



Meeting Agenda

Capital Investment Committee

Thursday, March 28, 2024

3:30 PM

Board Room

CALL TO ORDER

SETTING OF AGENDA

1. Consideration Of Changes In Agenda And Setting The Agenda
 - A. Proposed Changes
 - B. Approval Of Agenda As Submitted Or Changed

CITIZEN COMMENTS (Open for citizens to be heard on any issue or concern, including those related to items on the agenda. Please submit a Speaker Card at the beginning of the meeting if you would like to address the Board/Commission. If you would like to speak on an agenda item, the Chair will hold your comment until the public comment period associated with the item. As provided by law, Boards/Commissions shall make no decisions or consideration of action of citizen comments for items not on the agenda, except to refer the matter to the City Administrator/Staff for administrative consideration, or to a schedule the matter for consideration at a later date. Those addressing the Board/Commission are requested to come to the microphone and identify themselves by name and address for the official record. The Chair may restrict the period for public comment, including the length of the public comment period, the number of individuals who can speak and the length of time each individual may speak. When time allows, the standard individual public comment time is two minutes.)

Comments on agenda items may be made in person at City Hall or by emailing recorder@franklintn.gov before noon on the day of the meeting. Comments will be submitted for the record.

APPROVAL OF MINUTES

2. Consideration Of Approval Of Minutes
February 22, 2024 Capital Investment Committee Meeting

NEW BUSINESS

3. Consideration To Deny Sewer Availability For 1109 Holly Hill Drive (Map 089P, Parcel 04200), 1113 Holly Hill Drive (Map 089P, Parcel 04000), 1201 Holly Hill Drive (Map 089P, Parcel 03700), 1111 Shannon Lane (Map 089P, Parcel 03300)

Sponsors: Michelle Hatcher, Scott Andrews

4. Consideration Of Ordinance 2023-37, An Ordinance To Amend Title 23 Of the City Of Franklin Municipal Code To Revise Definitions, Clarify Requirements, And To Correct Grammatical And Typographical Errors In The Stormwater Management Ordinance

Sponsors: Paul Holzen, Jeff Willoughby

5. Consideration Of Resolution 2024-16, A Resolution To Award The Construction Contract (COF Contract No. 2023-0299) For The Harlinsdale Main Barn Project (COF Project No. 2019-017) To MTLC Building Group In The Amount Of \$2,796,000

Sponsors: Paul Holzen, Jonathan Marston, Shahad Abdulrahman

6. Consideration Of DRAFT COF Contract No. 2024-0079, With In-N-Out (Goose Creek Bypass Subdivision) For A Road Impact Fee Offset Agreement For An Amount Not To Exceed \$168,300

Sponsors: Paul Holzen, Jimmy Wiseman

7. Capital Projects Dashboard And Status Updates For March 2024

Sponsors: Paul Holzen, Jonathan Marston

OTHER BUSINESS

ADJOURN

Anyone needing accommodations due to disabilities please contact the ADA Coordinator at 615-791-3277 at least 24 hours prior to the meeting.



Meeting Minutes

Capital Investment Committee

Thursday, February 22, 2024

3:30 PM

Board Room

CALL TO ORDER

Chair Brandy Blanton called the meeting to order at 03:31 PM

Board Members Present: Matt Brown, Greg Caesar, Beverly Burger, Brandy Blanton

Board Members Absent:

Staff Present: Eric Stuckey, Michelle Hatcher, Paul Holzen, Cayce Anderson

SETTING OF AGENDA

1. Consideration Of Changes In Agenda And Setting The Agenda

A. Proposed Changes

B. Approval Of Agenda As Submitted Or Changed

Sponsors:

A motion was made by Alderman Matt Brown, seconded by Alderman Beverly Burger to Set the Agenda as Submitted. The motion passed 4-0.

CITIZEN COMMENTS (Open for citizens to be heard on any issue or concern, including those related to items on the agenda. Please submit a Speaker Card at the beginning of the meeting if you would like to address the Board/Commission. If you would like to speak on an agenda item, the Chair will hold your comment until the public comment period associated with the item. As provided by law, Boards/Commissions shall make no decisions or consideration of action of citizen comments for items not on the agenda, except to refer the matter to the City Administrator/Staff for administrative consideration, or to a schedule the matter for consideration at a later date. Those addressing the Board/Commission are requested to come to the microphone and identify themselves by name and address for the official record. The Chair may restrict the period for public comment, including the length of the public comment period, the number of individuals who can speak and the length of time each individual may speak. When time allows, the standard individual public comment time is two minutes.)

Comments on agenda items may be made in person at City Hall or by emailing recorder@franklintn.gov before noon on the day of the meeting. Comments will be submitted for the record.

APPROVAL OF MINUTES

2. Consideration Of Approval Of Minutes

December 14, 2023 Capital Investment Committee Meeting

Sponsors:

A motion was made by Vice Chair Greg Caesar, seconded by Alderman Beverly Burger to Approve the December 14, 2023 Capital Investment Committee Meeting Minutes. The motion passed 4-0.

NEW BUSINESS

3. Election Of Chair And Vice Chair**Sponsors:**

This item was voted on at the December 14, 2023 Capital Investment Committee Meeting.

4. Consideration Of COF Contract No. 2023-0387, With C&T Engineering For Solids Process Optimization**Sponsors:** Michelle Hatcher

A motion was made by Alderman Matt Brown, seconded by Vice Chair Greg Caesar to Recommend Approval of the Contract to the Board of Mayor and Aldermen. The motion passed 4-0.

5. Consideration Of COF Contract No. 2024-0016, With Hazen And Sawyer For Professional Services Agreement For Construction Administration For The Downtown Area Infrastructure Improvements Project In The Amount Of \$586,700**Sponsors:** Michelle Hatcher, Brian Goodwin, Patricia McNeese

A motion was made by Alderman Matt Brown, seconded by Vice Chair Greg Caesar to Recommend Approval of the Contract to the Board of Mayor and Aldermen. The motion passed 4-0.

6. Consideration Of DRAFT Amendment 1 To COF Contract No. 2021-0283, A Professional Services Agreement With Lose Design For The Liberty Park Expansion Project At A Lump Sum Cost Increase Of \$28,500**Sponsors:** Paul Holzen, Jonathan Marston, Shahad Abdulrahman

A motion was made by Alderman Beverly Burger, seconded by Alderman Matt Brown to Recommend Approval of the Contract Amendment to the Board of Mayor and Aldermen. The motion passed 4-0.

7. Capital Projects Dashboard And Status Updates For February 2024**Sponsors:** Paul Holzen, Jonathan Marston

The item was acknowledged.

OTHER BUSINESS**ADJOURN**

A motion was made by Alderman Matt Brown, seconded by Vice Chair Greg Caesar to Adjourn the Meeting. The motion passed 4-0.

Meeting Adjourned @ 3:52 PM

Brandy Blanton, Chair

Minutes Prepared By Sarah Schilling, Assistant Deputy City Recorder, City Administrator's Office - 2/27/24, 9:54AM



File #: 21-06137

DATE: February 26, 2024
TO: Capital Investment Committee
FROM: Michelle Hatcher, Director of Water Management
Scott Andrews, Utilities Engineer II

SUBJECT:

Consideration To Deny Sewer Availability For 1109 Holly Hill Drive (Map 089P, Parcel 04200), 1113 Holly Hill Drive (Map 089P, Parcel 04000), 1201 Holly Hill Drive (Map 089P, Parcel 03700), 1111 Shannon Lane (Map 089P, Parcel 03300)

PURPOSE:

The purpose of this memo is to provide information to the Franklin Board of Mayor and Alderman (BOMA) concerning a recommendation for denial of a request for sewer availability for the above referenced properties.

BACKGROUND/STAFF COMMENTS:

Date of Request: 2/16/2024.
SFUE's Requested: 4.
Domestic Water Meter Size(s): $\frac{3}{4}$ ".

These properties are located in the Redwing Farms subdivision, outside of the City limits. The applicant has requested sewer service for four individual homes in this subdivision.

In 2021, the applicant applied for sewer service for 1115 Holly Hill Drive, wanting to use a grinder pump and force main to connect to existing City of Franklin sanitary sewer infrastructure at the end of Moonbay Drive, north of the property. The Water Management Department recommended the request be denied as it was not an orderly expansion of the sanitary sewer collection system and the sewer service would be required to cross another property to reach the receiving infrastructure. The use of a grinder pump for this home was approved by the Board for this home only, as a temporary solution, and the property owner was required to sign an annexation agreement and agree to participate in any future special assessment district or other mechanism used to provide a permanent solution to sewer the area as a whole. The Water Management Department was also asked by the Board to perform a small area study to determine how the area should be provided with City sanitary sewer service.

Later in 2021, the applicant applied for sewer service for 1107 Holly Hill Drive, again wanting to use a grinder pump and force main to provide sewer to the home. The Water Management Department

recommended denial, again, because this would not be an orderly expansion of the system, and in this case, the service would be required to cross multiple properties. The use of a grinder pump for this home was approved by the Board for this home only, as a temporary solution, and the property owner was required to sign an annexation agreement and agree to participate in any future special assessment district or other mechanism used to provide a permanent solution to sewer the area as a whole.

FINANCIAL IMPACT:

N/A

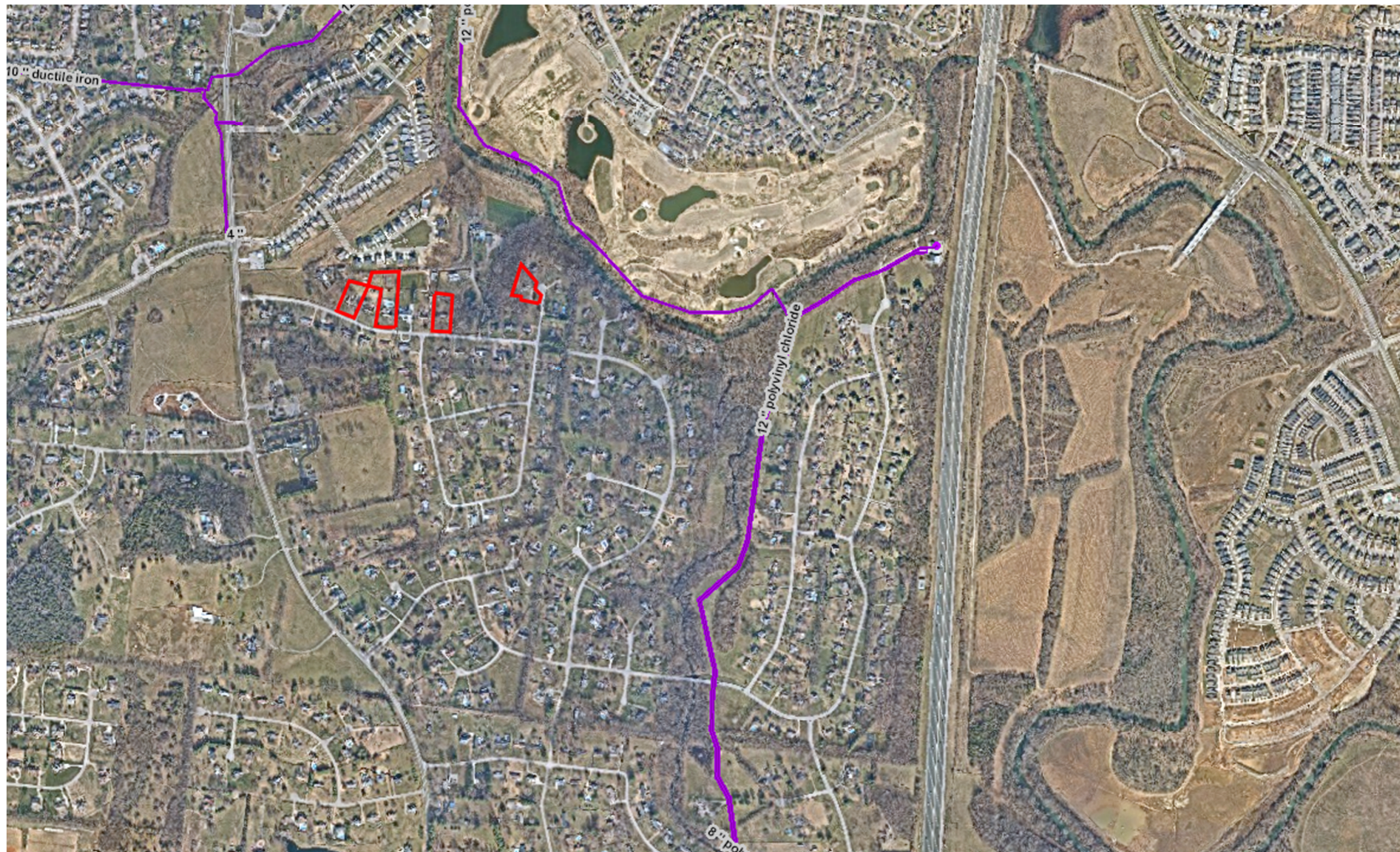
RECOMMENDATION:

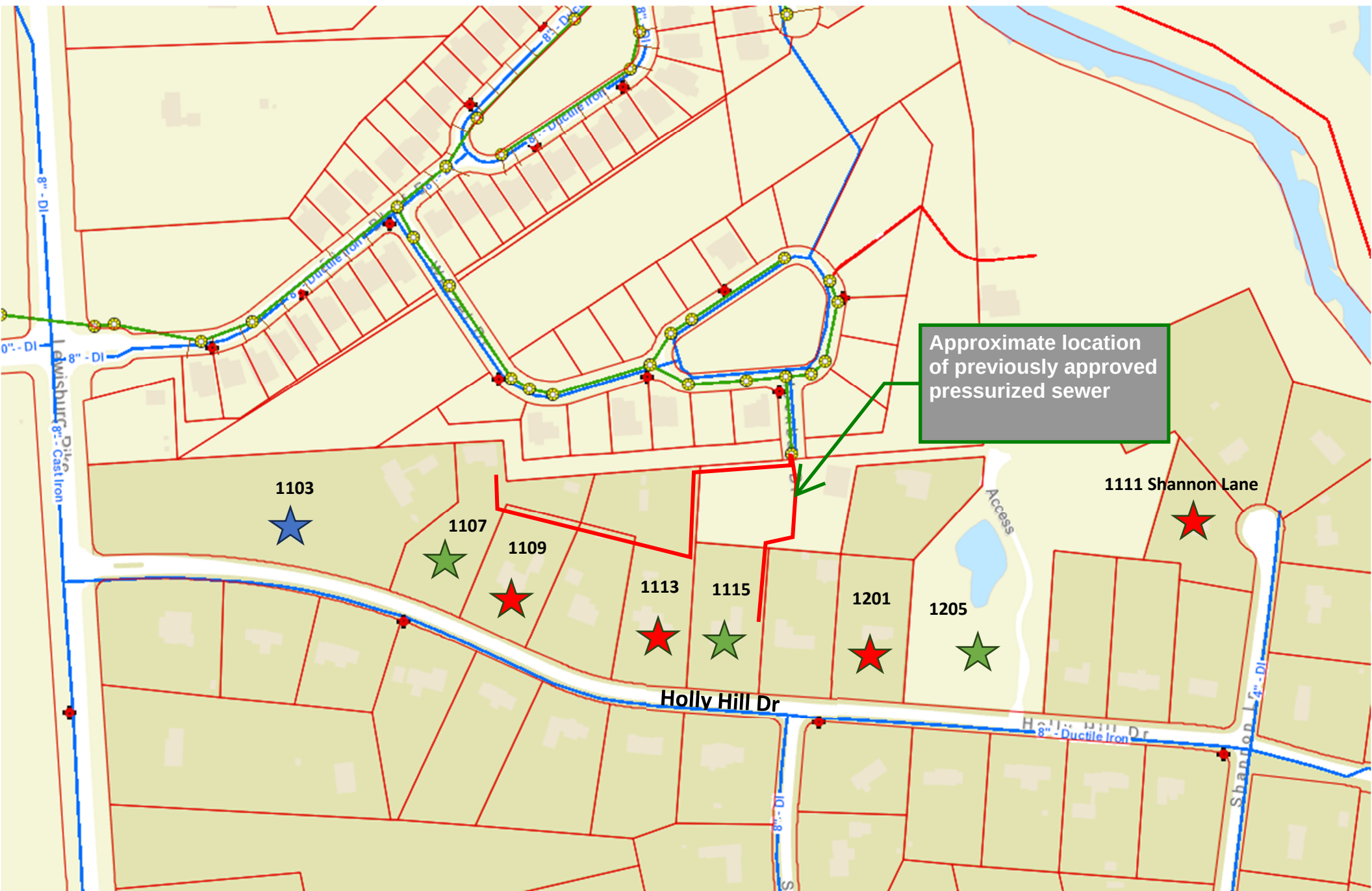
Staff recommends that these availability requests be denied. What was intended to be a temporary solution for one home and spread to two homes has the potential, if these availabilities are granted, to become a low-pressure sewer system for this area, but one that is constructed in a disjointed and unorganized fashion and in locations that only benefit the applicant, not the greater good of the City or this area. If the Board is amenable to providing sewer service to these properties, Water Management recommends the applicants be required to install the infrastructure required to serve the properties as identified in the small area study that was conducted for this area.

LOCATOR MAP



LOCATOR MAP (Aerial view)





★ Denied sewer ★ Approved sewer ★ Requesting sewer



Request for Water and/or Sewer Availability & Associated Costs

Please fill in the following information & return this form with the site plan per directions below. Incomplete forms will result in the request being returned until all of the information is included. Refer to the attached memo for fees and additional information.

