING FROM TITLE

108 Beasley Drive
Franklin, TN
37064
615.794.2275

WILSON & ASSOCIATES, P.C.
Engineering/Surveying/Environmental

TENNESSEE LAND SURVEYOR
JOEY C. WILSON, II
NO. 2089
REGISTERED
4/27/23

ALTA/NSPS LAND TITLE & TOPOGRAPHIC SURVEY
MAP 18 & PARCEL 10
2001 MOTLOW COLLEGE BLVD
RUTHERFORD COUNTY, TENNESSEE
FOR: FULMER LUCAS

DRAWN BY:	MBS
APPVD. BY:	JEC, II
DATE	04/17/2023
PROJ. No.	23-2015
SCALE:	1" = 100'

SHEET No.
1 OF 2

811
Know what's below.
Call before you dig.

Open Space Data		
Open Space Key	Open Space Type	Area (Acres)
A	Plaza	± 1.442
B	Playground	± 1.50
C	Residential Amenity - Walking Trail - Pavilions - Courtyard	± 2.151
D	Amphitheater	± 1.850
E	Park	± 0.682
F	Plaza	± 0.0708
	TOTAL	± 7.6958

Building Chart Data					
NUMBER	BUILDING USE	RETAIL COMMERCIAL (Sq.ft.)	OFFICE COMMERCIAL (Sq.ft)	MULTI-FAMILY UNITS	HOTEL (Keys)
1	Level 1 Retail	12,600			
2	Level 1 Retail	10,500			
3					
4	Level 1 Retail	10,500			
5	Level 1 Retail / Level 2 Office	12,600	26,000		
1 - 6	Multi-Family			268	
7	Level 1 Retail / Level 2 Office	8,000	8,000		
8	Level 1 Retail / Level 2 Office	8,000	8,000		
9	Level 1 Retail / Level 2 Office	8,000	8,000		
10	Level 1 Retail / Level 2 Office	8,000	8,000		
11	Level 1 Retail / Restaurant	2,500			
12	Level 1 Restaurant	3,600			
13	Level 1 Retail / Restaurant	5,000			
14	Level 1 Retail / Restaurant	10,000			
15	Level 1 Retail	6,000			
16	1 Grocery	24,000			
17	Level 1 Retail	8,000			
18	3 Story Office / Medical Above	20,000			
19	4 Story Retail / Office / Medical	24,000			
20	Hotel				120
21	Hotel				120
22	3 Story Retail / Office / Medical	10,000			
23	1 Jewel Box Retail	1,500			
24	1 Jewel Box Retail	1,500			
25	*Additional SF on Original PUD owed to developer*	86,100	187,500		
	TOTAL	280,400	245,500	268	240

GENERAL NOTES:

1. THE MASTER/VISION PLAN FOR THE SITE REFLECTS AN URBAN DESIGN CONCEPT WHICH INCORPORATES A BROAD SPECTRUM OF BUILDING PRODUCT THAT ARE IN CLOSE PHYSICAL PROXIMITY AND COMPLEMENT EACH OTHER. A SPECIFIC GOAL OF THE MASTER PLAN/VISIONING PLAN WAS TO HIGHLIGHT PEDESTRIAN ACCESS OF THE SITE AND OVERALL COMMUNITY WALKABILITY, INCLUDING PROVIDING OPPORTUNITIES FOR ORGANIZED PEDESTRIAN NETWORK, COMMON OPEN SPACES/STREETSCAPES AND TRAIL CONNECTIVITY. THE MASTER PLAN HAS BEEN DESIGNED TO BE FLEXIBLE PROVIDING OPPORTUNITIES FOR MULTIPLE USES WITHIN AN ORGANIZED STREET NETWORK WHICH SHOULD SERVE AS A VISION TO GUIDE DEVELOPMENT OF THE SITE. BEYOND THIS PROJECT, THE DEVELOPMENT OF DETAILED DESIGN GUIDELINES SHOULD BE A NEXT STEP TO ENSURE THE OVERALL VISION IS IMPLEMENTED. THE PEDESTRIAN FRIENDLY DEVELOPMENT SHALL DELIVER A CURATED ENVIRONMENT OF AN ECLECTIC MIX OF LOCAL AND NATIONAL TENANTS TO THE CITIZENS OF SMYRNA. THE PLACE WILL BECOME A COMMUNITY HUB FOR WORKING, SHOPPING, LIVING, AND ENTERTAINMENT THAT WILL RIVAL ANY MIXED-USE MASTER PLANS IN THE COUNTRY.
2. THE DEVELOPER REQUESTS THAT THE BUILDING AND PARKING ARRANGEMENTS SHALL HAVE FLEXIBILITY AS MARKET DEMANDS AS IT RELATES TO THE FUTURE LOCATIONS AND CONFIGURATIONS AS LONG AS THE OVERALL PROPOSED BUILDING SQUARE FOOTAGE IS NOT EXCEEDED. BUILDING USES MAY ALLOW FOR THE FLEXIBILITY OF RETAIL ON THE GROUND FLOOR AND OFFICE ABOVE AS LONG AS THE OVERALL PROPOSED BUILDING SQUARE FOOTAGE IS NOT EXCEEDED.
3. THE PROPOSED MEANS OF ASSURING THE CONTINUED MAINTENANCE OF THE COMMON OPEN SPACES AND OTHER COMMON ELEMENTS SHALL BE BY THE COMMERCIAL AND RESIDENTIAL HOMEOWNERS ASSOCIATIONS THAT WILL BE CREATED FOR THE DEVELOPMENT.
4. PROPOSED BUILDING MATERIALS SHALL MEET THE TOWN OF SMYRNA DESIGN REVIEW GUIDELINES. SEE ATTACHED VISION BOOK FOR ADDITIONAL PRECEDENT IMAGERY AND ANTICIPATED BUILDING MATERIALS.
5. SEE ATTACHED VISION BOOK FOR THE DESIGN INSPIRATION OF THE PROPOSED DEVELOPMENT PLAN AS IT RELATES TO BUILDING SCALE/MASS AS WELL AS PRECEDENT IMAGES FOR THE PROPOSED COMMON OPEN SPACE AREAS THAT PROMOTE PEDESTRIAN GATHERINGS, WALKABILITY AND STREETSCAPES.
6. ALL SIGNAGE TO MEET TOWN OF SMYRNA SIGNAGE CODE REQUIREMENTS. POLE SIGNS ARE PROHIBITED WITHIN THE DEVELOPMENT. SIGNAGE IS CONCEPTUAL IN NATURE. FINAL DESIGN TO BE COORDINATED WITH TOWN OF SMYRNA AT FUTURE SITE PLAN SUBMITTALS. SEE ATTACHED VISION BOOK FOR EXAMPLE PROJECT SIGANGE ELEVATIONS.