Type of Availability Requested:		CHECK ALL THAT APPLY: ☐ Water ☒ Sewer	
Project Name & Subdivision, Section, Lot #	Lot 2 Redwing Farms/ Section 1		
Map & Parcel(s) #	Tax Map 089P - Group A - Parcel 04200		
Property Address:	1109 Holly Hill Drive		
City Project # (If Applicable)	TBD		
# of Dwelling Units (If Residential)	1		
Applicant's Name & Company	1109 Holly Hill Driv Rev Land Trust		
Applicant's Address	1537 Franklin Road, Brentwood, TN 37027		
Applicant's Email & Phone #			
Anticipated Water Meter Size(s) (see chart on pg. 3).	3/4 " Domestic		
Water District:	City of Franklin		
Sewage Flow Calculations: Use the City of Franklin projected flow examples sheet –pg.4 350 GPD/HOUSE			
<i>use additional sheets as necessary</i>			
Anticipated sewage flows: Information Required for Sewer Service		350 GPD	
If County is requiring this request please indicate if you are requesting an approval or denial:	☐ DENY my Request ☒ APPROVE my request <i>*approval or denial is approved by BOMA, indication here is not a guarantee for approval or denial*</i>		

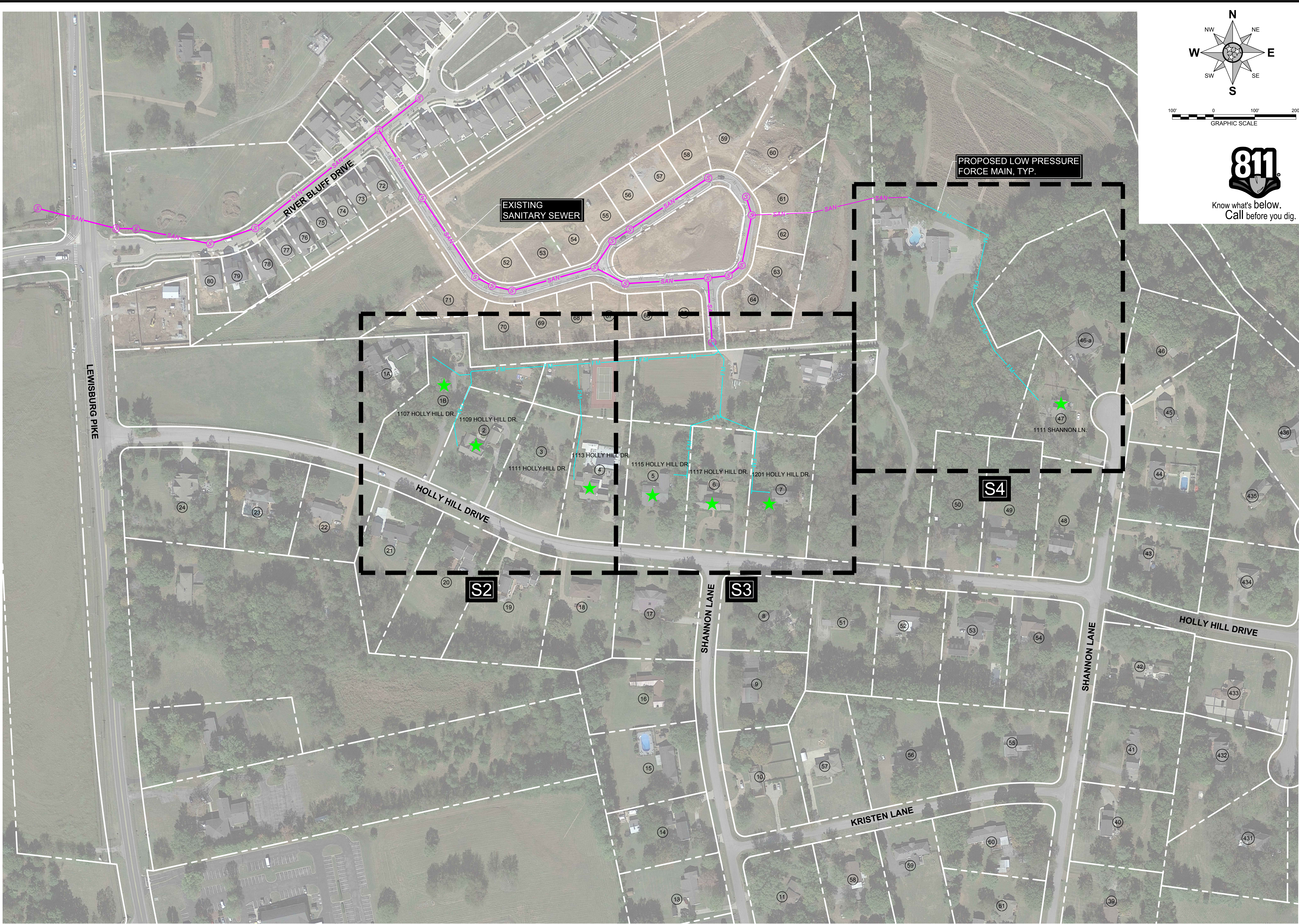
MUST SUBMIT A LOCATION MAP (FOR EX: GOOGLE MAP)

Email Application to: availability@franklintn.gov

For additional information or questions please call: 615-794-4554

Date Submitted: 2/16/2024

REDWING - SEWER STUDY - OVERALL DWG / Thursday, February 15, 2024 9:40:38 AM



100' 0 100' 200'
GRAPHIC SCALE

Know what's below.
Call before you dig.

OVERALL SANITARY SEWER EXHIBIT

DATE: FEBRUARY, 2024
PROJECT NO.:

DRAWN BY: NEL
CHECKED BY: MWB

SHEET NUMBER:
S1

REDWING FARMS SUBDIVISION
CITY OF FRANKLIN
WILLIAMSON COUNTY, TENNESSEE

EXHIBIT FOR:
REDWING FARMS SUBDIVISION
CITY OF FRANKLIN
WILLIAMSON COUNTY, TENNESSEE

DESCRIPTION

REVISION #

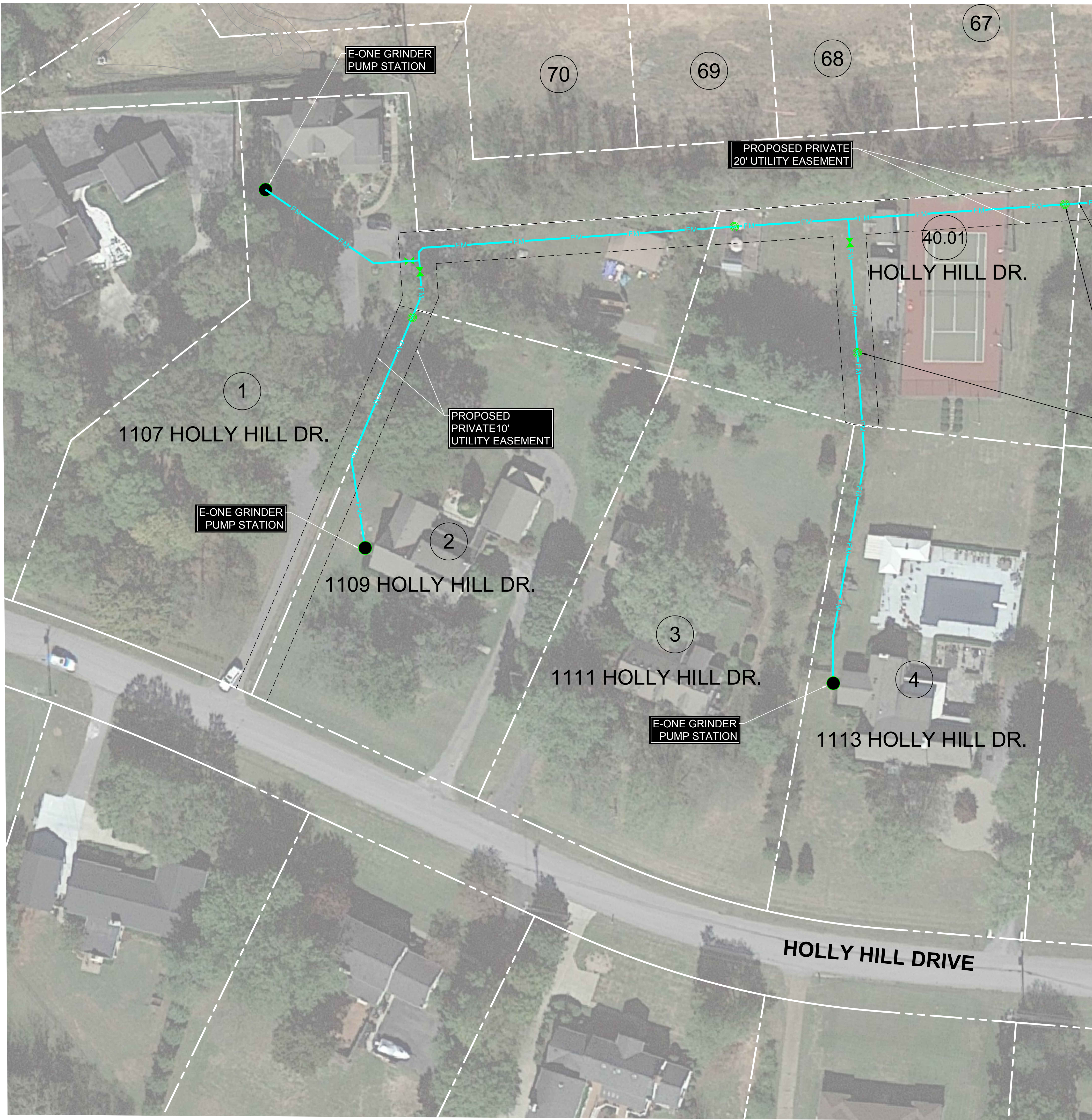
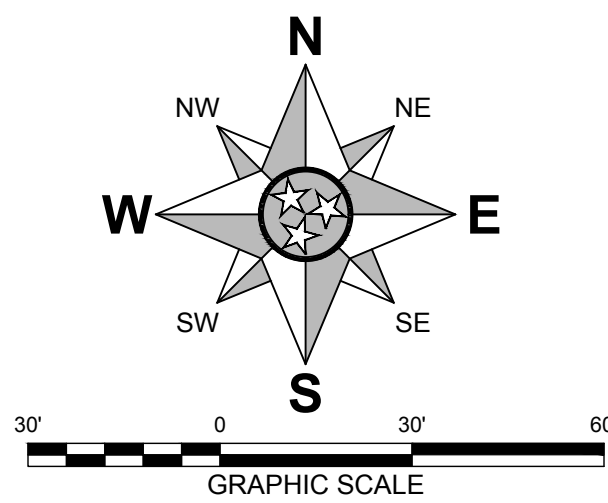
DATE

DATE: FEBRUARY, 2024
PROJECT NO.:

DRAWN BY: NEL
CHECKED BY: MWB

SHEET NUMBER:
S1

REDWING - 1107 HOLLY HILL DRIVE SEWER SERVICE Dwg / Thursday, February 15, 2024 9:40:59 AM



PROPOSED PRIVATE 1-1/4" PVC SDR21 LOW PRESSURE FORCE MAIN FOR SEWER SERVICE CONNECTION

INSTALL IN-LINE FLUSHING CONNECTION, TYP. EVERY 200'±

REVISION #	DATE	DESCRIPTION



EXHIBIT FOR:
REDWING FARMS SUBDIVISION
1107 HOLLY HILL DRIVE
CITY OF FRANKLIN
WILLIAMSON COUNTY, TENNESSEE



DATE:	PROJECT NO.:	DRAWN BY:	CHECKED BY:	NEL	MWB
FEBRUARY, 2024	24-018	NEL	MWB		

SHEET NUMBER:
S2



Request for Water and/or Sewer Availability & Associated Costs

Please fill in the following information & return this form with the site plan per directions below. Incomplete forms will result in the request being returned until all of the information is included. Refer to the attached memo for fees and additional information.

Type of Availability Requested:		CHECK ALL THAT APPLY: ☐ Water ☒ Sewer	
Project Name & Subdivision, Section, Lot #	Lot 4 Redwing Farms/ Section 1		
Map & Parcel(s) #	Tax Map 089P - Group A - Parcel 04000		
Property Address:	1113 Holly Hill Drive		
City Project # (If Applicable)	TBD		
# of Dwelling Units (If Residential)	1		
Applicant's Name & Company	Jonas & Ann Crockett Hale Rodriguez		
Applicant's Address	1113 Holly Hill Drive, Franklin, TN 37064		
Applicant's Email & Phone #			
Anticipated Water Meter Size(s) (see chart on pg. 3).	3/4 " Domestic		
Water District:	City of Franklin		
Sewage Flow Calculations: Use the City of Franklin projected flow examples sheet –pg.4 350 GPD/HOUSE			
<i>use additional sheets as necessary</i>			
Anticipated sewage flows: Information Required for Sewer Service		350 GPD	
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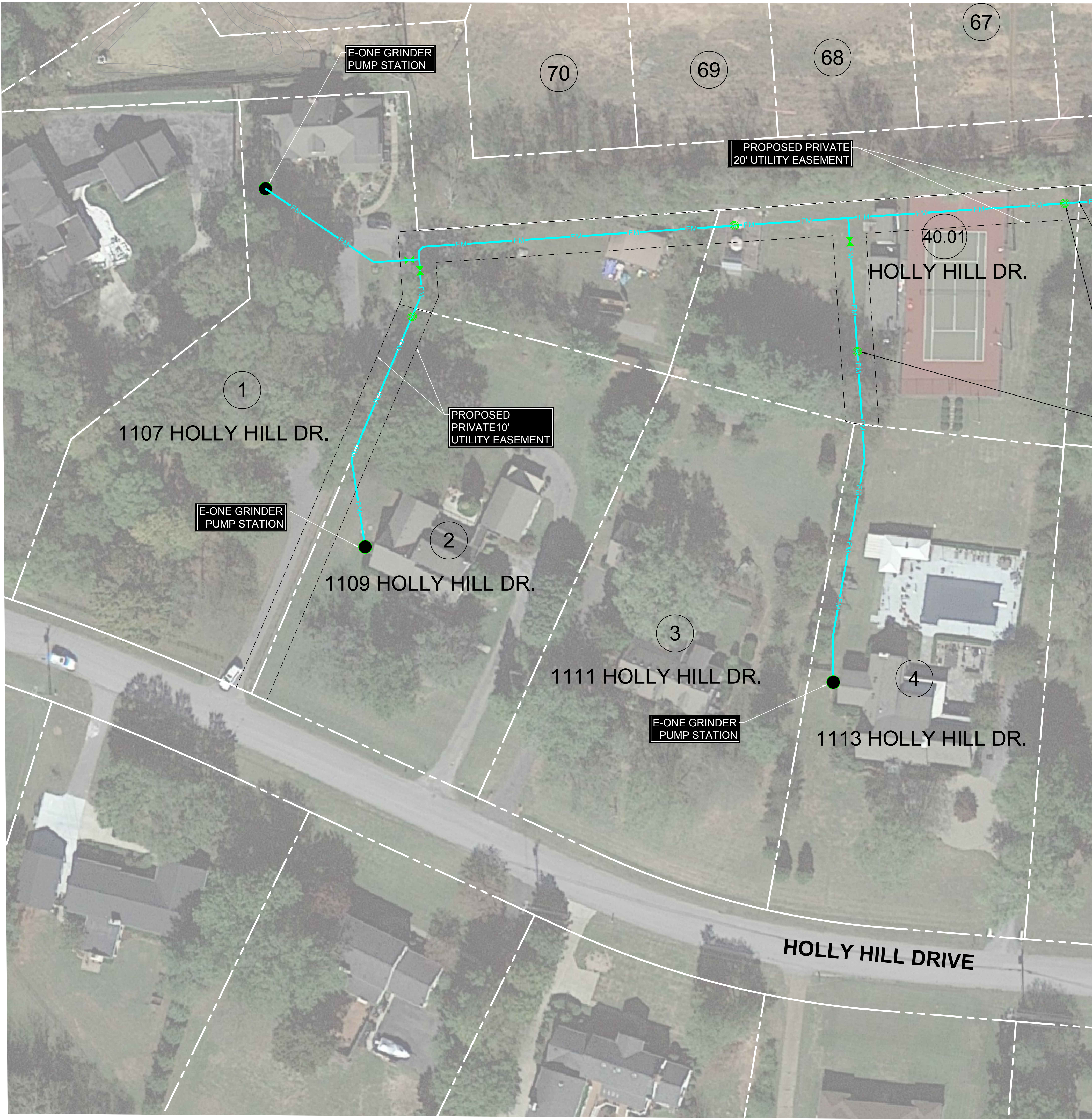
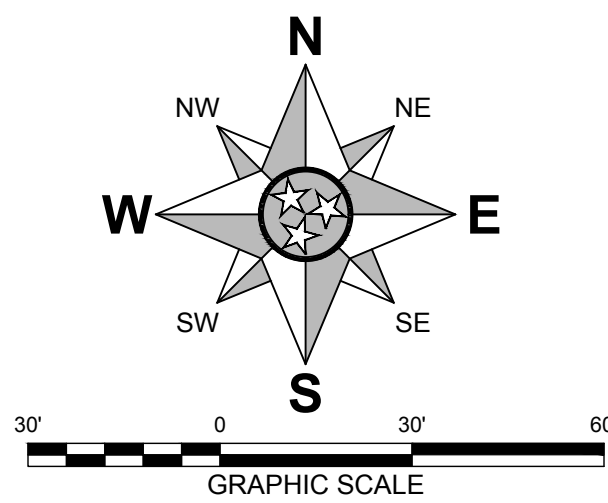
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Email Application to: availability@franklintn.gov

For additional information or questions please call: 615-794-4554

Date Submitted: 2/16/2024

REDWING - 1107 HOLLY HILL DRIVE SEWER SERVICE Dwg / Thursday, February 15, 2024 9:40:59 AM



REVISION #	DATE	DESCRIPTION



EXHIBIT FOR:
REDWING FARMS SUBDIVISION
1107 HOLLY HILL DRIVE
CITY OF FRANKLIN
WILLIAMSON COUNTY, TENNESSEE



DATE:	PROJECT NO.:	DRAWN BY:	CHECKED BY:	NEL	MWB
FEBRUARY, 2024	24-018	NEL	MWB		

SHEET NUMBER:
S2



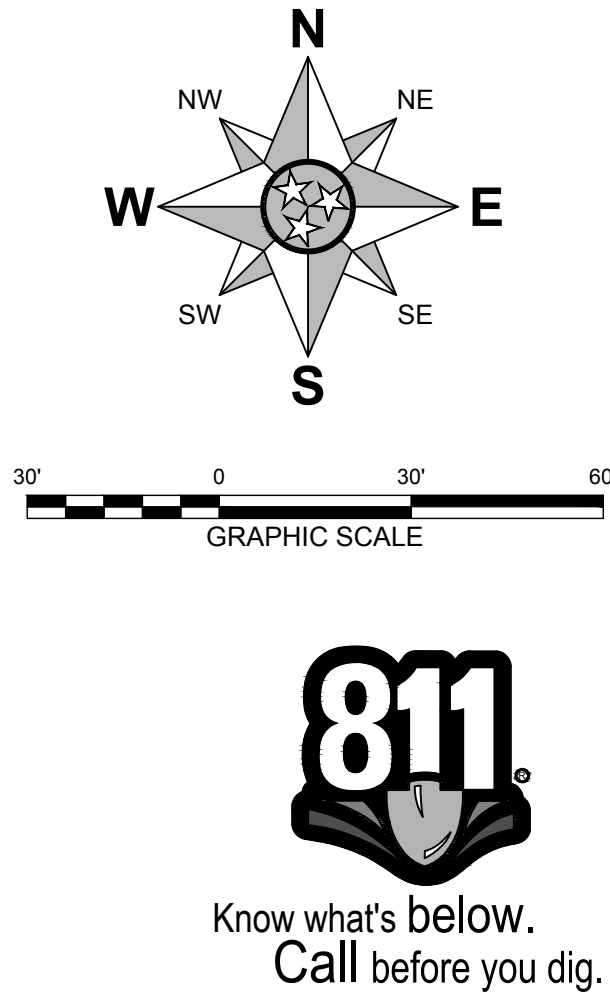
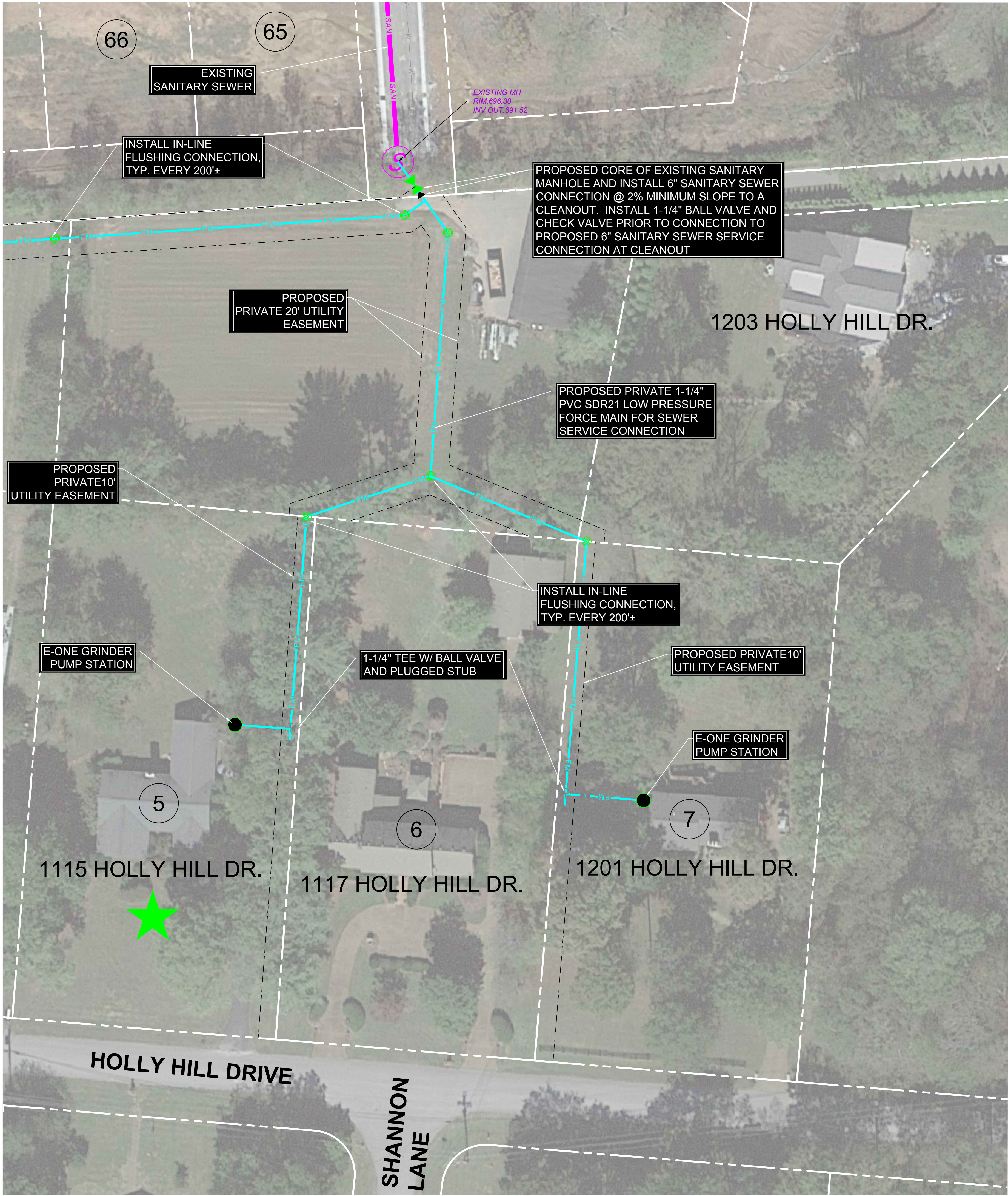
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MUST SUBMIT A LOCATION MAP (FOR EX: GOOGLE MAP)

Email Application to: availability@franklintn.gov

For additional information or questions please call: 615-794-4554

Date Submitted: 2/16/2024



REVISION		DESCRIPTION
REVISION #	DATE	

MATTHEW W. BRYNANT
AGRICULTURE
PROGRESSIVE
CITY OF FRANKLIN
STATE OF TENNESSEE

EXHIBIT FOR:
REDWING FARMS SUBDIVISION
1115 HOLLY HILL DRIVE
CITY OF FRANKLIN
WILLIAMSON COUNTY, TENNESSEE

M2 GROUP
P.O. BOX 2543
BRENTWOOD, TN 37024-2543
WWW.M2GROUP.LLC.COM

SANITARY SEWER SERVICE PLAN

DATE: FEBRUARY, 2024	DRAWN BY: NEL
PROJECT NO.: 24-018	CHECKED BY: MWB

SHEET NUMBER:
S3



Request for Water and/or Sewer Availability & Associated Costs

Please fill in the following information & return this form with the site plan per directions below. Incomplete forms will result in the request being returned until all of the information is included. Refer to the attached memo for fees and additional information.

Type of Availability Requested:		CHECK ALL THAT APPLY: ☐ Water ☒ Sewer	
Project Name & Subdivision, Section, Lot #	Lot 47 Redwing Farms/Section 3		
Map & Parcel(s) #	Tax Map 089P - Group A - Parcel 03300		
Property Address:	1111 Shannon Lane		
City Project # (If Applicable)	TBD		
# of Dwelling Units (If Residential)	1		
Applicant's Name & Company	Tennessee Valley Homes, Inc.		
Applicant's Address	127 Southeast Parkway Ct., Franklin, Tn 37064		
Applicant's Email & Phone #	Moore@Tennesseevalleyhomes.com 615-794-7415		
Anticipated Water Meter Size(s) (see chart on pg. 3).	3/4 " Domestic		
Water District:	City of Franklin		
Sewage Flow Calculations: Use the City of Franklin projected flow examples sheet –pg.4 350 GPD/HOUSE			
<i>use additional sheets as necessary</i>			
Anticipated sewage flows: Information Required for Sewer Service		350 GPD	
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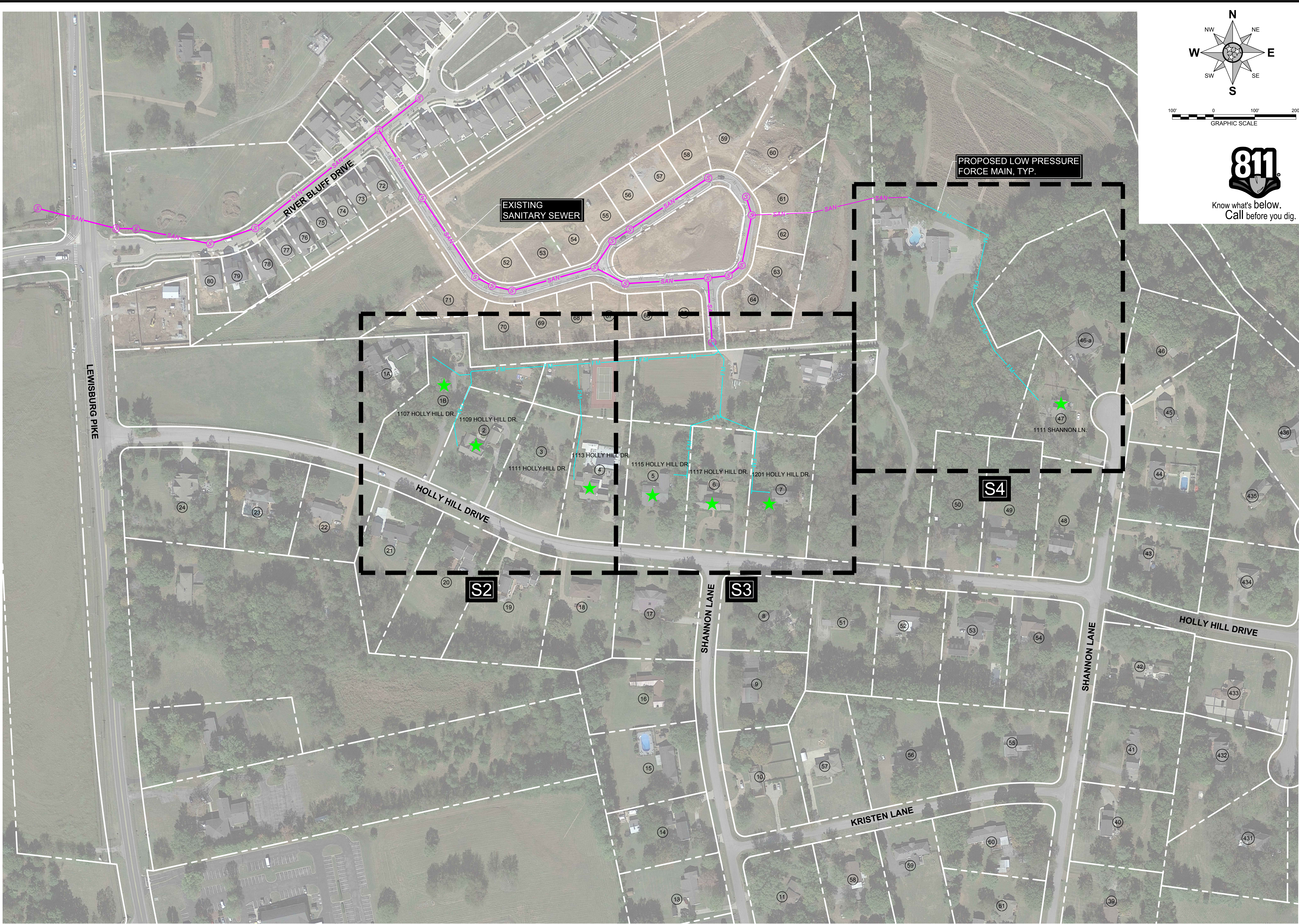
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For additional information or questions please call: 615-794-4554

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REDWING - SEWER STUDY - OVERALL DWG / Thursday, February 15, 2024 9:40:38 AM



100' 0 100' 200'
GRAPHIC SCALE

OVERALL SANITARY SEWER EXHIBIT

DATE: FEBRUARY, 2024
PROJECT NO.:

DRAWN BY: NEL
CHECKED BY: MWB

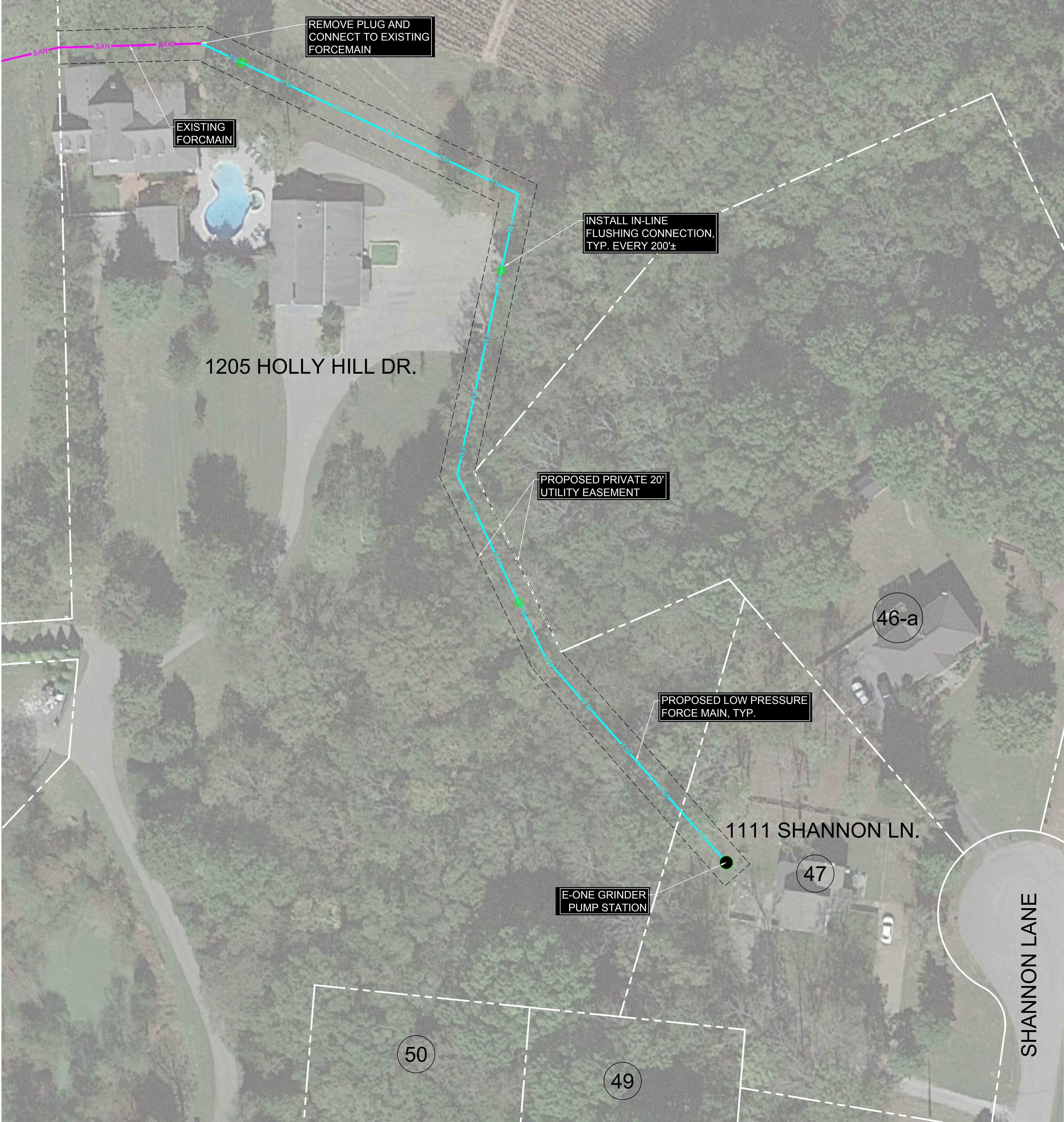
SHEET NUMBER:
S1

REDWING FARMS SUBDIVISION
CITY OF FRANKLIN
WILLIAMSON COUNTY, TENNESSEE

MATTHEW W. BRYAN
AGRICULTURE
SUMMER RANCH
GOVERNOR
STATE OF TENNESSEE

EXHIBIT FOR:
REDWING FARMS SUBDIVISION

DESCRIPTION:
DATE:
REVISION #:



30 0 30 60
GRAPHIC SCALE

Know what's below.
Call before you dig.

REVISION #		DATE	DESCRIPTION

811

Know what's below.
Call before you dig.

EXHIBIT FOR:

REDWING FARMS SUBDIVISION

1111 HOLLY HILL DRIVE

CITY OF FRANKLIN

WILLIAMSON COUNTY, TENNESSEE

MZ GROUP

P.O. BOX 2543

BRENTWOOD, TN 37024-2543

WWW.MZGROUP.LLC.COM

SANITARY SEWER
SERVICE PLAN

DATE: FEBRUARY, 2024

PROJECT NO.: 24-018

DRAWN BY: NEL

CHECKED BY: MWB

S4

Page 21 of 277



File #: 21-06102

DATE: February 21, 2024
TO: Capital Investment Committee
FROM: Paul Holzen, Director of Engineering
Jeff Willoughby, Stormwater Coordinator

SUBJECT:

Consideration Of Ordinance 2023-37, An Ordinance To Amend Title 23 Of the City Of Franklin Municipal Code To Revise Definitions, Clarify Requirements, And To Correct Grammatical And Typographical Errors In The Stormwater Management Ordinance

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning updates to Title 23 Stormwater Management Ordinance.

BACKGROUND/STAFF COMMENTS:

Franklin Municipal Code Title 23 Stormwater Management Ordinance sets requirements related to the City's MS4 permit to allow storm water discharges to receiving water resources, as well as the City's Stormwater Management Program. Title 23 has not been updated since 2017 (Ordinance 2017-41;current ordinance) and staff wishes to revise definitions, clarify requirements, and correct grammatical and typographical errors where needed.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends that Ordinance 2023-37 be recommended to the Board of Mayor and Aldermen for approval.

ORDINANCE 2023-37

AN ORDINANCE TO AMEND TITLE 23 OF THE CITY OF FRANKLIN MUNICIPAL CODE TO REVISE DEFINITIONS, CLARIFY REQUIREMENTS, AND TO CORRECT GRAMMATICAL AND TYPOGRAPHICAL ERRORS IN THE STORMWATER MANAGEMENT ORDINANCE.

WHEREAS, for the purpose of promoting the public health, safety, comfort, convenience, and general welfare of the people of Franklin, Tennessee the Board of Mayor and Aldermen is authorized to prescribe regulations and standards that encourage and advance the quality of life within the City; and

WHEREAS, the Board of Mayor and Aldermen desires to prescribe regulations and standards to manage Stormwater runoff within the City to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and the Tennessee Water Quality Control Act of 1977 as amended; and

WHEREAS, the City of Franklin's Stormwater program meets the minimum standards of the General NPDES Permit for Discharges of Stormwater Associated with Construction Activities; and

WHEREAS, the State of Tennessee has approved the City to participate as a Qualified Local Program allowing the City to administer the General NPDES Permit for Discharges of Stormwater Associated with Construction Activities; and

WHEREAS, the City of Franklin desires to exceed MS4 control measures, where practicable, beneficial, and economical, to provide a high quality of life and clean water to its citizens; and

WHEREAS, the Board of Mayor and Aldermen desire to clarify certain subsections of this Title and correct grammatical and typographical errors.

NOW, THEREFORE:

SECTION 1: BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that Title 23 of the Franklin Municipal Code – Stormwater Management – is hereby deleted in its entirety and replaced with the following:

TITLE 23 - STORMWATER MANAGEMENT

CHAPTER 1. - STORMWATER MANAGEMENT

Sec. 23-101. - Title and purpose.

This Title shall be known as the "Stormwater Management Ordinance" for the City of Franklin, Tennessee it is the purpose of this Chapter to:

- (a) Protect, maintain, and enhance the environment of the City of Franklin, Tennessee, and the public health, safety and the general welfare of the citizens, by controlling discharges of Pollutants to the City's Stormwater system and to maintain and improve the quality of the receiving Water Resources into which the Stormwater outfalls flow.
- (b) Enable the City of Franklin, Tennessee, to comply with the NPDES Permit and applicable regulations for Stormwater discharges.

- (c) Manage the manner in which Stormwater is addressed in areas of new Development and Redevelopment through the course of Construction and post-Construction to maintain or benefit water quantity, water quality, and the effects on the quality of life and character of the City of Franklin, Tennessee. This Ordinance sets general policy, minimum requirements and standards, and Stormwater management program direction and is supported and enforced through other more detailed regulations, design criteria, and other accepted materials.

Sec. 23-102. - Jurisdiction.

- (1) This Title shall govern all properties within the corporate limits of the City of Franklin, Tennessee.
- (2) Exemptions:
 - (a) Agricultural land management activities shall be exempt from the provisions of this Chapter. Land Disturbances or discharges related to the Development or Redevelopment of Structures, Buildings, roads, and other impervious related areas shall not be exempt from EPSC practices or Stormwater quantity requirements set forth in this Title. Neither can this Title exempt any person(s) or properties from State or Federal requirements. Agriculture is not exempt from point-source pollution discharges unless authorized by an NPDES permit.
 - (b) Any Development or Redevelopment which meets all of the following conditions shall be exempt from having to obtain a Stormwater permit and Grading Permit and shall be exempt from having to comply with Riparian Buffer, Peak Runoff control and Green Infrastructure - runoff reduction requirements of this Title unless otherwise determined by the City Engineer. All other requirements set forth in Title 23 shall apply:
 - (i) Involves less than 10,000 square feet of Land Disturbance.
 - (ii) Involves less than 5,000 square feet of additional or modified existing Impervious Surface.
 - (iii) Development that is not part of a larger common Development or contiguous properties that may have been subdivided.
- (3) Critical lots as defined in the City's Zoning Ordinance
- (4) Critical Drainage Areas as determined by the City Engineer. This may exclude areas deemed by the City Engineer to be private drainage issues.
- (5) Single lot single family residences that add 5,000 square feet Impervious Surface or 10,000 square feet of Land Disturbance shall meet the City's Single Family BMP Manual requirements unless otherwise determined by the City Engineer.