SAM RIDLEY PARKWAY WEST
(RIGHT OF WAY VARIES)
T.D.O.T PROJECT NO. 75027-3215-04

CSX RAILROAD
(200' RIGHT OF WAY)

SURVEY INFO
PROVIDED BY: WILSON AND ASSOCIATES (DATED 04/17/2023)
DATUM: TENNESSEE STATE PLANE (NAD83 & NAVD 88)

0 40 80 160 240
SCALE: 1" = 80'

FULMER LUCAS
2002 RICHARD JONES RD - SUITE B200
NASHVILLE, TENNESSEE 37215
INFO@FULMERLUCAS.COM - (615) 345-3770

STATE OF TENNESSEE — DEPARTMENT OF AGRICULTURE — REGISTERED LANDSCAPE ARCHITECT — No. 101994 — 5/08/2024

PUD AMENDMENT PLANS FOR:
SEWART'S LANDING
2001 MOTLOW COLLEGE BOULEVARD
SMYRNA, RUTHERFORD COUNTY, TENNESSEE 37167

DR.	DATE	DESCRIPTION

DEVELOPMENT PLAN

L1.0

1133-06 SEWART'S LANDING

Know what's **below.**
Call before you dig.

PHASE 3

PHASE 2

PHASE 1.5

PHASE 1

FUTURE BUILDING
±19,545 SF

GROCERY
± 23,300 SF

FUTURE BUILDING
±7,700 SF

SQUADRON STREET
(50' PUBLIC ROW)

EN-GOT PLACE
(50' ROW)

SAM SEWART WAY
(ROW VARIES)

MOTLOW COLLEGE BLVD
(PUBLIC ROW)

CSX RAILROAD
(200' RIGHT OF WAY)

SAM RIDLEY PARKWAY
(STATE ROUTE 266)

SAM RIDLEY PARKWAY WEST
(RIGHT OF WAY VARIES)
T.D.O.T PROJECT NO. 75027-3215-04

SURVEY INFO
PROVIDED BY: WILSON AND ASSOCIATES (DATED 04/17/2023)
DATUM: TENNESSEE STATE PLANE (NAD83 & NAVD 88)

0 40 80 160 240
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PUD AMENDMENT PLANS FOR:

SEWART'S LANDING

2001 MOTLOW COLLEGE BOULEVARD
SMYRNA, RUTHERFORD COUNTY, TENNESSEE 37167

DR.	DATE	DESCRIPTION

SITE PHASING PLAN

C1.0

1133-06 SEWART'S LANDING

811
Know what's below.
Call before you dig.

LEGEND

- SANITARY SEWER MANHOLE
- STORM SEWER MANHOLE
- CURB INLET
- CATCH BASIN
- NYLOPLAST DRAIN BASIN
- XXX.XX / XXX.XX — TOP OF CURB SPOT ELEVATION / BOTTOM OF CURB SPOT ELEVATION
- ELECTRIC/COMMUNICATION POLE
- TW:XXX.XX / BW:XXX.XX — RETAINING WALL, TOP OF WALL / FINISHED GRADE AT BOTTOM OF WALL
- DW — DOMESTIC WATER SERVICE
- G — GAS SERVICE
- SAN — SANITARY SEWER SERVICE
- OH-E — OVERHEAD ELECTRIC SERVICE
- OH-T — OVERHEAD TELEPHONE SERVICE
- UD — PERVIOUS PAVEMENT UNDERDRAIN
- RD — ROOF DRAIN TRUNK LINE
- STORM PIPE (SEE PLANS FOR MATERIAL).
- 562 — EXISTING CONTOUR
- 562 — PROPOSED CONTOUR
- DRIVEWAY CENTERLINE
- PROPERTY LINE

FUTURE BUILDING
±19,545 SF

GROCERY
± 23,300 SF

FUTURE RETAIL
±7,000 SF

SQUADRON STREET
(50' PUBLIC ROW)

SCHOLARS STREET
(50' PUBLIC ROW)

10-FT PLACE
(50' ROW)

MOTLOW COLLEGE BLVD
(PUBLIC ROW)

SAM RIDLEY PARKWAY
(STATE ROUTE 266)

SAM RIDLEY PARKWAY WEST
(RIGHT OF WAY VARIES)
T.D.O.T PROJECT NO. 75027-3215-04

CSX RAILROAD
(200' RIGHT OF WAY)

JOINT #605085

SURVEY INFO
PROVIDED BY: WILSON AND ASSOCIATES (DATED 04/17/2023)
DATUM: TENNESSEE STATE PLANE (NAD83 & NAVD 88)

0 40 80 160 240
SCALE: 1" = 80'

FULMER LUCAS
2002 RICHARD JONES RD - SUITE B200
NASHVILLE, TENNESSEE 37215
INFO@FULMERLUCAS.COM - (615) 345-3770

JAMES WILLIAM WILSON
REGISTERED
No. 101934
AGRICULTURE
STATE OF TENNESSEE
4/08/2024

PUD AMENDMENT PLANS FOR:

SEWART'S LANDING

2001 MOTLOW COLLEGE BOULEVARD
SMYRNA, RUTHERFORD COUNTY, TENNESSEE 37167

DR.	DATE	DESCRIPTION

SCHEMATIC UTILITY PLAN

C2.0

1133-06 SEWART'S LANDING

Know what's **below.**
Call before you dig.

FIRE HYDRANT NOTE:

FIRE HYDRANTS TO BE PROVIDED WITHIN 400 FEET OF ALL BUILDINGS. FDCS AS REQUIRED CANNOT BE ON ANY BUILDING.

CONSTRUCTION TYPE NOTE:

CONSTRUCTION TYPE IIB, UNPROTECTED, SPRINKLED.

LEGEND

- VEHICLE PATH
- TIRES
- VEHICLE BODY

Smyrna Fire Dept 70421

Wheel Base:	280.5
Tire Size:	425
Bumper Extension:	18

OUTSIDE CURB TO CURB TURNING RADIUS

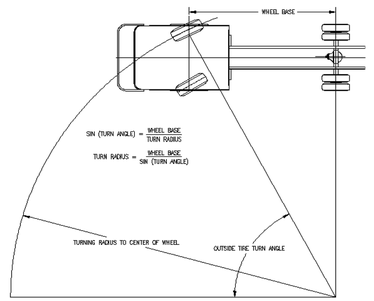
Input wheelbase?	280.5
Input front wheel INSIDE turn angle?	48
Input offset from kingpin to outside of wheel	16