Sec. 23-103. - Definitions.

For the purpose of this Chapter, unless specifically defined below, words or phrases shall be interpreted to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary. and to give this Title its most effective application. Words in the singular shall include the plural, and words in the plural shall include the singular. Words used in the present tense shall include the future tense. The word "shall" denotes mandatory and not discretionary; the word "may" is permissive. The following definitions shall apply in the interpretation of this Title and in any regulations promulgated hereunder, unless specifically stated otherwise:

- (1) *Active Construction Sites.* Any Site that has a permit for Grading, Stormwater or other activities (even if actual Construction is not proceeding) and any Site where Construction is occurring regardless of permits required.
- (2) *Agriculture.* means:
 - (a) The land, Buildings and machinery used in the commercial production of farm products and nursery stock.

- (b) The activity carried on in connection with the commercial production of farm products and nursery stock.
- (c) Recreational and educational activities on land used for the commercial production of farm products and nursery stock.
 - (i) As used in this definition of Agriculture, the term “farm products” means forage and sod crops; grains and feed crop; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; forestry products; fish and other aquatic animals used for food; bees; equine; and all other plants and animals that produce food, feed, fiber or fur.
 - (ii) As used in this definition of Agriculture, the term “nursery stock” means all trees, shrubs, or other plants grown or kept for, or capable of, propagation, distribution, or sale on a commercial basis.
- (3) *Appeal*. A request for a review of the City Engineer's interpretation of any provision of these regulations.
- (4) *Best Management Practice* or *BMP*. Practices or a combination of practices that are the most effective and practicable (including technological, economic, and institutional considerations) means of controlling Pollutants at levels compatible with environmental quality goals. This includes schedules of activities, prohibitions of practices, Maintenance procedures, and other management practices to prevent or reduce pollution of Water Resources. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage. Also known as Stormwater Control Measures (SCM)
- (5) *Bridge*. A manmade Structure spanning and providing passage over a waterway to allow for the conveyance of Stormwater flows. Spans of 10 feet or more are considered a Bridge.
- (6) *Building*. Any Structure built for support, shelter, or enclosure for any occupancy or storage.
- (7) *Channel*. A natural or artificial watercourse of perceptible extent, with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow is that water which is flowing within the limits of the defined Channel.
- (8) *City*. The City of Franklin, Tennessee.
- (9) *City Engineer*. Refers to the City of Franklin, City Engineer who has the authority to delegate to designated staff.
- (10) *Clearing*. The removal of vegetation or disturbance of Soil. Removal of vegetation may be by cutting, clipping, or uprooting.
- (11) *Climax Successional Vegetation*. The native plant community that would become established on a Site if all successional sequences were completed without interferences by man under the present environmental conditions. Natural disturbances are inherent in its development.
- (12) *Compensatory Cut*. Excavated volume of material below the Floodplain elevation required to offset Fill in the Floodplain.
- (13) *Construction*. The process or act of erecting, building, repairing, remodeling, improving, demolishing, altering or modifying a Structure, road, utility, Bridge, or infrastructure.
- (14) *Culvert*. A manmade conveyance of Stormwater flows. This may include a pipe or other constructed conveyance of less than 20 feet.
- (15) *Cross-drain*. A Culvert used to convey flow under a road or other obstruction between Channels or surface flow.
- (16) *Critical Area*. A Site subject to Erosion or Sedimentation as a result of Clearing, cutting, Filling,

Grading, or other disturbance of the Soil; a Site difficult to stabilize due to exposed subsoil, steep Slope, extent or exposure, and other conditions.

- (17) *Critical Drainage Areas*. Areas throughout the City in which there are current or historical drainage issues resulting from lack of Stormwater Management Features or infrastructure.
- (18) *Critical Service Roads*. Designated City evacuation routes or other access to facilitate police, fire, and emergency medical services to all existing and proposed Structures.
- (19) *Cut*. Portion of land surface or area from which earth has been removed or will be removed by Excavation; the depth below original ground surface to the excavated surface.
- (20) *Detention*. The temporary delay of storm runoff prior to discharge into receiving waters.
- (21) *Developer*. Any individual, firm, corporation, association, partnership, trust, or authorized agents involved in commencing proceedings to effect Development of land for him/her or others.
- (22) *Development*. Any manmade change to improved or unimproved real estate, including, but not limited to, Buildings or other Structures, mining, dredging, Filling, Grading, paving, excavating, drilling operations, or permanent storage of materials (as defined as materials of like nature stored in whole or in part for more than six months).
- (23) *Drainage Well*. A bored, drilled, driven, dug, or naturally occurring shaft or hole with a depth greater than the largest surface dimension, used to drain surface fluid, primarily storm runoff, into a subsurface or karst formation. Also known as "dry well" or "sinkhole."
- (24) *Ecological Integrity*. The quality of a natural unmanaged or managed ecosystem in which the natural ecological processes are sustained, with genetic species diversity and ecosystem diversity assured for the future.
- (25) *Engineer or Professional Engineer*. An Engineer duly registered, licensed, or otherwise authorized by the State of Tennessee to practice in the field of civil engineering.
- (26) *EPSC*. Erosion Prevention/Sediment Control; see "Erosion Prevention" and "Sediment Control."
- (27) *Erosion*. The removal of Soil particles by the action of water, wind, ice, or other geological agents, whether naturally occurring or acting in conjunction with or promoted by human activities or effects.
- (28) *Erosion Prevention*. Practices implemented to prevent, through shielding, binding, or other mechanism(s), the suspension of Soil particles, often associated with Erosion Prevention and Sediment Control.
- (29) *Excavation*. See "Cut."
- (30) *Exotic Invasive Vegetation*. Vegetation that has been introduced from other regions and compete so successfully against native plants that they can crowd out their competitors, thus providing a monoculture that discourages the growth of native plant species.
- (31) *Facility*. Something that is built, installed, or established to serve a particular purpose that makes an action, operation, or activity possible.
- (32) *Fill*. Portion of land surface or area to which Soil, rock, or other materials have been or will be added; height above original ground surface after the material has been or will be added.
- (33) *Flood or Flooding*.
 - (a) Water from a channel, ditch, river, Stream, watercourse, lake, or other body of standing water that temporarily overflows and inundates adjacent lands, and which may affect other lands and activities through increased surface water levels and/or increased groundwater levels.
 - (b) Accumulation of water in areas as a result of increased runoff from upstream or downstream runoff.

- (34) *Floodplain*. The relatively flat or lowland area adjoining a river, Stream, watercourse, lake, or other body of standing water, which has been or may be covered temporarily by Flood water. For purposes of this Title, the Floodplain is defined as the 100-year Floodplain having a one-percent chance of being equaled or exceeded in any given year.
- (35) *Floodway*. That portion of the Stream Channel and adjacent Floodplain required for the passage or conveyance of a 100-year Flood discharge. The Floodway boundaries are placed to limit encroachment in the Floodplain so that a discharge can be conveyed through the Floodplain without materially increasing (less than one foot) the water surface elevation at any point and without producing hazardous velocities or conditions. This is the area of significant depths and velocities, and due consideration should be given to effects of Fill, loss of cross-sectional flow area and resulting increased water surface elevations.
- (36) *Functionally Dependent Facility*. A Facility that cannot be used for its intended purpose unless it is located or carried out in proximity to water, such as a docking or port Facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.
- (37) *Grading*. Any operation or occurrence by which the existing Site elevations are changed; or where any ground cover, natural or manmade, is removed; or any watercourse or body of water, either natural or manmade, is relocated on any Site, thereby creating an unprotected area. This includes Stripping, Cutting, Filling, stockpiling, or any combination thereof, and shall apply to the land in its Cut or Filled condition. Grading activities may only be performed with a Stormwater Management Permit and Grading Permit.
- (38) *Grading Permit*. A permit issued by the City Engineer that allows Grading on a parcel in accordance with this Title.
- (39) *Green Infrastructure*. The interconnected network of natural areas and other open spaces that conserves natural ecosystem values and functions, sustains clean air and water, and provides environmental and community benefits.
- (40) *Green Infrastructure Practices*. Management measures that are designed, built and maintained to infiltrate, evapotranspire, harvest and/or use rainwater through the use of natural hydrologic features.
- (41) *Green Infrastructure Easements (GIE)* are exclusive easements defining areas set aside for the Construction, Maintenance, repair, monitoring, and other activities necessary for the furtherance of water quality features designated as Green Infrastructure Practices by the City of Franklin, and to provide public access to such features.
- (42) *Greenways*. Linear undeveloped areas linking various types of Development by such facilities as bicycle paths, footpaths, and bridle paths. Greenways are usually kept in their natural state except for the pathway and areas immediately adjacent to the pathway.
- (43) *Hot Spot*. An area where land use or activities generate highly contaminated runoff, with concentrations of Pollutants in excess of those typically found in Stormwater. Examples include, but are not limited to, operations producing concrete or asphalt, auto repair shops, auto supply shops, large commercial parking areas, and restaurants.
- (44) *Illicit Connections*. Any drain or conveyance, whether on the surface or subsurface, which allows an Illicit Discharge to enter the MS4, including, but not limited to, any conveyances which allow any non-Stormwater discharge including sewage, process wastewater, and wash water to enter the MS4 and any connections to the MS4 from indoor drains and sinks. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by the City.
- (45) *Illicit Discharge*. Any discharge that is not entirely composed of Stormwater, except discharges authorized under an NDPES permit (other than the NPDES permit for discharges from the MS4)

and discharges resulting from firefighting activities.

- (46) *Impaired Waters*. Any segment of surface waters that has been identified by the Tennessee Department of Environment and Conservation (TDEC) as failing to support classified uses. The TDEC periodically compiles a list of such waters known as the "303(d) List."
- (47) *Impervious Surface*. A term applied to any ground or Structures surface that water cannot penetrate or through which water penetrates with great difficulty. Examples of Impervious Surfaces are, but not limited to the following: concrete, asphalt, wood, compacted gravel, rock, and metal surfaces.
- (48) *Land Disturbance*. Any tilling, digging, Grading, excavating, turning, or removal of Soil; grubbing, cutting, Clearing, or other removal of vegetation shall also be considered Land Disturbance.
- (49) *Land Surveyor*. A Land Surveyor duly registered, licensed, or otherwise authorized by the State of Tennessee to practice in the field of land surveying.
- (50) *Limited Areas*. Areas as defined by the City Engineer that Riparian Buffer Averaging may be applied.
- (51) *Inspection and Maintenance Agreement (IMA)*. A document recorded in the landrecords that acts as a property deed restriction, and which provides for long-term Maintenance of Stormwater Management Features.
- (52) *Long-Term Maintenance Plan (LTMP)*. A document that is attached to the Inspection and Maintenance Agreement that details specific instruction for Maintenance of Stormwater Management Features on-Site.
- (53) *Maintenance*. Any activity that is necessary to keep a Stormwater Management Feature in good working order so as to function as designed. Maintenance shall include complete reconstruction of a feature if reconstruction is needed in order to restore the feature to its original operational design parameters. Maintenance shall also include the correction of any problem on the Site property that may directly impair the functions of the feature.
- (54) *Master Plan*. Any study or plan prepared by or accepted by the City of Franklin that identifies solutions to water quantity or quality problems. Also known as basin study or plan, Flood management study or plan, or water quality management study or plan.
- (55) *Modified Existing Impervious Surface*. Any existing Impervious Surface, which is included with a Sites limits of disturbance as part of a newly proposed Development or Redevelopment, in which Land Disturbance is intended to occur.
- (56) *Mowing*. The act of cutting or removing vegetation by means of a lawn mower, tractor, or handheld mechanical or manual trimming or removal device.
- (57) *Municipal Separate Storm Sewer System (MS4)*. A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade Channels, or storm drains) that are:
 - a. Owned or operated by a State, City, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, Stormwater, or other wastes, including special districts under State law such as a sewer district, Flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (CWA) that discharges to Waters of the State;
 - b. Designed or used for collecting or conveying Stormwater;
 - c. Which is not a combined sewer;
 - d. Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.
- (58) *Native Vegetation*. The normal vegetation that grows or would reestablish normally after a

disturbance. This does not include Exotic Invasive Vegetation.

- (59) *New Construction*. Structures for which the "start of Construction" commenced on or after the effective date of these regulations. The term also includes any subsequent improvements to such Structures.
- (60) *National Pollution Discharge Elimination System (NPDES) MS4 Phase II program*. A comprehensive program to manage the quality of Stormwater discharged from the MS4 of small communities.
- (61) *Notice of Coverage or NOC*. Notice from the City to the initial Site-wide primary Permittee informing the applicant that the NOI, the SWPPP and application fee were received and accepted, and Stormwater discharges from a specified area of a Construction activity have been approved under the State of Tennessee's General NPDES Permit for Discharges of Stormwater associated with Construction activity.
- (62) *Notice of Intent*. A notice given to the City's Engineering department to obtain coverage by the State of Tennessee's General NPDES Permit for discharges of Stormwater associated with Construction activities.
- (63) *Notice of Termination*. A notice given to the City's Engineering Department to terminate a Stormwater and *Grading Permit* and terminate coverage by the State of Tennessee's General NPDES Permit for discharges of Stormwater associated with Construction activities.
- (64) *100-Year Flood, 100-Year Flood Event, 100-Year Floodplain*. A Flood that has an average frequency of occurrence of once in 100 years, determined from an analysis of Floods on a particular watercourse and other watercourses in the same general region. Statistically, it has a one-percent chance of occurring in any given year.
- (65) *Operator*. As used in this Title, Operator shall be as defined by the State of Tennessee's Construction General Permit.
- (66) *Passive Recreation*. Recreation activities that require limited physical exertion on behalf of the participant. Examples of Passive Recreation activities include bird watching, walking, or photography.
- (67) *Peak Runoff*. The maximum instantaneous rate of flow of water at a particular point resulting from a storm event.
- (68) *Pollutant*. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded and abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a Building or Structure; Sediment; and noxious or offensive matter of any kind that may degrade an environment.
- (69) *Permittee*. Any person, firm, or any other legal entity to which a Site disturbance, Grading, Stormwater, building or other related permit is issued in accordance with City of Franklin regulations.
- (70) *Priority Construction Activity*. Any Development or Redevelopment activity that falls under jurisdiction of section 23-102 of this Title shall be treated as Priority Construction Activity
- (71) *Public Utility and Drainage Easement (PUD/PUDE)* means an area or setback of a defined width and placement upon a parcel to define limits of utility or drainage use and access for the City.
- (72) *Qualified Hydrologic Professional or QHP*. A person who is duly registered, licensed, or otherwise authorized by the State of Tennessee to perform hydrologic determinations and is

certified as a Tennessee Qualified Hydrologic Professional.

- (73) *Qualified Local Program or QLP*. A Stormwater management program for discharges associated with Construction activity that has been formally approved by the State of Tennessee as having met specific minimum program requirements, including those identified in 40 CFR § 122.44(s). The intent of the QLP is to establish a streamlined and efficient process for managing discharges of Stormwater associated with Construction activities by eliminating duplication of the effort between the Permittee and the State.
- (74) *Redevelopment*. The alteration of developed land. Demolition and reconstruction is considered Development and not Redevelopment. Note: Redevelopment is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse Stormwater quality impacts.
- (75) *Regional Stormwater Management Feature*. A device or management practice, typically but not always a Detention or Retention pond, with a Tributary Area with more than one Development Site. This may be multiple homogeneous land use areas or an area of various land uses.
- (76) *Retention*. The prevention of storm runoff from direct discharge into receiving waters. Examples include systems which discharge through percolation, exfiltration, filtered bleed-down, and evaporation processes.
- (77) *Riparian Buffer*. An undisturbed area, measured from Top of Bank of the Water Resource, which consists of a Riparian Zone comprised of Native Vegetation, original or re-established, bordering Streams, seeps, springs, Wetlands, sinkholes, lakes, and other Water Resources.
- (78) *Riparian Buffer Averaging or Riparian Buffer Mitigation*. Encroaching on existing predeveloped Riparian Buffer square footage in order to develop certain areas of a Site and taking this square footage and moving it elsewhere on the Site to compensate for the loss in another area.
- (79) *Riparian Buffer Management Plan*. A written integrated plan outlining the utilitarian, ecological, and aesthetic objectives for a specific landscape, and the landscape management practices and products that will be employed.
- (80) *Riparian Zone*. Areas adjacent to Water Resources with a differing density, diversity, and productivity of plant and animal species relative to nearby uplands. This area provides a transition from an aquatic ecosystem to a terrestrial ecosystem.
- (81) *Sediment*. Solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its Site of origin by air, water, or gravity as a product of erosion.
- (82) *Sediment Control (SC)*. Practices implemented to manage through filtering, settling or other mechanism(s) to remove suspended particles (Soil, organic, or mineral) from water, often associated with Erosion Prevention and Sediment Control.
- (83) *Sensitive Areas*. Areas that supply critical habitat in supporting aquatic or semi-aquatic life such as Streams, sinkholes, springs, Wetlands, ponds, etc.
- (84) *Site*. All contiguous land and bodies of water in one ownership, Graded, proposed for Grading or Development as a unit, although not necessarily at one time.
- (85) *Slope*. Degree of deviation of a surface from the horizontal, usually expressed in percent or ratio.
- (86) *Soil*. All unconsolidated mineral and organic material of any origin that overlies bedrock and that can be readily excavated.
- (87) *Stabilization*. The measures, vegetative and/or structural, taken that will prevent Erosion from occurring.
- (88) *Stop Work Order (SWO)*. An order directing the Developer and/or Permittee responsible for the Development to cease and desist all or any portion of the work which violates the provisions of

this Title.

- (89) *Stormwater*. Storm event runoff, snowmelt runoff, and surface runoff and drainage.
- (90) *Stormwater Control Measure*. See "Best Management Practice (BMP)."
- (91) *Stormwater Management Feature*. Any feature, Facility, area or infrastructure that is designed for Stormwater use that carries, captures, controls, conveys, directs, dissipates, discharges, treats, detains, retains, infiltrates, stores, settles or evapotranspires Stormwater. Also known as, but not limited to, a Best Management Practice (BMP), Stormwater control measure (SCM), Stormwater Facility, Stormwater control Facility, Stormwater runoff Facility, Stormwater practice, Stormwater infrastructure, Stormwater feature, Stormwater management area, Stormwater Management Feature, Stormwater management Facility, least impact Development practice or features (LID) or Green Infrastructure (GI).
- (92) *Stormwater Management Permit*. A permit issued by the City Engineer that allows Stormwater discharge into the City of Franklin's MS4 in accordance with this Title.
- (93) *Stormwater Management Plan*. A document that is submitted to the City Engineer, in accordance with concept plans, regulating plans, and/or Site plans which shows, in detail, that a Site meets the standards set forth in this Title and allows the City to evaluate the environmental characteristics of the Site, the potential impacts of all proposed Development of the Site, both present and future, on the Water Resources and the effectiveness and acceptability of the measures proposed for managing Stormwater generated at the Site.
- (94) *Stormwater Pollution Prevention Plan (SWPPP)*. A written plan that includes Site map(s), an identification of Construction/contractor activities that could cause Pollutants in the Stormwater, and a description of measures or practices to control these Pollutants. It must be prepared and approved before Construction begins. In order to effectively reduce Erosion and Sedimentation impacts, Best Management Practices (BMPs) must be designed, installed, and maintained during land-disturbing activities. The SWPPP shall be prepared in accordance with the Tennessee Erosion and Sediment Control Handbook or local BMP manual, whichever is more stringent and protective of Waters of the State. The handbook is designed to provide information to planners, Developers, Engineers, and contractors on the proper selection, installation, and Maintenance of BMPs. The handbook is intended for use during the design and Construction of projects that require Erosion and Sediment Controls to protect Waters of the State. It also aids in the development of SWPPPs, and other reports, plans, or specifications required when participating in the State of Tennessee's water quality regulations.
- (95) *Stream*. Surface water that is not a wet-weather conveyance as determined by a Qualified Hydrological Professional and approved by the Tennessee Department of Environment and Conservation (TDEC) and/or the City Engineer.
- (96) *Stream Buffer*. See "Riparian Buffer."
- (97) *Stripping*. Any activity that removes or significantly disturbs the vegetative surface cover, including Clearing and grubbing operations.
- (98) *Structure*. Anything constructed or erected, the use of which requires a permanent location on or in the ground. Such Construction includes but is not limited to objects such as Buildings, towers, smokestacks, carports, and walls.
- (99) *Top of bank*. The ordinary high-water level and break in Slope for a Water Resource.
- (100) *Tributary Area*. The area upstream of a specified point including all overland flow that directly or indirectly connects down-Slope to the specified point.
- (101) *View Corridors*. Areas associated with formal trail systems that allow viewing areas of Water Resources, closer than the required buffer width approved by the City Engineer with an approved

Riparian Buffer Management Plan.

- (102) *Water Resources*. Streams, seeps, springs, Wetlands, sinkholes, or lakes as determined by the City Engineer. This includes Waters of the State as determined by the Tennessee Department of Environment and Conservation.
- (103) *Waters of the State*. Any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or affect a junction with natural surface or underground waters.
- (104) *Water Quality Buffer*. See "Riparian Buffer."
- (105) *Watershed*. All the land area that contributes runoff to a particular point along a Site, Water Resource, Floodplain, Floodway, or Stormwater Management Feature.
- (106) *Waters with Unavailable Parameters*. Means any segment of surface water that has been identified by the Tennessee Department of Environment and Conservation as failing to support one or more classified uses. The Tennessee Department of Environment and Conservation periodically compiles a list of such waters known as the "303(d) List." Formerly known as "Impaired Waters"
- (107) *Wet Weather Conveyance (WWC)*. Manmade or natural watercourses, including natural watercourses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality, whose Channels are above the groundwater table and which do not support fish and aquatic life and are not suitable for drinking water supplies, and in which hydrological and biological analysis indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two months.
- (108) *Wetland*. Those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typical to life in saturated Soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs, and similar areas. Wetlands are designated by Federal or State organizations with this responsibility.

Sec. 23-104. - Authority.

- (1) *Authority of departments*. The City Administrator may provide authority in part or whole to various departments for the implementation of activities pursuant to this Title. This authority may include but is not limited to plan review, incentives negotiation, plan approval, and Stormwater Management Facility Maintenance. The City Engineer shall have the authority of administration and enforcement of the provisions established pursuant to this Title, including, but not limited to, the issuance of civil penalties.
- (2) *Right-of-entry*.
 - (a) Designated City staff shall have right of entry on or upon the property of any person subject to this Title and any permit/document issued hereunder. The City staff shall be provided ready easy access to all parts of the premises for the purposes of inspection, monitoring, sampling, inventory, records examination and copying, and the performance of any duties necessary to determine compliance with this Title.
 - (b) Where a property, Site, or Facility has security measures in force which require proper identification and clearance before entry into its premises, the person shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification, the designated City staff will be permitted to enter without delay for the purposes of performing specific responsibilities.

- (c) Designated City staff shall have the right to set up on the person's property such devices as are necessary to conduct sampling and/or monitoring of the person's Stormwater operations or discharges.
- (d) Any temporary or permanent obstruction to safe and easy access to the areas to be inspected and/or monitored shall be removed promptly by the person at the written or verbal request of the City staff. The costs of Clearing such access shall be borne by the person.
- (e) The City Engineer, or his designee, may inspect the facilities of any user in order to ensure compliance with this Title. Such inspection shall be made with the consent of the owner, manager, or signatory official. If such consent is refused, denied, or not promptly addressed, the designated City staff may seek issuance of an administrative search warrant.
- (f) The City has the right to determine and impose inspection schedules necessary to enforce the provisions of this Title. Inspections may include, but are not limited to, the following:
 - (i) An initial inspection prior to Stormwater Management Plan approval;
 - (ii) A bury inspection prior to burial of any underground drainage Structure;
 - (iii) Erosion control inspections as necessary to ensure effective control of Erosion and Sedimentation; and
 - (iv) A finish inspection when all work, including installation of storm management facilities, has been completed.
 - (v) Regular or random follow-up inspections to ensure the storm management facilities remain in compliance.

Sec. 23-105. - Appeals.

Appeals of this section shall be pursuant to Franklin Municipal Code section 23-301 et seq.

Sec. 23-106. - Objectives and policy.

- (1) *Objectives.* The objectives of this Title are pursuant to the small MS4 permit issued by the State to the City and are as follows:
 - (a) To protect human life and health.
 - (b) To minimize the need for rescue and relief efforts associated with Flooding.
 - (c) To eliminate any non-allowable discharges to the City's MS4 that impact water quality.
 - (d) To help maintain a stable tax base by providing for the sound use and Development of Flood-prone areas in such a manner as to maximize beneficial use without increasing Flood hazard potential or diminishing the quality of the natural Stormwater resources.
 - (e) To ensure that potential homebuyers are notified that property is in a Flood area and generally increase the public awareness of Flooding potential.
 - (f) To minimize prolonged business interruptions.
 - (g) To minimize damage to public facilities and utilities such as water and gas mains; electric, telephone, and sanitary sewer lines; and streets and Bridges located in Floodplains.
 - (h) To ensure a functional public and private Stormwater quantity and quality management system that will not result in excessive Maintenance costs.
 - (i) To encourage the use of natural and aesthetically pleasing design that maximizes preservation of natural areas.
 - (j) To guide the Construction of Stormwater Management Facilities by developing comprehensive

Master Plans to address Stormwater quantity and quality.

- (k) To encourage preservation of Floodplains, Floodways, and open spaces to protect and benefit the community's quality of life and natural resources.
 - (l) To encourage community stewardship of the City's Water Resources and their impacts on the community character and quality of life.
- (2) *Implementation.* To implement the objectives presented above, the following standards and general policy statements shall be enforced:
- (a) *Permits.* All new Development and Redevelopment under the jurisdiction of this Chapter shall obtain a Stormwater Management Permit and/or Grading Permit. If Site disturbance is over 1 acre, is part of a larger common plan of Development, or is required to have lot level coverage, the applicant shall obtain a Notice of Coverage through the City's Qualified Local Program process.
 - (i) The City Engineer shall issue a Grading and Stormwater Management Permit for Stormwater Management Plans that meet the guidelines of this Title and any other provision given authority under section 23-110 of this Title. Application for a permit shall be accompanied by a fee as specified in appendix A, Comprehensive fees and penalties.
 - (ii) Technical, administrative, or procedural matters may be modified by the City Engineer as needed to meet the objectives and policies defined in this Title, so long as such modifications as to technical, administrative, or procedural matters are not contrary or beyond the intent of the objectives and policies of this Title.
 - (iii) Approved permits shall be displayed in a conspicuous location on all Active Construction Sites.
 - (iv) A pre-Construction meeting with the City Engineer, or his designee shall be held with Construction Site Operators prior to the issuance of a Grading and/or Stormwater Management Permit.
 - (v) All Site Permittees and/or Operators shall apply for a Notice of Termination to the City's engineering department stating that all areas have been stabilized and vegetated and all Construction activities have been completed related to that sections or Site's corresponding Stormwater and Grading Permit and Notice of Coverage. This shall be completed prior to the release of all performance sureties.
 - (vi) Site owner or Developer and/or contractor that wish to transfer Stormwater and Grading Permit coverage to a new owner or Developer and/or contractor shall do so by applying for a Notice of Transfer request in the City's Engineering Department. The Site owner or Developer shall also be required to transfer performance sureties to the new Site owner or Developer prior to the City of Franklin approving the Notice of Transfer.
 - (vii) The Permittee(s) shall be responsible for all EPSC measures and Maintenance located within the Sites or sections defined in the permit regardless of individual lot ownership until a Notice of Transfer or Notice of Termination is issued by the City's Engineering Department.
 - (viii) Stormwater and Grading Permits shall be terminated after one (1) year of Site inactivity, unless otherwise determined by the City Engineer. After permit termination a new permit application shall be submitted and approved, and a new Site pre-Construction meeting shall be required before Construction is to resume.
 - (b) *Stormwater plan submittal requirements.* All new Development and Redevelopment under the jurisdiction of this Title shall be required to submit and have approval of all Construction plans, NOI, and SWPPP prior to issuance of Stormwater and/or Grading Permit approval.
 - (i) An Engineer shall stamp all proposed plans for Construction in the City. This shall include

all proposed improvements or modifications to the existing or new Stormwater infrastructure, EPSC practices, and other related improvements or modifications.

- (ii) All Development or Redevelopment plans and/or Site plans submitted to the City for review shall conduct an environmental Site assessment which evaluates the property for Water Resources. This shall be done before initial submittal for review. Failure to do so shall result in rejection of plan submittal.
- (c) *Stormwater Master Plan.* Each individual project shall be evaluated for consistency with the master Stormwater Management Plan for the major Watershed or Watersheds within which the project Site is located. The individual project evaluation will determine if Stormwater quantity and quality management practices can adequately serve the property and limit impacts to downstream public and private properties. The presence of a Regional Stormwater Management Feature(s) will be considered indetermining the extent to which quantity and/or quality controls will be necessary.
 - (i) In the absence of such a Stormwater quantity and/or quality Master Plan, a system of uniform requirements shall be applied to each individual project Site. In general, these uniform requirements will be based on the criteria that post-Development Stormwater Peak Runoff, volume over the critical design-storm period, and water quality must not differ significantly from pre-Development conditions. These criteria shall be included in the Stormwater Management Plan for the Site.
- (d) *Peak Runoff control.* Peak Runoff control facilities for new Development and Redevelopment shall be designed to address the rate at which flow is released over the entire runoff discharge period and the volume of discharge over the critical design-storm period. This shall be applied for two-, five-, 10-, 25-, 50- and 100-year 24-hour storm peak discharge rate not to exceed the pre-Development (or undisturbed natural conditions) discharge rate.
 - (i) *Calculation of Peak Runoff flow.* Acceptable methodologies for computing pre-and post-Development conditions shall include:
 - A. The rational method (used when the drainage area is 25 acres or less).
 - B. The peak discharge method as described in USDA Technical Release Number 55 (TR-55) (drainage area is 2,000 acres or less).
 - (ii) *Peak Runoff flow requirements.* If the total Land Disturbance area is less than 50 percent of the property, then Peak Runoff control shall be required for the disturbed area only. If the total Land Disturbance area is greater than 50 percent of the property, then Peak Runoff control shall be required for the entire Site area.
 - (iii) Redevelopment of property without existing Detention shall be evaluated using one of the following methods unless otherwise determined by the City Engineer:
 - A. Rational method shall evaluate pre-Development conditions utilizing the appropriate turf meadows runoff coefficient or as existing conditions. The more stringent conditions shall govern.
 - B. USDA Technical Release Number 55 (TR-55) shall evaluate the pre-Development conditions as either grassland conditions or as existing conditions. The more stringent conditions shall govern.
 - (iv) No more than 5 percent of Impervious Surface on a Site can bypass water quality treatment unless otherwise approved by the City Engineer.
- (e) *Stormwater design requirements.* New Development shall meet a Stormwater quantity level of service defined by:
 - (i) Designing road catch basins and connecting Culverts to convey the ten-year design-storm

runoff. No portion of the storm pipe network shall be surcharged above the interior crown elevation.

- (ii) Designing Bridges, Culverts, Channels, and Cross-Drains to pass the 50-year design-stormrunoff. No portion of the storm pipe network shall be surcharged above the interior crown elevation.
- (iii) Providing emergency bypass of the *100-year Flood event*.
- (iv) New roadway, existing roadways, and *Critical Service Roads* are not inundated by more than three inches of water over one-half the roadway width under a *100-year Flood event*.

(f) *Easements.*

- (i) All new Development and Redevelopment shall be designed and Graded in such a way as to forbid Stormwater from discharging onto adjacent property where not supported by adequate public infrastructure, easements, and rights-of-way.
- (ii) All new Development and Redevelopment shall be designed and Graded so that a minimum ten-foot drainage easement and Stormwater conveyance exist between each property.
- (iii) All new Development and Redevelopment shall be designed to provide a minimum 20-foot drainage easement on all Stormwater infrastructure, including Channels, serving more than two properties.
- (iv) No obstructions or encroachments which impede the flow of Stormwater shall be permitted within public drainage easements.
- (v) The City is not responsible for repair or replacement of any encroachments that are damaged or removed in the course of Maintenance activity within easements.
- (vi) Green Infrastructure Easements shall be required on all Green Infrastructure Practices.
 - A. Any and all activities within a Green Infrastructure Easement, except as specifically permitted by notation on the current plat of record and/or within the recorded Inspection and Maintenance Agreement, shall be strictly prohibited without the written consent of the City Engineer or his designee.

(vii) Public drainage easements shall be required on all Stormwater Management Features

- A. Public Utility and/or Drainage Easements do not imply any ownership or Maintenance responsibility to the City, only to allow the City right of entry for inspection and Maintenance if deemed necessary. Any type of alteration, building, Construction, storage, blockage, or disturbance of any kind by the property owner(s) within the easement is strictly prohibited unless approved by the City Engineer.

(g) *Erosion Prevention and Sediment Control.* All Construction Sites regardless of size or disturbed area shall follow proper *EPSC* practices to control unwarranted Sediment from leaving a Site. All Construction Sites receiving Grading or Stormwater permits from the City of Franklin shall be subject to the requirements outlined in the State of Tennessee's Construction General Permit, *EPSC Handbook*, the City Stormwater BMP Manual, and this Title (whichever is more stringent), including the following:

- (i) Construction shall only be permitted after temporary, or permanent *EPSC* management practices have been placed or constructed and are operational to the City's satisfaction, and a Grading and/or Stormwater Management Permit has been issued and signed by the City Stormwater inspector.
- (ii) The design-storm for *EPSC* practices shall be as described in the City of Franklin Stormwater BMP Manual or the Tennessee *EPSC Handbook* and consistent with the Tennessee

Construction General Permit.

- (iii) The City may require more stringent EPSC practices on properties adjacent to Water Resources with unavailable parameters, or within Watersheds with Water Resources with unavailable parameters, Watersheds with TMDLs, or Sites in close proximity to Water Resources. This may include measures that limit or eliminate, with a greater safety factor, the potential for Sediment or other forms of water pollution from entering Sensitive Areas as designated by TDEC or the City Engineer.
 - (iv) Unwarranted acceleration of Erosion or Sedimentation, or transport of other Pollutants or forms of pollution, due to various land Development activities shall be controlled.
 - (v) If deemed appropriate, the City may require the addition, removal, or modification of EPSC measures and/or EPSC locations at any time during the Construction process to ensure proper EPSC performance.
 - (vi) The City may impose enforcement actions outlined in section 23-111 of this Title if any Site, Development, or Construction is found to be in violation of this Title or the State of Tennessee's Construction General Permit in order to achieve EPSC compliance.
 - (vii) The design-storm for Erosion Prevention and Sediment Control practices shall be as described in the City of Franklin Stormwater BMP Manual and consistent with the Tennessee General Construction Permit.
 - (viii) Inlet protection shall be specified on all Construction plans to include an overflow protection device. Other measures may be approved on a case-by-case basis by the City Engineer.
 - (ix) For Priority Construction Activity the Permittee shall schedule a pre-Construction meeting with City staff prior to the commencement of work, City staff shall perform monthly inspections of the Site, and City staff shall document related meetings and inspections.
- (h) *Floodplain alterations.*
- (i) Floodplain alterations or Filling shall not cause a net decrease in Flood storage capacity below the projected 100-year Flood elevation unless it is shown that the proposed alteration or Filling will not cause an increase in the high-water level, increase velocities, or aggravate Flooding on other properties and will not unduly restrict Flood flows. Any Grading within Floodplains shall result in a net volumetric Compensatory Cut of at least 150 percent (1.5:1.0) for all Fill in Floodplains. Floodplain may be used for application of water quality devices. This may only be permitted provided EPSC, waterquality, and Cut-Fill policies are adequately addressed as determined by the City Engineer according to the provisions in section 23-110 of this Title. Detention/Retention volumes in theFloodplain shall count as Fill if applied in a manner where Floodplain storage is lost.
- (i) *General Stormwater regulations.*
- (i) The City encourages Regional Stormwater Management Features, serving 40 to 300 acres of Tributary Area, which may be consistently and efficiently managed and maintained. These types of practices will be encouraged to replace or reduce the implementation of on-Site Stormwater management practices Redevelopment of properties containing on-Site Stormwater management practices may be permitted, at the discretion of the City Engineer, provided the property and downstream public and private properties, infrastructure or Waters of the State are adequately protected by a Regional Stormwater Management Feature(s) from Stormwater quantity or quality impacts.
 - (ii) No Development, Redevelopment, Construction, storage, Grading, or alteration of property of any other kind, shall be performed in a manner that will cause increased runoff or flooding or negatively impact Stormwater quantity or quality in upstream or downstream areas of

public property. Areas deemed by the City Engineer to be private drainage issues shall not be the responsibility of the City to enforce upon.