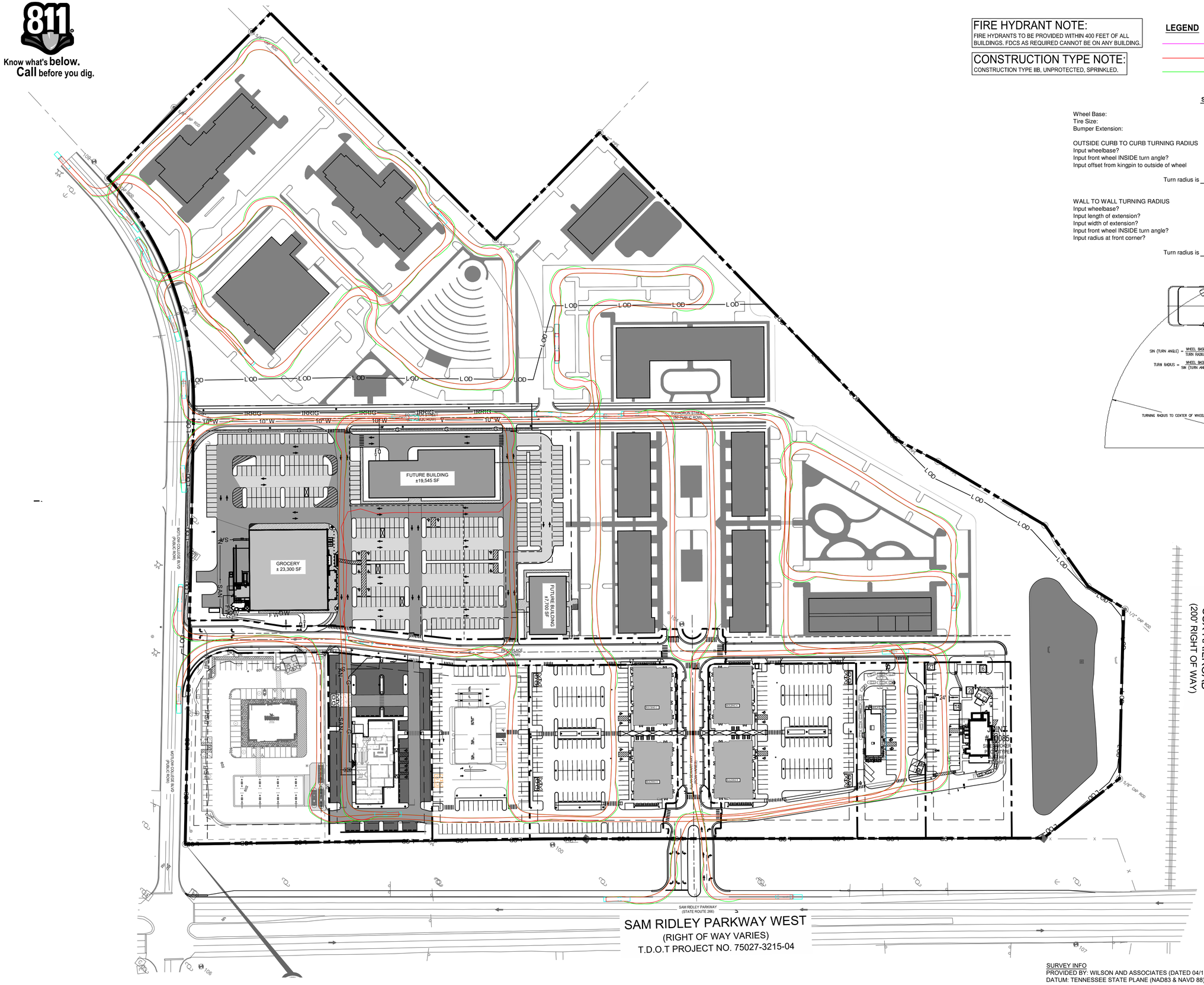
Turn radius is **41.20 ft.**

WALL TO WALL TURNING RADIUS

Input wheelbase?	280.5
Input length of extension?	18
Input width of extension?	101
Input front wheel INSIDE turn angle?	48
Input radius at front corner?	12

Turn radius is **45.01 ft.**





SAM RIDLEY PARKWAY WEST

(RIGHT OF WAY VARIES)
T.D.O.T PROJECT NO. 75027-3215-04

SURVEY INFO
PROVIDED BY: WILSON AND ASSOCIATES (DATED 04/17/2023)
DATUM: TENNESSEE STATE PLANE (NAD83 & NAVD 88)

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STATE OF TENNESSEE — REGISTERED LANDSCAPE ARCHITECT — 223 — AGRICULTURE — 4/28/2023

PUD AMENDMENT PLANS FOR:

SEWART'S LANDING

2001 MOTLOW COLLEGE BOULEVARD
SMYRNA, RUTHERFORD COUNTY, TENNESSEE 37167

DR.	DATE	DESCRIPTION

FIRE CODE COMPLIANCE PLAN

C3.0

1133-06 SEWART'S LANDING

Tuesday, August 8, 2023
P:\133-Clarke Property\06- Sam Ridley Canyon\02 - Civil\Sheets\113306_PD Plans.dwg

SEWART'S
LANDING

SEWART'S LANDING
2001 MOTLOW COLLEGE BLVD
SMYRNA, RUTHERFORD COUNTY, TN

ARCHITECTURE | PLANNING
CONSORTIUM

EQUITABLE
PROPERTY COMPANY

Custom
Real Estate
Solutions

PUD AMENDMENT RESUBMITTAL
AUGUST 5, 2025

The following graphics/images depict the vision to implement this master plan.

VISION IMAGERY

Examples of amenities, green space, amphitheater, storefront retail, pedestrian trails, parks, and various plazas

















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SEWART'S
LANDING

SEWART'S LANDING
2001 MOTLOW COLLEGE BLVD
SMYRNA, RUTHERFORD COUNTY, TN

PUD AMENDMENT RESUBMITTAL
AUGUST 5, 2025

VISION IMAGERY

Examples of amenities, green space, amphitheater, storefront retail, pedestrian trails, parks, and various plazas















VISION IMAGERY

Examples of amenities, green space, amphitheater, storefront retail, pedestrian trails, parks, and various plazas















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SEWART'S
LANDING

SEWART'S LANDING
2001 MOTLOW COLLEGE BLVD
SMYRNA, RUTHERFORD COUNTY, TN

PUD AMENDMENT RESUBMITTAL
AUGUST 5, 2025

ROOF AND PARAPET

- Long facades should have vertical features and varying roof lines
- Cornice lines with masonry detail shadow lines
- Gable roof and Corner Tower Features with varying roof lines
- Parapets and cornices shall create detail and provide shadowing
- Metal Roofing features and coping detail shall be consistent
- Stepping facades in plan and roof line
- Varying heights
- Rear roof side parapets visible form grade shall have finished material all sides
- Roof pitch in all areas shall be the same pitch for consistency

BUILDING COMPOSITION AND PATTERNING:

- Repetition is good for patterning
- Mix of masonry and metal panels and sim. limestone
- Create pedestrian visual connections between structures
- Symmetry should be used in mirrored building structures for “gateway” effect
- Roof line should be designed to vary and provide rhythm
- No large wall areas without varying depths and breaks in elevation
- Windows, Columns and vertical elements to break up facades
- Lighting sconces and other lighting features to be used
- Base, Body and Cap for architectural standards
- Main Level Retail windows areas to be 40% min.
- Metal awnings over various second story windows

HARDSCAPES:

- Masonry site landscape and seat walls, planter walls and landscape features to create pedestrian gathering spaces with benches and light poles along walkways.
- Pathways to be added from parking to retail spaces

MATERIAL SELECTIONS AND STANDARDS:

All visible Sides of buildings shall be consistent for material use. All materials to be durable and of high quality for longevity and maintenance purposes. Per Design Review Manual, architectural design character for the non-residential buildings will contain 50% of a primary exterior material. On the mixed-use buildings where multifamily makes up 67% of the building type, the current submitted design guidance is composed of an average of 64.31% brick/glazing (primary materials) and 35.69% and hardie (secondary material). Acceptable primary materials brick, stone, glass, and glasing

PRIMARY MATERIALS:
Nominal Full brick or thin brick
Natural or Simulated/Synthetic Smooth
Cast Stone
Authentic Stucco
ACM Reynobond Smooth Metal Panels Prefinished Wood (Not Stained)
Standing Seam Metal Awnings
Painted Wood Detailing at Main Level Retail

SECONDARY MATERIALS:
Cementuous Siding, Nichiha
Small areas of EIFS (Cornices etc.)
Fabric Awnings
Composite Panels
Architectural Metal Panels, prefinished as accents Smooth Faced Concrete Masonry

Example of pedestrian, retail frontage in retail/mixed use spaces





ARCHITECTURAL DESIGN GUIDELINES:

This Architectural Design Guideline section will apply to the architecture design and aesthetic for all building types within the Sewart's Landing, Mixed Use Development in Smyrna, TN.

GENERAL OVERVIEW:

The criteria set in this section is to determine a clean, well-organized and defined architectural development. The applicant for all structures shall review and follow these guidelines for building aesthetics, form, materials and general standards. Each structure may have unique requirements that will be reviewed on an individual basis.

DESIGN PRINCIPLES:

The principal concept of this guideline is to coordinate the individual building architecture to create a cohesive and well-organized development with a similar theme and an inviting lifestyle, pedestrian friendly environment.

ARCHITECTURAL DESIGN:

ARCHITECTURAL CHARACTER STANDARDS:

- Elevated Architectural Detail
- Cohesive Design Aesthetic for All Buildings
- Similar Themes between adjacent Structures
- Rooflines and Cornices to vary to create interest
- Mechanical Screening from Pedestrian View
- Color Scheme to be consistent within General Design
- One and Two-Level Structures to be comparable in heights with roof lines and features
- Glazing at the main retail spaces on the main level is beneficial for pedestrian interest

BUILDING HEIGHT AND SETBACKS:

- All architectural building design shall follow the Smyrna City Zoning and Design Ordinance
- Roof cornices shall create shadow lines
- Clock tower and Roof features such as Gables and Tower Features shall be provided at main corner elements
- Symmetrical building heights and roof features may be required at gateway elements between buildings
- One story and two story shall be designed not to create drastic building height changes
- Setbacks with entrances and differentiating setbacks within buildings is encouraged for shadowing etc.
- Mechanical roof screening with parapets, roof structures or placed where not visible from grade
- No long Roof line designs will be appropriate without variation in parapets and cornices