- (iii) New Construction, Development or Redevelopment shall not aggravate upstream or downstream Flooding. Existing downstream or upstream problems may be required to be corrected in conjunction with new Development and Redevelopment.
 - (iv) In no instance shall new Development or Redevelopment cause or have the potential to cause water quality degradation to immediate or downstream Water Resources.
 - (v) The Construction and financing of any required off-Site drainage improvement necessitated by private Development within the same Watershed shall be the responsibility of the Developer.
 - (vi) Under no circumstances shall a Site be Graded or drained in such a way as to change pre versus post runoff conditions, drainage areas, or volumes to sinkholes, dry wells, or Drainage Wells.
 - (vii) Soil bioengineering, "green" and other "soft" Slope and Stream bank Stabilization methods shall receive preference over riprap, concrete, and other hard armoring techniques. "Hard" alternatives shall only be permitted when their necessity can be demonstrated given Site-specific conditions.
 - (viii) The City may require Maintenance or modification of Stormwater Management Features that are not operating within the guidelines established by this Title, as determined by the City Engineer.
 - (ix) The City encourages the use of Greenway rights-of-way for appropriate properties.
 - (x) As new Development Construction is completed, an "as-built" plan, certified by an Engineer and/or Land Surveyor as appropriate, must be submitted upon completion of the Stormwater management facilities included in the Stormwater Management Plan. The licensed professional shall certify that: the facilities have been constructed as shown on the "as-built" plan, and facilities meet the approved Stormwater Management Plan and specifications or achieve the function for which they were designed. Coordinate data shall be presented in the State of Tennessee Plane System with the North American Datum 1983 (NAD83) and North American Vertical Datum (NAVD) of 1988. (as added by Ord. No. 2001-53, 2002).
 - (xi) Corrugated metal pipe shall not be allowed within the City of Franklin. Extensions of existing corrugated metal pipe shall not be allowed. Existing corrugated metal pipe shall be replaced in its entirety.
- (j) *Maintenance responsibility.*
- (i) Any Stormwater Management Feature or BMP which services individual property owners or subdivisions shall be privately owned with general routine Maintenance (controlling vegetative growth and removing debris, or as otherwise defined in the recorded Inspection and Maintenance Agreement agreement) provided for by the owner(s). The owner shall maintain a perpetual, non-exclusive easement, which allows for access for inspection and other Maintenance by the City.
 - (ii) Any Stormwater Management Feature or BMP which services an individual subdivision in which the feature or BMP is within designated open areas or an amenity with an established homeowners' association shall be privately owned and maintained consistent with provisions of this Title. The owner shall maintain a perpetual, nonexclusive easement, which allows for access for inspection and emergency Maintenance by the City.
 - (iii) Any Stormwater Management Feature or BMP which services commercial and industrial Development shall be privately owned and maintained consistent with the provisions of this Title. The City has the right, but not the duty to enter premises for emergency repairs through

a perpetual nonexclusive easement. All Stormwater Management Features proposed by the owners, if accepted by the City Engineer and approved by the Board of Mayor and Aldermen for dedication as a public regional feature shall be publicly owned and maintained.

- (iv) All other Stormwater Management Features, infrastructure, and BMPs shall be publicly owned and/or maintained only if accepted for Maintenance by the City through a formal agreement recorded at the Williamson County, Tennessee, Register of Deeds. Existing or proposed public utility or drainage easements shall not constitute a formal agreement and shall not constitute any real or implied Maintenance requirement upon or by the City.
 - (v) The City Engineer may require dedication of privately owned Stormwater facilities that discharge to the City's Stormwater system.
 - (vi) All Stormwater BMPs shall be required to place Maintenance signs approximately 9"x12" on or near BMPs in order to ensure identification and proper Maintenance of features.
 - (vii) An Inspection and Maintenance Agreement for Stormwater Management Facilities and Long-Term Maintenance Plan shall be submitted for review and approval by the City Engineer and then recorded with the Register of Deeds for Williamson County, Tn for all devices or facilities in new Development and Redevelopment that require more than general Maintenance (i.e., Mowing, weeding, etc.). Any subsequent Site plan revisions, amendments, field changes, etc shall require modification of both the IMA and LTMP. The plan shall address through exhibits, schedules and techniques for inspections and Maintenance of the facilities and devices. Documentation of the inspection schedule, times of inspection, remedial actions taken to repair, modify or reconstruct the system and the state of control measures shall be submitted to the City Engineer on or before July 1 of each year.
- (3) *Green Infrastructure—Runoff reduction requirements.* This section shall be effective for all Development and Redevelopment under the jurisdiction of this Title submitted for plan review on or after January 1, 2014.
- (a) All new Development and Redevelopment shall utilize Site design standards that reduce Stormwater runoff volume through the use of Green Infrastructure Practices which are designed to infiltrate, evapotranspire, and/or reuse rainwater. The Green Infrastructure Practices shall be designed to reduce the volume of Stormwater runoff using the runoff reduction method (RRM) as defined in the current City of Franklin Stormwater Best Management Practices (BMP) Manual.
 - (b) All Green Infrastructure Practices shall be located in open space lots on residential developments requiring plats. All other Development shall be required to locate Green Infrastructure Practices in an exclusive public drainage and Green Infrastructure Easement.
 - (c) The City Engineer may approve alternative practices in lieu of runoff reduction/Green Infrastructure when Site limitations exist. Criteria to determine the circumstances under which alternatives are available shall not be based solely on the difficulty or cost of implementing practices. The determination shall be based on one or more of the following Site limitations:
 - (i) Where the potential for introducing Pollutants into groundwater exists unless pretreatment is provided;
 - (ii) Where pre-existing Soil contamination is present in areas subject to having contact with infiltrated runoff;
 - (iii) Where sinkholes or other karst features are present on the Site (stamped geotechnical report shall be submitted to the City Engineer);
 - (iv) Where the Site has a historic or archaeological significance that cannot be disturbed as determined by the State Historic Preservation Office;
 - (v) Where utility conflicts preclude the use of Green Infrastructure Practices;

- (vi) Where steep Slopes are present and Slope failure may occur (stamped geotechnical report shall be submitted to the City Engineer); and
- (vii) Other Site limitations as determined by City Engineer.
- (viii) Cost and difficulty of implementing Green Infrastructure/runoff reduction measures shall not be considered a limitation.

(4) *Pollutant removal.* New Development and Redevelopment will be required to minimize the impact to Stormwater quality by applying structural and/or nonstructural management practices selected to address Site-specific conditions. New Development and Redevelopment that cannot meet 100 percent of the RRM must implement Pollutant removal BMPs that are designed and constructed in accordance with the Site design standards, criteria, and specifications for Pollutant removal BMPs that are provided in the current City of Franklin Stormwater BMP Manual. The water quality treatment for the runoff resulting from a rainfall depth of 1.1 inches shall be a minimum of 80 percent total suspended solids (TSS) removal through appropriate use of BMP controls as detailed in the current City of Franklin BMP Manual.

Sec. 23-107. - Riparian resources buffer requirements.

- (1) A Riparian Buffer shall be applied to all Water Resources located in, or adjacent to, New Construction, Development or Redevelopment. There shall be no Mowing, Clearing, Grading, Construction, storage, or disturbance of vegetation except as permitted by the City Engineer, his designee, or a Sites approved Buffer Management Plan. Final determination shall be made by the City Engineer regarding Riparian Buffer delineation, Top of Bank, areas where the Riparian Buffer shall apply and Riparian Buffer width requirements.
- (2) Riparian Buffer zones. The Riparian Buffer shall be applied in two zones: Riparian Zone 1 and Riparian Zone 2: all uses, other than those allowable in each zone, shall be prohibited.
 - (a) *Riparian Zone 1.* The Riparian Zone 1 shall begin at the Top of Bank of the Water Resource and extend a minimum of 30 linear feet perpendicular for Water Resources that have Tributary Area less than one square mile. This distance shall be 60 linear feet perpendicular from Top of Bank for Water Resources that drain one square mile or greater.
 - (i) Allowable uses within zone 1.
 - (A) Utility crossings according to subsection 23-107(5)(b) of this Title.
 - (B) Passive Recreation, pervious footpaths, canoe launches, and boardwalks placed perpendicular to the Top of Bank and the Riparian Zone to approach the Water Resource as approved by the City Engineer.
 - (C) Stabilization practices to prevent channelization and Erosion in the Riparian Buffer from Stormwater runoff adjacent to the Water Resource.
 - (D) Landscaping to allow for Climax Successional Vegetation through the removal of Exotic Invasive Vegetation and the establishment of Native Vegetation, and/or other practices that restore the Ecological Integrity of the Riparian Buffer.
 - (E) Removal of individual trees within the Riparian Buffer which are in danger of falling, causing damage to dwellings or other Structures, or causing blockage of the Water Resource. An arborist certification may be required in order to determine tree health in some circumstances where tree removal is requested.
 - (F) Existing Structures or Impervious Surface approved on prior Site plans.
 - (ii) *Riparian Zone 1—Special conditions.* Riparian Zone 1 widths shall vary depending on the Tributary Area of the Water Resource, location of water pollution hazards, or steep Slopes. The following Riparian Zone 1 widths shall apply:

- (A) For certain land uses and/or activities designated as potential water pollution hazards:
 - 1. Drain fields from on-Site sewage disposal and treatment systems (i.e., septic systems) require 100 feet.
 - 2. Land application of biosolids requires 100 feet.
 - 3. Subsurface discharge from a wastewater treatment plant requires 100 feet.
 - 4. Above ground or underground petroleum storage or storage of hazardous substance facilities require 150 feet.
 - 5. Raised septic systems require 250 feet.
 - 6. Solid waste landfills or junkyards require 300 feet.
- (B) For areas containing steep Slopes:
 - 1. Where the average Slope of the land within the Riparian Zone 1 is between 15 percent and 25 percent, an additional 20 feet shall be added to the minimum Riparian Buffer width.
 - 2. Where the average Slope of the land within the Riparian Zone 1 is greater than 25 percent, an additional 50 feet shall be added to the minimum Riparian Buffer width.
- (b) *Riparian Zone 2.* A Riparian Zone 2 shall be applied to Water Resources that drain less than one square mile. The Riparian Zone 2 shall begin at the edge of the Riparian Zone 1 (which includes any additional width as specified above in "Riparian Zone 1—special conditions") and extend 30 linear feet perpendicular to Riparian Zone 1.
 - (i) Allowable uses within Riparian Zone 2.
 - (A) Those uses allowed in Riparian Zone 1.
 - (B) Biking or hiking paths and Greenways. View Corridors shall be allowed along Greenways as approved by the City Engineer. Paths and Greenways shall be designed to prevent the channelization of Stormwater runoff. Stormwater quality and quantity requirement may be required. The Water Resource Riparian Buffer width shall be increased by the width of impact associated with the path, Greenway, or trail.
 - (C) Limited Passive Recreation.
 - (D) Changes to existing Stormwater Channels.
- (3) *Riparian Buffer enhancement.* Evaluation of the current Riparian Buffer conditions shall be required in Riparian Buffer Zone 1 and Riparian Buffer Zone 2 areas of the Riparian Buffer and from Top of Bank to water edge on all Water Resources. This is to ensure the preservation and propagation of the Riparian Buffer areas and to provide the necessary conditions to ensure proper Water Resource function. If the riparian areas are found to be in any other vegetative state than that outlined below, then the Riparian Buffers shall be enhanced. Reference the Tennessee Urban Riparian Buffer handbook for guidance and more information.
 - (a) Vegetative state.
 - (i) The Riparian Buffer shall be enhanced to allow for Climax Successional Vegetation through the establishment of Native Vegetation and the removal of Exotic Invasive Vegetation. The Native Vegetation established shall be consistent with that of an undisturbed forest ecosystem with all classes of vegetation equally represented. Where appropriate the Riparian Buffer may be enhanced to allow for a native riparian meadow ecosystem to be established.
 - (ii) The Riparian Buffer shall consist of Native Vegetation along both sides of a Water Resource measured linearly perpendicular from Top of Bank.

- (iii) Riparian Buffers shall be maintained perpetually on all properties in a manner that allows for growth of Climax Successional Vegetation.
 - (iv) No Clearing of existing Native Vegetation in the Riparian Zones shall be allowed, except as permitted in subsection 23-107(3) of this Title.
- (b) Riparian Buffer Management Plans—Proposals for enhancement to restore the Ecological Integrity of the Riparian Buffer shall be submitted as a Riparian Buffer Management Plan or landscape plan to the City Engineer during the Site plan review process, and any pertinent local, State, or Federal permits shall be obtained. The City Engineer shall approve the specific requirements of such plan prior to site plan approval or the issuance of a Grading and Stormwater permit or Grading Permit.
- (4) *Stream relocations.* Stream relocations shall only be permitted in rare circumstances where the need to address a highly unstable hydrological condition can be clearly demonstrated by the following:
 - (a) The applicant shall apply for a variance pursuant to Chapter 3 of this Title.
 - (b) The relocation shall create a high-quality aquatic habitat, restore natural flow regimes and natural Streamside conditions, and shall result in overall water quality improvements.
 - (c) The applicant shall submit a Riparian Buffer Management Plan and Long-Term Maintenance Plan as prescribed in the Grading and Stormwater Management Permit requirements. A copy of any applicable Federal or State permits shall be supplied to the City Engineer prior to the commencement of relocation.
- (5) *Riparian Buffer width averaging, Clearing activities, and crossings.*
 - (a) The Riparian Buffer zone 2 width may be averaged in Limited Areas in conjunction with targeted restoration plans that make comparable improvements to both the Ecological Integrity within the Riparian Buffer and water quality of the Water Resource. Restoration plans may include Stream bank restoration, revegetation, habitat improvements, or other bioengineering methods, as approved in a Riparian Buffer Management Plan by the City Engineer, or his designee. Averaging of the Riparian Buffer Zone 2 width may apply to specific areas of an overall Development and shall be approved on a case-by-case basis (in no case shall averaging be allowed in the zone 1 Riparian Buffer). Averaging shall occur on the same Water Resource and on the same side of the Water Resource as the encroachment. Riparian Buffers shall be evenly averaged in Limited Areas and shall be placed in areas that provide same the water quality and ecological Water Resource benefit. Averaging request shall demonstrate the same practical difficulty as variance request outlined in [section] 23-304(3)(a).
 - (b) Riparian Buffer crossings shall be approved by the City Engineer, or his designee. Attempts should be made to limit the number and width of road and utility crossings across Water Resources. Utilities shall be located under pavement where possible. Riparian Buffer crossings shall be approved in a Riparian Buffer Management Plan by the City Engineer, or his designee.
 - (i) Above and underground utilities such as, but not limited to, sanitary sewer mains, water mains, gas, electric, phone, and internet shall be located outside of the Riparian Buffer except for crossings.
 - (ii) Crossing Water Resources with utilities shall be minimized and shall cross with road crossings where possible. If crossings at roads is impractical, the utility shall cross perpendicular, ± 15 degrees to the Water Resource. Riparian Buffer square footage lost due to impacts from crossing activities shall be mitigated on a 1:1 basis on-Site. Note that such crossings may still require Federal, State, and/or local permits.
 - (iii) The City Engineer, or his designee, may approve new driveways or road crossings through or across Riparian Buffer zones on a case-by-case basis. It shall be demonstrated that access across the Riparian Buffer is necessary and that the Riparian Buffer will not be impacted

excessively. In these cases, the driveway or road crossing shall be constructed perpendicular, ± 15 degrees, to the Water Resource and/or Riparian Buffer with careful detail to protecting trees and vegetation and minimizing Site Grades. Crossings shall utilize a spanning open bottom Culvert with footings located outside of the Stream and embankments. Stream encapsulations shall be prohibited unless approved by a variance request to the Stormwater Appeals Board. Riparian Buffer square footage lost due to impacts from crossing activity shall be mitigated on a 1:1 basis on-Site. Note that such crossings may still require Federal, State, and/or local permits.

(6) Development plan and Construction activity requirements.

- (a) The parameters of the Riparian Buffer shall be delineated by the applicant prior to the pre-application phase of a Development submittal.
- (b) Riparian Buffer boundaries shall be clearly indicated on all plats and plans including Development plans, regulating plans, Site plans, conservation subdivisions, preliminary plats, final plats, as well as permits and official maps, and shall:
 - (i) Show the extent of any Riparian Buffer on the subject property and clearly label as "Riparian Buffer" along with the required width.
 - (ii) Provide a note to reference the Riparian Buffer, labeled as: "There shall be no Mowing, Clearing, Grading, Construction, storage, or disturbance of vegetation in Riparian Buffers except as permitted by the City Engineer, or his designee."
 - (iii) Provide a note to reference protective covenants governing all Riparian Buffer areas, labeled as: "Any Riparian Buffer is subject to protective covenants recorded in the register of deeds (Williamson County). Disturbance and use of these areas is restricted; severe penalties apply."
- (c) Riparian Buffer areas shall be protected during all Development activities. Construction layout survey shall include fencing and labeling of the Riparian Buffer areas. Use of a combination of fencing and flagging to ensure adequate visibility shall be required. Riparian Buffer boundaries shall be marked with signs that persist before, during, and after Construction to prevent entry of Construction equipment, storage, and stockpiling.
- (d) Permanent boundary markers, in the form of signage approved by the City Engineer, or his designee, shall be installed prior to the issuance of a Grading and Stormwater permit. Signage shall be posted and clearly observable at the edge of the Riparian Buffer, each lot line, and at a maximum spacing of 150 feet. Properties with a large amount of Riparian Buffer frontage may request a reduction in spacing requirements, subject to approval from the City Engineer, or his designee. The size of the sign shall be 12 inches by 18 inches rectangle or greater and shall contain the message, "Riparian Buffer Do Not Disturb" or other language approved by the City Engineer, or his designee.
- (e) All Riparian Buffers shall be placed in open space lot to be maintained per section 23-108 of this Chapter. Commercial developments shall be allowed to place Riparian Buffers in a Riparian Buffer conservation easement in lieu of open space lots.
- (f) Stormwater Management Features shall not be allowed or placed within the Riparian Buffer.

(7) Enforcement procedures.

- (a) Any person violating the provisions of this Chapter shall be subject to the penalties set forth in section 23-111 of this Title.
- (b) Riparian Buffers shall be actively managed with periodic buffer surveys. Violators shall be served

with civil penalties per section 23-111(4)(d) of this Chapter and shall be required, at their own expense, to revegetate, according to an approved Riparian Buffer Management Plan, and maintain the section of the Riparian Buffer encroached upon, using only plants from a list of Native Vegetation provided by the City Engineer. Equivalent native plants and trees that were removed shall be replaced on a tree per tree basis or as approved by the City Engineer, or his designee. Specimen trees shall be replaced as required by the City's Zoning Ordinance.

- (8) *Variance and appeal procedures.* Variance and appeal requests shall be submitted pursuant to Section 23-301 et seq. of this Title.
- (9) *Other requirements.* If deemed appropriate by the City Engineer, or his designee, during the plan review process, each new Development shall evaluate Water Resource conditions and shall be required to address the following:
 - (a) Stabilization and/or restoration within or adjacent to the Water Resource.
 - (b) Additional water quality protection.
 - (c) Channel Erosion.
 - (d) Stream pollution.
 - (e) Habitat degradation.

Sec. 23-108. - Maintenance requirements.

- (1) The Maintenance responsibilities for permanent Stormwater Management Features shall be determined based upon the type of ownership of the property which is controlled by the Stormwater Management Features.
- (2) Single entity ownership. Where the permanent Stormwater Management Features are designed to manage runoff from property in a single entity ownership as defined below, the Maintenance responsibility for the Stormwater Management Features shall be with the single entity owner.
 - (a) The stated responsibilities of the entity in terms of owning and maintaining the Stormwater Management Feature shall be submitted with the Stormwater Management Plan for determination of their adequacy. Approval of the Stormwater Management Plan shall be conditioned upon the approval of these terms. These terms shall be in writing in the form of an Inspection and Maintenance Agreement, shall be recorded at the register of deeds office, and shall, in addition to any other terms deemed necessary by the City, contain a provision permitting inspection at any reasonable time by the City Engineer, or his designee, of all such features or facilities deemed critical in the public welfare.
 - (b) A single entity shall be defined as an association, public or private corporation, partnership firm, trust, estate, or any other legal entity allowed to own real estate exclusive of an individual lot owner.
 - (c) Upon approval of the Stormwater Management Features by the City, the features owner(s) shall demonstrate the ability to garner and apply the financial resources necessary for long-term Maintenance requirements. The funding mechanism shall be in a form approved by the City. The City will only approve funding mechanism(s) for long-term Maintenance responsibilities that can be demonstrated to be permanent or transferable to another entity with equivalent longevity.
 - (d) Unless made specifically clear in the preliminary stages of the Site design and Construction plan review procedure, it will be assumed that all Stormwater Detention, Retention, treatment or storage facilities and/or devices, and Riparian Buffers shall be owned, operated, and maintained by a single entity as defined above.
 - (e) All Stormwater Management Features physically located within a section or lot shall be contained and referenced in that section or lots IMA and LTMP for a site. In some cases of regional features the City Engineer may allow otherwise if private agreements are in place denoting maintenance

responsibilities.