MASSING, PROPORTION AND SCALE:

- Create appropriate massing and scale per adjacent structures and context
- Awnings, canopies and Main level retail window openings
- Vertical masonry columns between glazing
- Common design elements with masonry
- Utilize nominal masonry and not utility sized brick
- Main level window height to be 10'-0" with clear glazing
- Building entries to be visible and defined
- Compliment adjacent structures with material and color
- Facades shall not be flat and shall have stepping and breaks

Example of pedestrian, retail frontage in retail/mixed use spaces





DISCOURAGED MATERIAL USE:
Large areas of EIFS/Dryvit
Simulated stone (Lick and Stick)
CMU or Split-Faced CMU
Corrugated R-Panels (Prefab Structures)

WINDOWS:
1" Insulated Aluminum Storefront
Marvin Elevate or Equal
Iron Lion Metal Frame or Equal
False Windows and Spandrel Glass may be used as accent

ROOFING:
Standing Seam Metal Roofing
Pre- Finished Metal Coping
TPO for typical non-visible roofing

AWNINGS AND CANOPIES:
ACM Reynobond Smooth Metal Panels
Smooth Metal for Canopies etc.
Fabric Awnings

LIGHTING:
Consistent Pole Type Lighting, Black in Color
Sconce Lighting, should have varying standards
Uplighting recessed in walkway or building mounted accent

GENERAL PALETTE:

Retail/Mixed use, along center entry drive or "Avenues" architectural aesthetic may have a similar aesthetic to create a more cohesive well-organized shopping environment.

Commercial outparcels and other structures would follow the primary and secondary material options.

Prototype retail parcels would follow the primary and secondary material options but allow the prototypical Design and their material concepts to remain.

- "Avenue" or retail/Mixed use section may be lighter stucco and brick with main level glazing
- Colors for accents may be placed for interest or signage
- Number of varying colors may be limited depending on tone changes
- Lighting and window type frames to be considered

SIGNAGE:

- All building signage shall follow the Smyrna City Zoning and Design Ordinance
- Signage should be contextual in height and scale with neighboring or adjacent structures
- Way finding signage will be designed to be throughout the development with a consistent aesthetic
- Neon Signage is not encouraged outside of "OPEN" type at retail storefronts

Example of pedestrian, retail frontage in retail/mixed use spaces





Example of roof cornice and light tone design with metal canopy and color accents



Example of well-placed signage and open, inviting retail level with strong roof lines



Example of massing and material changes with pedestrian connection



Example of office spaces above retail and material breaks and massing





MONUMENT SIGNAGE CONCEPT 1



MONUMENT SIGNAGE CONCEPT 2
WITH TENANT SIGNAGE

GENERAL SIGNAGE NOTES:

- ALL SIGNAGE TO MEET TOWN OF SMYRNA SIGNAGE CODE REQUIREMENTS.
- POLE SIGNS ARE PROHIBITED WITHIN THE DEVELOPMENT.
- SIGNAGE IS CONCEPTUAL IN NATURE. FINAL DESIGN AND LOCATION OF SIGNAGE TO BE COORDINATED WITH TOWN OF SMYRNA AT FUTURE SITE PLAN SUBMITTALS.



MONUMENT SIGNAGE CONCEPT 3



SIGNAGE COLUMN CONCEPT

ARCHITECTURE | PLANNING CONSORTIUM EQUITABLE PROPERTY COMPANY | Custom Real Estate Solutions

SIGNAGE CONCEPTS

SEWART'S LANDING

2001 MOTLOW COLLEGE BLVD
SMYRNA, RUTHERFORD COUNTY, TN

PUD AMENDMENT RESUBMITTAL
AUGUST 5, 2025

BURCH TRANSPORTATION

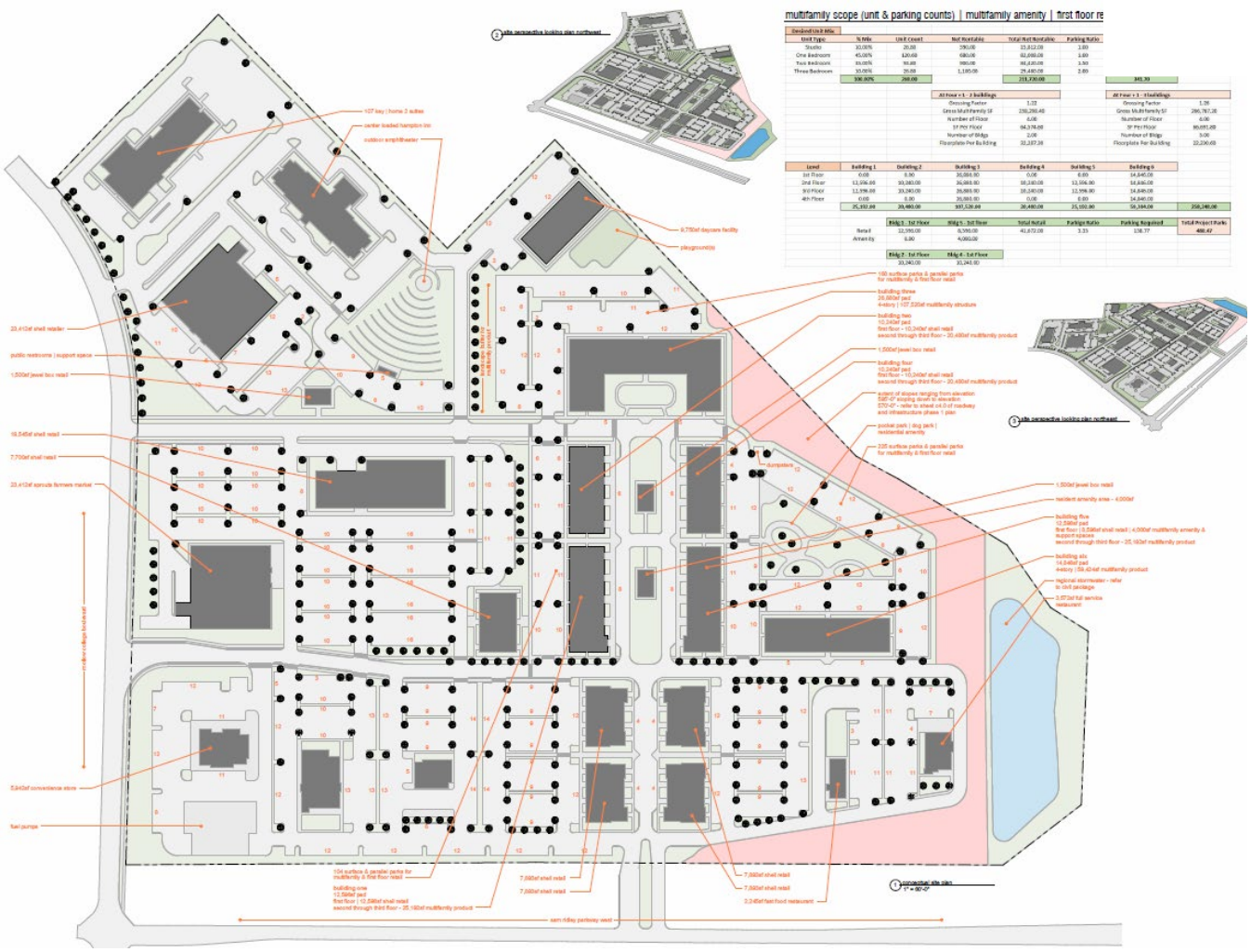
1114 17th Ave S, Ste 103
Nashville, TN 37212
Office: (615) 258-8551

Memorandum

To:	Turnbull Pursley, Equitable Property Company
From:	Amy Burch, PE
Date:	July 22, 2025
Re:	Sewart's Landing, Smyrna, TN
Subject:	Shared Parking Study

Burch Transportation has conducted a shared parking analysis to evaluate the number of parking spaces that will be needed to accommodate the Sewart's Landing mixed-use development. A snapshot of the site layout plan provided by Equitable Property Company is shown in Figure 1.

Figure 1: Sewart's Landing Site Layout Plan
(Not to Scale)



Parking Analysis

Parking for the Sewart's Landing mixed-use development will be provided with surface parking lots surrounding the multiple buildings on site according to the site plan. The Town of Smyrna's Zoning Ordinance outlines minimum parking rates by land use. Table 1 highlights the parking required on site based on the proposed land uses, applicable land use and parking rates in the Town's Zoning Ordinance, and the resulting minimum parking requirements for the entire site when looking at each land use separately.

Table 1. Minimum Parking Required per Local Parking Rates

Land Use	Intensity	Applicable Local Use	Local Parking Rate	Minimum Parking Required
Multi-Family	268 Units	Permanent Multifamily Apartments	2 spaces/unit	536 spaces
Hotel	240 keys	Transient Habitation	1 space/unit	240 spaces
Shopping Center & Grocery	139,217 sf	General Retail Trade	5 spaces/1,000 sf	696 spaces
Convenience Store/Gas Station	5,942 sf	Convenience Retail Sales & Services	1 space/100 sf	59 spaces
Restaurant	12,817 sf	General Food and Beverage Service	1 space/100 sf	128 spaces
Office	15,786 sf	Professional Services – Non-Medical	1 space/400 sf	39 spaces
Day Care Center	9,750 sf*	Day Care Centers	1 space/employee + 1 space/5 children	65 spaces
Bank with Drive-Thru	7,500 sf	Financial & Real Estate Services	1 space/200 sf	38 spaces
Total Required Spaces (without Shared Parking Consideration)				**1,801 spaces**
*Note: assumed 200 children and 25 employees				