- (3) *Municipal ownership.* Where the City has accepted an offer of dedication of permanent Stormwater Management Features or infrastructure, the City shall be responsible for Maintenance. Dedication of a permanent Stormwater Management Feature shall be through a formal agreement or plat recorded at the Williamson County, Tennessee Register of Deeds. Existing or proposed public utility or drainage easements shall not constitute a formal agreement and shall not constitute any real or implied Maintenance requirement upon or by the City.
- (4) *Construction performance agreement.* The City may require the posting of a performance agreement to secure the structural integrity of said facilities as well as the functioning of said facilities in accordance with the City of Franklin Zoning Ordinance.

Sec. 23-109. - Allowable and Illicit Discharges.

- (1) No person shall discharge or cause to be discharged into the City's MS4 or Water Resources, as determined by the City Engineer, any materials, including but not limited to, Pollutants or waters containing any Pollutants that cause or contribute to violation of applicable water quality standards, other than Stormwater and except as permitted by section 23-109(4) of this Title.
- (2) Contamination of Stormwater runoff from Hot Spots shall be prohibited and subject to the maximum penalties as specified in section 23-111(4)(d)(iv) of this Title.
- (3) Except as hereinafter provided, all non-Stormwater discharges into the MS4 shall be prohibited and declared to be unlawful.
- (4) Unless the City Engineer has identified them as a source of Pollutants to the Waters of the State, the following non-Stormwater discharges into the MS4 shall be lawful:
 - (a) Discharges from emergency firefighting activities.
 - (b) Diverted screen flows.
 - (c) Rising ground waters.
 - (d) Uncontaminated groundwater infiltration to separate storm sewer systems (as defined by 40 CFR35.2005(20) as may be amended.
 - (e) Uncontaminated pumped ground water.
 - (f) Discharges from potable water sources as required for system Maintenance.
 - (g) Drinking water line flushing.
 - (h) Foundation drains and pumps.
 - (i) Air conditioning condensate.
 - (j) Landscape irrigation.
 - (k) Irrigation water.
 - (l) Lawn watering.
 - (m) Uncontaminated springs.
 - (n) Water from crawl space pumps.
 - (o) Uncontaminated footing drains and pumps.
 - (p) Individual residential car washing.
 - (q) Flows from riparian habitats and Wetlands.
 - (r) Dechlorinated swimming pool discharges in which chlorination has not been added within 48hrs.

- (s) Street wash waters resulting from normal street cleaning operations.
 - (t) Controlled flushing of Stormwater conveyances (controlled by appropriate Best Management Practices).
 - (u) Discharges within the constraints of a NPDES permit from the Tennessee Department of Environment and Conservation (TDEC).
 - (v) Discharges approved at the discretion of the City Engineer.
- (5) The Construction, use, Maintenance, or continued existence of Illicit Connections to the MS4 is prohibited. This prohibition expressly includes, without limitation, Illicit Connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is in violation of this Title if the person connects a line conveying sewage to the MS4 or allows such connection to continue.
 - (6) The City may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the State, or to minimize danger to persons.
 - (7) Every person, or such person's lessee or other designee, owning or maintaining property through which the City's MS4, Public Utility and Drainage Easement, Channel or ditch that conveys Stormwater, or Water Resource passes shall keep the aforementioned within the property free of trash, debris, Structures, and other obstacles that would pollute, contaminate, or significantly retard, slow, spread or impede the flow of water.
 - (8) Notwithstanding other requirements of law, as soon as any person responsible for a Facility or operation, or responsible for emergency response for a Facility or operation has information of any known or suspected release of materials which are resulting or may result in Illicit Discharges or Pollutants discharging into the MS4 or Waters of the State, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence. In the event of a release of non-hazardous materials, said person shall notify the City no later than the next business day.

Sec. 23-110. - Rule-making authority.

- (1) The City Engineer shall have authority to implement this Title by appropriate regulations, guidance, or other related materials. In this regard, technical, administrative, or procedural matters or documents may be modified as needed to meet the objectives and policies defined above, so long as such modifications as to technical, administrative, or procedural matters or documents are not contrary or beyond the intent of the objectives and policies defined above.
- (2) Documents referenced above may be updated periodically to reflect the most current and effective practices and shall be made available to the public. However, the failure to update the manual shall not relieve any applicant from the obligation to comply with the Stormwater Ordinance (this Title) and shall not prevent the City Engineer from imposing the most current and effective practices.
- (3) Regulations, guidance, or other related materials or documents that may be given authority by this Title may include, but are not limited to, BMP manuals, design regulations and requirements, submittal checklists, review checklists, inspection checklists, certifications, Stormwater management manuals, Stormwater inspection manuals, and operation and Maintenance manuals. The document(s) may include information deemed appropriate by the City Engineer, including guidance and specifications for the preparation of Stormwater Management Plans, selecting environmentally sound practices for managing Stormwater, minimum specifications and requirements, more complete definitions, and

performance standards.

- (4) The above referenced documents shall not in any way require specific commercially available products. However, they may refer to performance specifications, class of devices, Construction, or management practice.

Sec. 23-111. - Enforcement.

The City shall have the authority to institute appropriate actions or proceedings at law or equity for the enforcement of this Title. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, and other appropriate forms of remedy or relief. Any person unlawfully polluting the Waters of the State or violating or failing, neglecting, or refusing to comply with any provisions of this Title as it relates to Tenn. Code Ann. § 69-3-101 et seq. (as it may be amended) commits a Class C misdemeanor. Each day of noncompliance is considered a separate offense; and nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation, including application for injunctive relief. Any of the following enforcement remedies and penalties shall be available to the City in response to violations of this Title. If the person, property or Facility has or is required to have a Stormwater discharge permit from the TDEC, the City shall alert the appropriate State authorities of the violation.

- (1) *Notice of violation (NOV).* Whenever designated City staff find that any person, company, Facility, or property owning or occupying a premise has violated or is violating this Title or order issued hereunder, the City Engineer, or his designee, may serve, by personal service, or by registered or certified mail, upon said person a written NOV. Within 30 days of the receipt of this notice, or shorter period as may be prescribed in the NOV, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall include specific required actions, shall be submitted to the City staff. Submission of this plan shall in no way relieve liabilities for violations occurring before or after receipt of the NOV.
- (2) *Revocation of permit.* The City Engineer, or his designee, may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application plans, or specifications; refusal or failure to comply with the requirements of State or local law; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of any applicable State or local law may also be revoked.
- (3) *Compliance order.* If any person, company, or Facility shall violate the provisions of this Title, the City Engineer, or his designee, may give notice to the owner or to any person in possession of the subject property, ordering that all unlawful conditions existing thereupon be abated within a schedule defined from the date of such notice.
 - (a) The City Engineer, or his designee, shall have the authority to establish elements of a Stormwater Pollution Prevention Plan, and to require any business to adopt and implement such a plan, as may be reasonably necessary to fulfill the purposes of this Title. The City Engineer, or his designee, may establish the requirements of Best Management Practices for any premises.
 - (b) The notice and order may be given provided that if, in the opinion of the City Engineer, or his designee, the unlawful condition is such that it is of imminent danger or peril to the public, then an authorized City representative may, without notice, proceed to abate the same, and the cost thereof shall be charged against the property. The City, as described further in this subsection, may recover the cost of such actions from the property owner.
- (4) *Civil penalties.* Any person, company, Facility, or property who has been found to have been in violation of any provision of this Title may be assessed a civil penalty by the City Engineer, or his designee, and may be served, by personal service, or by registered or certified mail, upon said person. Civil penalties shall not exceed the amount presented in this subsection.
 - (a) The penalty may increase by 25 percent of the previous penalty amount for every subsequent but

separate offense made by the same person, company, or Facility. The penalty shall be additional to other enforcement actions of this section.

- (b) The penalty may be assessed by the City Engineer, or his designee, for each day beyond schedules applied in compliance orders or other schedules issued to the property owner or other person responsible for unauthorized activity defined in this Title.
- (c) In determining the amount of the penalty, the City Engineer, or his designee, shall consider the following:
 - (i) The degree and extent of the harm to the natural resources, to the public health, or to the public or private property resulting from the violation;
 - (ii) The duration and gravity of the violation;
 - (iii) The effect on ground or surface water quality;
 - (iv) The cost of rectifying the damage;
 - (v) The amount of money saved by noncompliance;
 - (vi) Whether the violation was committed willfully or intentionally;
 - (vii) The cumulative effect of other enforcement actions applied for the same offense;
 - (viii) The prior record of the violator in complying or failing to comply with the Stormwater quality management program; and
 - (ix) The costs of enforcement to the City.
- (d) The maximum daily civil penalties shall be determined by the City Engineer, or his designee, based on the type of offense. This indicates the maximum that may be imposed for a first offense and does not reflect the increases described above for repeat offenses. Payment of civil penalties are due 30 days after issuance by the City Engineer or his designee.
 - (i) *Development without permit—\$10,000.00.* To engage in any Development, Redevelopment, use, Construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Title without all required permits, certificates, or other forms of authorization as set forth in this Title.
 - (ii) *Development inconsistent with permit—\$5,000.00.* To engage in any Development, Redevelopment, use, Construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.
 - (iii) *Violation by act or omission—\$5,000.00.* Any person, company, Facility, or property that violates, by act or omission, any term, variance, modification, standard, requirements, condition, or qualification placed by the City or its agent departments upon any required permit, certificate, Site plan, Development plan, Inspection and Maintenance Agreement, Long Term Maintenance Plan, or other form of authorization of the use, Development, Redevelopment, or other activity upon land or improvements thereon.
 - (iv) *Illicit Discharge—\$5,000.00.* Any person, company, Facility, or property who is found to have improperly disposed of any substance that is not defined in section 23-110 of this Title or causes the City to be in noncompliance with any applicable environmental permit.
 - (v) *Household products—\$500.00.* Any person, company, Facility, or property who is found to have improperly disposed of any substance not included in section 23-109 of this Title that was purchased over the counter for household use, in quantities considered normal for household purposes, which, upon discharge to the MS4 or drainage network, would have an adverse impact on water quality or cause the City to be in noncompliance with any applicable environmental permit.

- (vi) *Other offenses---\$5,000.00.* Any person, company, Facility, or property found to be in violation of any provision covered under this Title but not categorized by one of the above.
- (e) In the event there are penalties assessed by TDEC against the City caused by any person, company, or Facility, said person, company, or Facility shall be assessed the equivalent amount of civil penalty. This shall include, but is not limited to, penalties for improper disposal or illegal dumping, or Illicit Connections into the MS4.
- (5) *Stop Work Order.* Any person, company, or Facility who has been found to have been in violation of any provision of this Title may be issued a Stop Work Order. This shall be an order requiring the entity in violation to cease any and all work associated with a Grading, building, or Stormwater permit issued by the City. Work to correct or rectify the violation may be allowed. This order is to be in place until all violations have been corrected in their entirety.
- (6) *Order to clean and abate/restore.* Any violator may be required to clean and/or restore land to its condition prior to the violation.
- (7) *Cost recovery.* If corrective action, including Maintenance delinquency, is not taken in the time specified or within a reasonable time if no time is specified, the City may take the corrective action, and the cost of the corrective action shall be the responsibility of the owner and the Developer. The cost of the abatement and restoration shall be borne by the owner of the property and the cost therefore shall be invoiced to the owner of the property. If the invoice is not paid within 90 days, the City shall have the authority to place a lien upon and against the property. If the lien is not satisfied within 90 days, the City is authorized to take all legal measures as are available to enforce the lien as a judgment, including, without limitation, enforcing the lien in an action brought for a monetary judgment, by delivery to the assessor or a special assessment against the property.
- (8) *Injunctions and/or proceedings at law or in equity.* Any violation of this Title or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to State law.
- (9) *Fee or utility credit revocation.* This enforcement tool is intended to be available or used if there are, at any time, provisions for a funding mechanism managed by the City. This enforcement tool permits that credits or other measures to reduce fees or utility charges may be revoked, in full or in part, if any provision of this Title, or given authority per section 23-110 of this Title, is violated.
- (10) *Civil actions.* In addition to any other remedies provided in this Title, any violation of this Title may be enforced by civil action brought by the City Attorney. Monies recovered under this subsection shall be paid to the City to be used exclusively for costs associated with implementing or enforcing the provisions of this Title. In any such action, the City may seek, as appropriate, any or all of the following remedies:
- (a) A temporary and/or permanent injunction;
 - (b) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which leads to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;
 - (c) Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation; and/or
 - (d) Compensatory damages for loss or destruction to water quality, wildlife, fish, and aquatic life.
- (11) *Emergency orders and abatements.* The City Engineer, or his designee, may order the abatement of any discharge from any source to the Stormwater conveyance system when, in the opinion of the City Engineer, or his designee, the discharge causes or threatens to cause a condition which presents an imminent danger to the public health, safety, or welfare, or the environment, or a violation of a NPDES permit. In emergency situations where the property owner or other responsible party is unavailable and time constraints are such that service of a notice and order to abate cannot be affected without

presenting an immediate danger to the public health, safety, or welfare, or the environment or a violation of a NPDES permit, the City may perform or cause to be performed such work as shall be necessary to abate said threat or danger. The costs of any such abatement shall be borne by the owner and shall be collectable in accordance with the provisions of this subsection.

- (12) *Appeals*. Upon issuance of an enforcement action of this Stormwater Management Ordinance (this Title), it shall be conclusive and final unless the accused violator submits a written Notice of Appeal to the City Engineer within ten (10) days of the enforcement action being served. If the City Engineer does not issue a decision within ten days of the written Notice of Appeal, then the enforcement action is considered upheld. If the City Engineer does not reverse the decision or if the violation is considered upheld, the aggrieved party may appeal to the Stormwater Appeals Board by filing a written request for hearing within thirty (30) days of the City Engineer's decision on the appeal. The request for hearing shall state the specific reasons why the decision of the City Engineer is alleged to be in error and shall be accompanied by the Stormwater Appeals Board Application, Stormwater Appeals Board Checklist and a payment in the amount of \$750.00 to cover the cost of court reporters, transcripts, plan reviews, and other administrative costs associated with the appeal. In the event the Stormwater Appeals Board overturns the decision of the City Engineer, this payment may be refunded to the appellant.

Sec. 23-112. - Severability.

- (1) Should any article, section, subsection, clause, or provision of this comprehensive Stormwater Management Ordinance (this Title) be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Title as a whole or any part thereof other than the part declared to be unconstitutional or invalid, each article, section clause and provision being declared severable.
- (2) If any provisions of this Title and any other provisions of law impose overlapping or contradictory regulations or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

CHAPTER 2. - STORMWATER USER FEE

Sec. 23-201. - Definitions.

For the purpose of this Chapter, the following definitions shall apply; unless specifically noted herein, the definitions found in Chapter 1 also apply to this Chapter; words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined herein shall be interpreted to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

- (1) *Bonds* means revenue bonds, notes, loans, or any other debt obligations issued or incurred to finance the costs of Construction.
- (2) *Calendar year* means a 12-month period commencing on the first day of January of any year.
- (3) *City Engineer* refers to the City of Franklin City Engineer who has the authority to delegate to designated staff.
- (4) *Costs of Construction* means costs reasonably incurred in connection with providing capital improvements to the system or any portion thereof, including, but not limited to, the costs of:
- (a) Acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements thereof;
- (b) Physical Construction, installation, and testing, including the costs of labor, services,

- materials, supplies, and Construction services used in connection therewith;
- (c) Architectural, engineering, legal, and other professional services;
 - (d) Insurance premiums taken out and maintained during Construction, to the extent not paid for by a contractor for Construction and installation;
 - (e) Any taxes or other charges which become due during Construction;
 - (f) Expenses incurred by the City or on its behalf with its approval in seeking to enforce any remedy against any contractor or sub-contractor in respect of any default under a contract relating to Construction;
 - (g) Principal of and interest of any bonds; and
 - (h) Miscellaneous expenses incidental thereto.
- (5) *Debt Service* means, with respect to any particular calendar year and any particular series of bonds, an amount equal to the sum of (i) all interest payable on such bonds during such calendar year, plus (ii) any principal installments of such bonds during such calendar year.
 - (6) *Developed Property* means real property other than undisturbed property and vacant improved property.
 - (7) *Dwelling Unit* means a singular unit or apartment providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.
 - (8) *Equivalent Residential Unit* or ERU means the average Impervious Surface of residential developed property per dwelling unit located within the City and as established by the board.
 - (9) *ERU rate* means a utility fee charged on each ERU as established by the board.
 - (10) *Exempt Property* means public rights-of-way, public streets, public alleys, and public sidewalks.
 - (11) *Extension and Replacement* means costs of extensions, additions, and capital improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for, the system, or land acquisitions for the system and any related costs thereto, or paying extraordinary Maintenance and repair, including the costs of Construction, or any other expenses which are not costs of operation and Maintenance or debt service.
 - (12) *Impervious Area* means the number of square feet of Impervious Surfaces as determined by the City Engineer which either prevent or retard the entry of water into Soil mantle, as it entered under natural conditions as undisturbed property, and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undisturbed property, including, but not limited to, structures, roofs, roof extensions, patios, porches, driveway, roads, sidewalks, pavement, and athletic courts.
 - (13) *Multi-Residential Developed Property* means developed property with multiple Dwelling Units located on a single parcel and shall be but not limited to; apartments, condos, townhomes, and duplexes.
 - (14) *Nonresidential Developed Property* means developed property that is not utilized for dwelling units within the City.
 - (15) *Operating Budget* means the annual operating budget adopted by the City for the succeeding fiscal year.
 - (16) *Operations and Maintenance* means the current expenses, paid or accrued, of operation, Maintenance, and current repair of the system, as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, labor, executive compensation, and cost of materials and supplies used

for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with sound accounting practice.

- (17) *Revenues* mean all rates, fees, assessments, rentals or other charges or other income received by the Stormwater user fee fund, in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by the City, all as calculated in accordance with sound accounting practice.
- (18) *Stormwater User Fee* means a fee authorized by ordinance(s) established to pay operations and Maintenance, extension and replacement, and debt service.
- (19) *Stormwater User Fee Fund* means the enterprise fund created by this Chapter to operate, maintain, and improve the system and for such other purposes as stated in this Chapter.
- (20) *Undisturbed Property* means real property which has not been altered from its natural state by dredging, Filling, removal of trees and vegetation, or other activities which have disturbed or altered the topography or Soils on the property.
- (21) *User Fee District* means the area or property within the corporate limits of the City of Franklin.
- (22) *Vacant Improved Property* means vacant property which is, or could reasonably be, served by any subdivision improvements that allow egress.

Sec. 23-202. - Fee established.