As shown in Table 1, approximately 1,801 parking spaces are required without any consideration for shared parking. However, based on the mix and intensity of land uses as well as the internal connectivity within the development, parking was evaluated holistically for the entire site. In developments such as the Sewart's Landing mixed-use site, the peak parking demands for the various uses will likely fluctuate throughout the day and even days of the week and months of the year. In addition, it is likely that the residents, employees, and patrons will frequent multiple land uses on site with a single vehicular trip. As such, a shared parking calculation was utilized to determine the minimum parking for the project site.

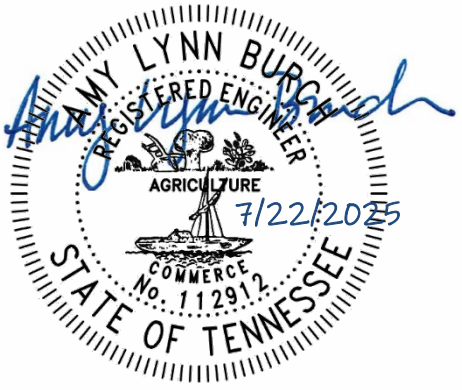
Article IV of the Town of Smyrna's Zoning Ordinance outlines not only the minimum parking requirements described above, but also outlines instances in which shared parking arrangements can be utilized in locations such as the Sewart's Landing mixed-use development. More specifically, Section 4.010.3.A states the following:

> *"Where two (2) or more residential, commercial, or industrial activities are located in the same development and where, in the opinion of the Planning Commission during site plan review, a more efficient parking arrangement can be made by allowing the sharing of parking among the different activities, the sharing of parking may be allowed. This could occur when activities are such that the peak parking needs are at different times of the day and/or week and the total parking needed for the total development is actually less than a strict calculation under this Article would require. Calculation of the required parking shall be the required parking for the highest intensity activity, plus 10 (ten) percent."*

Based on the site plan provided, the project site includes approximately 139,217 sf of retail commercial space which has a minimum parking requirement of 5 spaces per 1,000 square feet, making it the most intense land use on-site. Conservatively, the minimum parking requirements for the restaurant land uses and convenience store were added to the retail parking requirement for the shared parking calculation. This results in a minimum parking of 883 spaces. After accounting for the additional 10% outlined in Section 4.010.3.A, **the Sewart's Landing development should provide a minimum of 971 parking spaces on-site to address parking demands of the various uses.** It is important to note that no parking spaces should be reserved for specific tenants or land uses in a shared parking scenario where the minimum parking spaces are provided.

According to information provided by the developer, Equitable Property Company, approximately 2,131 spaces are planned to be provided across the entire mixed-use development, which is more spaces than the 1,801 spaces required when considering each of the land uses and densities separately without consideration for shared parking opportunities. Therefore, more than sufficient parking will be provided to meet the Town of Smyrna's parking requirement and the parking demands for the Sewart's Landing mixed-use development.

Should you have any comments or questions regarding this parking study, please let me know.



Sewarts Landing Partners, LP – Rezoning Request from C-2 to PUD/PUD Amendment

Tax Map 18, Parcels 10.01, 10.02, 10.03, 10.04, and 10.05, and Tax Map 28, Parcels 44.29, 44.30, and 44.31, owned and requested by Sewarts Landing Partners, LP.

Bordered on the south by the right-of-way of SR 266/Sam Ridley Parkway, West; on the east by CSX Transportation, Inc.; on the north by Tax Map 18K, Group B, Parcel 31.09, owned by Jorge Andrade, and Tax Map 18, Parcels 13.02 and 13.03, owned by the State of Tennessee; and on the west by the right-of-way of Motlow College Boulevard.

Area requested to be rezoned from C-2 to PUD contains approximately 3 acres and the total of all parcels for the PUD amendment contains approximately 40.94 acres.

Town of Smyrna
Town Council Meeting
Agenda Summary

Agenda Item Number 19.
Department: Administration
Date: August 28, 2025

Subject:
Consideration of the appointment of one (1) Planning Commission representative to serve on the Historic Zoning Commission.

Fiscal Impact:

Contract Type:

Contract Term (if applicable):

Background:

Summary:
The current Planning Commission representative, Miranda Swift, announced that she is unable to continue service on the Historic Zoning Commission, effective immediately; and therefore, we will need to appoint another member of the Planning Commission to also serve on the Historic Zoning commission.

This appointment is made by Mayor's nomination, with majority Council confirmation.

Recommended Council Action:
Mayor to nominate a member of the Planning Commission to serve as representative on the Historic Zoning Commission.

Attachments:
None