Subject to the provisions of this Chapter, each and every residential developed property, nonresidential developed property and vacant improved property, other than exempt property, within the corporate limits of the City, and the owners and non-owner users thereof, have imposed upon them a Stormwater user fee. In the event the owner and non-owner users of a particular property are not the same, the liability for each the owner and non-owner user for the Stormwater user fee attributable to that property shall be joint and several. The Stormwater user fee shall be a monthly or a regular interval service charge and shall be determined by the provisions of this Chapter and the ERU and ERU rate which shall be established and changed from time to time by the Board of Mayor and Aldermen.

Sec. 23-203. - Stormwater user fee collection.

The Stormwater user fee for metered property shall be billed and collected monthly with the monthly City's utility services bill for those properties within the corporate limits of the City utilizing the City utilities and billed and collected separately as Stormwater user fees for those properties not utilizing other City utilities. All such bills for Stormwater user fees shall be rendered monthly by the utilities department. The Stormwater user fee for those properties utilizing City utilities is part of a consolidated statement for utility customers, which is generally paid by a single payment. In the event that a partial payment is received, the payment shall be applied pro-rata to each account billed on the consolidated statement in the proportion that an individual account bears to the total consolidated statement of all current charges for all accounts. The Stormwater user fee for unmetered property shall be billed at regular intervals. All bills for Stormwater user fees shall become due and payable in accordance with the rules and regulations of the utilities department pertaining to the collection of the Stormwater user fees.

Sec. 23-204. - Stormwater user fee determination.

There is hereby established the following uniform schedule of rates for impervious area located on a parcel:

- (a) The Board of Mayor and Aldermen, upon recommendation of the City Engineer, shall, by resolution, establish reasonable rates for each single-family residence: each single-family residence shall be billed at a flat fee established by the Board of Mayor and Aldermen for an equivalent residential unit (ERU).

- (b) Parcels which are undeveloped shall be assessed a Stormwater user fee. The bill shall be determined by dividing the total land area of the property, in square feet, by the area of an equivalent residential unit times a correction factor. The correction factor shall be based on the relative volume of runoff from an undeveloped property and that of a typical single-family residence, under typical hydrologic conditions.
- (c) For all nonresidential properties, that is enterprise, business establishment, Building, or other occupancy not covered by subsections (a) and (b) of this section, the ERU rate shall be computed based on the total impervious area of the property divided by the average impervious area of an ERU times the rate established for an ERU. The billing amount shall be updated by the City Engineer based on any additions to the impervious areas as approved through the building permit process.
- (d) Areas that contain infiltration-based BMP's such as pervious concrete, asphalt, or pavers shall not count towards total Site impervious area.
- (e) The following will be used to determine the ERU Rate for Multi-Residential Developed Property: In cases where one water tap serves a multi-residential property then the ERU Rate established will be based on the non-residential property formula. Exceptions to this policy will be where one parcel is served by multiple water taps. In this case each water tap will be billed an ERU rate equivalent to the number of single-family residential units served by that tap. Depending on the impervious footprint of each dwelling unit served by the water tap, this may be a small or large residential ERU rate. In special or unique circumstances, the City Engineer may establish the ERU Rate for properties and/or parcels that may not fit into one of the above categories.
- (f) In commercial cases where one parcel is served by multiple water taps, then the ERU Rate for all water taps located within that parcel shall be billed to the property owner and address on record for that parcel.
- (g) Any person who disagrees with the calculation of the Stormwater user fee's determination by the City Engineer or who seeks adjustments or exemption of his Stormwater user fee, may appeal such determination to the City Engineer. An appeal shall be accompanied by a fee as specified in appendix A—Comprehensive fees and penalties, Title 23—Stormwater Management Ordinance, filed in writing and include a written statement of the grounds for the appeal, with reference to the Franklin Stormwater Management Credit and Appeal Manual or other appropriate documents available from the engineering department. The City Engineer will review the appeal and render a decision within thirty (30) days. The City Engineer's decision shall be in writing and mailed, certified return receipt requested, or hand-delivered to the address of the applicant contained in the appeal. In response to an appeal, the City Engineer may adjust the Stormwater user fee applicable to a property in conformance with the general purpose and intent of this Title.

Sec. 23-205. - Equivalent residential unit (ERU) established.

The equivalent residential unit is hereby established to be 3,350 square feet of impervious area.

Sec. 23-206. - Equivalent residential unit (ERU) rate and tiers established.

- (1) *Intent.* The Board of Mayor and Aldermen intends to establish a base ERU rate and tiers of residential properties so that application of the ERU rate and tiers as established leads to a fair and equitable result and such that the collection of fees shall be proportional to the amount of actual use of the Stormwater management system. The fee Structure reflects different categories of use and tiers using commonly accepted statistical principles to achieve such equitable results.
- (2) *ERU rate established.* The ERU rate to be charged for the Stormwater user fee for each ERU is as specified in appendix A—Comprehensive fees and penalties, Title 23—Stormwater Management Ordinance.
 - (a) *Two tier residential ERU established.* Residential properties will be separated into two tiers:

residential units smaller than or equal to 3,350 square feet will pay 75 percent of the ERU rate per month and residential units larger than 3,350 square feet will pay 120 percent of the ERU rate per month.

- (b) *Non-residential properties established.* Non-residential properties will pay monthly the ERU rate times the actual square footage of impervious area divided by the ERU.

Sec. 23-207. - Undisturbed property correction factor established.

The undisturbed property correction factor to be used to calculate the Stormwater user fee for each acre of undisturbed property is hereby established to be zero percent.

CHAPTER 3. - STORMWATER APPEALS BOARD

Sec. 23-301. - Established.

There is hereby established a board of seven members to be known as the Stormwater Appeals Board ("SAB").

Sec. 23-302. - Composition; terms; filling vacancies.

- (1) The seven members of this board shall be appointed by the Mayor, subject to the approval of the Board of Mayor and Aldermen. The Mayor shall appoint members with the following qualifications: one (1) environmental Engineer or environmental scientist, one attorney, one person employed or retired from an industrial or commercial establishment regulated by this Title, and one person that is a member of an organized neighborhood organization or environmental group. At least one member of the SAB shall be a current member of the Board of Mayor and Aldermen.
- (2) . All members shall serve until their successor is appointed. In the event of a vacancy, the Mayor shall appoint a member to fill the unexpired term subject to approval by the Board of Mayor and Aldermen. The SAB shall select its own Chair, Vice Chair and Secretary. All officers shall serve for terms of two years.
- (3) Officers of the Board shall consist of a Chair, a Vice Chair, and a Secretary.

Sec. 23-303. - General duties of the SAB.

In addition to any other duty or responsibility otherwise conferred upon the SAB by this Title, the SAB shall have the duties and powers as follows:

- (1) To recommend from time to time to the Board of Mayor and Aldermen that it amend or modify the provisions of this Title;
- (2) To hold hearings upon appeals from orders or actions of the City Engineer, or his designees, as may be provided under any provision of this Title relating to Stormwater;
- (3) To hold hearings relating to the suspension, revocation, or modification of a Stormwater Management and/or Grading Permit and issue appropriate orders relating thereto;
- (4) To hold hearings relating to an appeal from a user concerning the accuracy of any fees imposed upon a Stormwater management system user;
- (5) To hold such other hearings as may be required in the administration of this Title and to make such determinations and issue such orders as may be necessary to effectuate the purposes of this Title;
- (6) To request assistance from any officer, agent, or employee of the City or the Franklin Municipal Planning Commission and to obtain such information or other assistance as the SAB might need;
- (7) The SAB acting through its chair shall have the power to issue subpoenas requiring attendance

and testimony of witnesses and the production of documentary evidence relevant to any matter properly heard by the SAB; and

- (8) The chair, vice chair or chair pro tem shall be authorized to administer oaths to those persons giving testimony before the SAB.

Sec. 23-304. - Variances.

- (1) The City Engineer, or his designee, and/or the SAB may grant a variance from the requirements in this Title, provided to do so would not result in the violation of any State or Federal law or regulation and if exceptional circumstances applicable to the Site exist such that strict adherence to the provisions of this Title will result in unnecessary hardship and will not result in a condition contrary to the intent of the Title.
- (2) The appellant shall submit a written request containing specific justifications, and any other information necessary to the City Engineer for the variance request first. The City Engineer shall conduct a review of the request for a variance within thirty (30) days after receipt and may either approve or deny the petition of variance. The City Engineer shall follow the same criteria as noted in section 23-304(3) for approving or denying a variance as the SAB. The City Engineer may require additional information or an independent third-party study or design analysis. If the City Engineer denies the variance, the reasons therefore shall be stated. If the petition for variance is approved by the City Engineer, no action shall be required by the SAB. Petitions for variances that are denied by the City Engineer shall be heard by the SAB if the appellant request such. Once the City Engineer's review is complete or the thirty (30) days for review has expired, the petition shall be subject to SAB action at the next regularly scheduled meeting or at a special meeting called at the discretion of the chair if needed. The appellant shall have thirty (30) days after the decision or ruling of the City Engineer to appeal to the SAB. If an appeal of a damage assessment or civil penalty is not requested within thirty (30) days after the damage assessment or civil penalty is served in any manner authorized by law, the violator shall be deemed to have consented to the damage assessment or civil penalty and it shall become final.
- (3) Variance requests shall be reviewed and may be granted using the following criteria:
 - (a) Those projects or activities where it can be demonstrated that strict compliance with the Title would result in practical difficulty. Each of the following criteria must be satisfied to show practical difficulty:
 - i. The problem is not self-created.
 - ii. The situation of the landowner is due to the unique conditions of the property. A unique condition is a condition that is peculiar to the subject property that relates to a physical aspect of the subject property.
 - iii. Compliance with the strict letter of the restrictions governing physical requirements such as lot area, setbacks, and lot coverage unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
 - (b) Those projects or activities serving a public need where no feasible alternative is available.
 - (c) The repair and Maintenance of public improvements where avoidance and minimization of adverse impacts to Water Resources have been addressed.
 - (d) Other considerations, such as:
 - i. The proximity of the Facility to a waterfront location, in the case of a Functionally Dependent Facility.
 - ii. The relationship of the proposed use to the Franklin Zoning Ordinance, comprehensive land use plan, and master drainage plans for that area.

- iii. The safety of access to the property in times of Flood for ordinary and emergency vehicles.
 - iv. The costs of providing governmental services during and after Flood conditions including Maintenance and repair of public utilities and facilities such a sewer, gas, electrical, and water systems, and streets and Bridges.
 - v. Whether issuance of a variance is the minimum necessary so as not to destroy the character and design of a historic Building or feature.
- (e) In approving a variance, the City Engineer and/or SAB may impose conditions on the approval. The conditions shall be identified in the variance approval.
 - (f) The decisions of the SAB shall be final and conclusive.
- (4) Effect of a variance. The issuance of a variance shall authorize only the particular variation that is approved. A variance, including any conditions, shall run with the land and shall not be affected by a change in ownership.
 - (5) Subsequent Development. Development authorized by the variance shall not be carried out until the applicant has secured all other approvals required by this Title or any other applicable local, State, or Federal law or regulation. A variance shall not ensure that the Development feature approved as a variance shall receive subsequent approval for other applications for Development approval unless the relevant and applicable portions of this Title's other applicable provisions are met.
 - (6) Time limit. Unless otherwise specified in the variance, an application for a Stormwater and/or Grading Permit shall be applied for and approved within one (1) year of the date of the variance approval; the City Engineer shall have the authority to extend this time limit for one (1) year by request of the property owner as long as significant changes have not occurred in Site design, riparian buffers, or water quality impacts. Following the expiration of these dates the variance shall become invalid and submission of a new variance shall be required. Once expired the Site shall meet all new requirements set forth in this Title. Permitted time frames do not change with successive owners.

Sec. 23-305. - Meetings: quorum.

- (1) The SAB shall hold regular monthly meetings on the third Tuesday of every month as needed, and such special meetings as the SAB may find necessary.
- (2) Four members of the SAB shall constitute a quorum. A concurring vote of a majority of the voting members present shall be necessary to deny or grant any appeal or variance.
- (3) The SAB meetings, deliberations, and records shall be open to the public. The SAB shall provide for public comment as part of its meeting.

Sec. 23-306. - Hearing procedure: judicial review.

- (1) *When to be held.* The SAB shall schedule an adjudicatory hearing to resolve disputed questions of fact and law whenever provided by any provision of this Title or regulations.
- (2) *Record of hearing.* At any such hearing, all testimony presented shall be under oath or upon solemn affirmation in lieu of oath. The SAB shall make a record of such hearing, but the same need not be a verbatim record. Any party coming before the SAB shall have the right to have such hearing recorded stenographically, but in such event the record need not be transcribed unless any party seeks judicial review of the order or action of the SAB by common law writ of certiorari, and in such event the parties seeking such judicial review shall pay for the transcription and provide the SAB with the original of the transcript so that it may be certified to court.
- (3) *Subpoenas.* The chair may issue subpoenas requiring attendance and testimony of witnesses or the production of evidence, or both. A request for issuance of a subpoena shall be made by lodging with the chair at least ten days prior to the scheduled hearing date a written request for a subpoena setting forth the name and address of the party to be subpoenaed and identifying any evidence to be produced.

Upon endorsement of a subpoena by the chair, the same shall be delivered to the chief of police for service by any police officer of the City, if the witness resides within the City. If the witness does not reside in the City, the chair shall issue a written request that the witness attend the hearing.

- (4) *Hearing procedure.* The party at such hearing bearing the affirmative burden of proof shall first call his witnesses, to be followed by witnesses called by other parties, to be followed by witnesses that the SAB may desire to call. Rebuttal witnesses shall be called in the same order. The chair shall rule on any evidentiary questions arising during such hearing and shall make such other rulings as may be necessary or advisable to facilitate an orderly hearing subject to approval of the SAB. The SAB, the City Engineer, or his designee, and all parties shall have the right to examine the witness. The SAB shall not be bound by or limited to rules of evidence applicable to legal procedures.
- (5) *Appeal of City Engineer's order.* Any person aggrieved by any order or determination of the City Engineer may appeal said order or determination to the SAB and have such order or determination reviewed by the SAB under the provisions of this Title. The appellant shall have thirty (30) days from the City Engineer's decision, to petition the SAB in order to appeal the City Engineer's decision. A written Notice of Appeal to the SAB shall be filed with the City Engineer, and such Notice shall set forth with particularity the action or inaction of the City Engineer complained of, and the relief sought by the person filing said appeal. A payment of \$750.00 shall accompany this appeal, and the payment shall cover the cost of court reporters, transcripts, planreviews, and other administrative costs associated with the appeal, and may be refunded to the appellant by the SAB in the event the decision of the City Engineer is overturned. A special meeting of the SAB may be called by the chair upon the filing of such appeal, and the SAB may in its discretion suspend the operation of the order or determination of the City Engineer until such time as the SAB has acted upon the appeal.
- (6) *Absence of chair.* The vice-chair or the chair pro tem shall possess all the authority delegated to the chair by this section when action in his/her absence or in his/her stead is required.
- (7) *Review of SAB's decision.* Any person aggrieved by any final order of determination of the SAB hereunder shall have judicial review by common law writ of certiorari, or as otherwise provided by law.

SECTION II. BE IT FINALLY ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that this Ordinance shall take effect from and after its passage on second and final reading, the health, safety, and welfare of the citizens requiring it.

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

BY: _____

ERIC S. STUCKEY
City Administrator

BY: _____

DR. KEN MOORE
Mayor

Approved as to Form:

William E. Squires, Assistant City Attorney

PASSED FIRST READING:

PUBLIC HEARING:

PASSED SECOND READING:



File #: 21-06175

DATE: March 4, 2024
TO: Capital Investment Committee
FROM: Paul Holzen, Director of Engineering
Jonathan Marston, Asst. Director of Engineering
Shahad Abdulrahman, Staff Engineer

SUBJECT:

Consideration Of Resolution 2024-16, A Resolution To Award The Construction Contract (COF Contract No. 2023-0299) For The Harlinsdale Main Barn Project (COF Project No. 2019-017) To MTLC Building Group In The Amount Of \$2,796,000

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Resolution 2024-016.

BACKGROUND/STAFF COMMENTS:

On August 13, 2019, the BOMA approved Resolution 2019-68 to adopt the project list for the fiscal years (FYs) 2019-2028 Capital Investment Program (CIP). Included in that project list was the restoration of the "Main Barn, Harlinsdale." The BOMA then approved a Professional Services Agreement (COF Contract No. 2020-0124) with Kimley-Horn and Associates, Inc. and 3 subsequent amendments to prepare the design documents needed to advertise this restoration project for construction bids.

On December 17, 2023, the City advertised the restoration and renovation of the "Main Barn at Harlinsdale" (COF Contract No. 2023-0299) for construction bids. The original bid deadline of January 24, 2024 extended to allow for the scheduling of a *mandatory* pre-bid meeting, which was held to allow potential bidders a formal opportunity to view the interior and exterior of the barn and to ask questions of the project team. This pre-bid meeting was held on January 24, 2024.

On February 28, 2024, City staff received, opened, and read aloud the 3 submitted bids. It should be noted that a minor bid error occurred, specifically on the City's end. This error pertained to the inadvertent omission of several pages of the project manual. However, staff has determined that the omitted pages did *not* materially affect the bid results. Therefore, staff recommends awarding the construction contract (COF Contract No. 2023-0299) to the apparent low bidder, MTLC Building Group, in the bid amount of \$2,796,000.00.

FINANCIAL IMPACT:

The total bid amount of this construction contract (COF Contract No. 2023-0299) is \$2,796,000.00. Expenses to-date for this project (COF Project No. 2019-017) have been paid from the Capital Project fund, with final expense allocations being determined by the Administration and Finance Departments.

RECOMMENDATION:

Staff recommends that Resolution 2024-16 be recommended to the Board of Mayor and Aldermen for approval.

RESOLUTION 2024-16

A RESOLUTION TO AWARD THE CONSTRUCTION CONTRACT (COF CONTRACT NO. 2023-0299) FOR THE "HARLINSDALE MAIN BARN" PROJECT TO MTLC BUILDING GROUP COMPANY IN THE AMOUNT OF \$2,796,000.00.

WHEREAS, on August 13, 2019, the City of Franklin Board of Mayor and Aldermen (BOMA) approved Resolution 2019-68 to adopt the project list for fiscal years (FYs) 2019-2028 Capital Investment Program (CIP); and

WHEREAS, said Resolution 2019-68 included "Harlinsdale Main Barn" as an approved project; and

WHEREAS, on February 28, 2024, sealed bids for the construction of "Harlinsdale Main barn" were received by the City of Franklin staff at City Hall, 109 3rd Avenue South, Franklin, Tennessee 37064, were opened, and were read aloud; and

WHEREAS, after careful review and tabulation of the submitted bids, City staff recommends award of the construction contract (COF Contract No. 2023-0299) for "Harlinsdale Main Barn" to the lowest responsive and responsive bidder, MTLC Building Group, in the amount of Two Million Seven Hundred and Ninety-Six Dollars and No/100 Dollars (\$2,796,000.00).

WHEREAS, the Board of Mayor and Aldermen believes it is in the best interest of the City of Franklin to award the bid to MTLC Building Group.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:

The Board of Mayor and Aldermen approve awarding the construction contract (COF Contract No. 2023-0299) for "Harlinsdale Main Barn" to MTLC Building Group in the amount of Two Million Seven Hundred and Ninety-Six Dollars and No/100 Dollars (\$2,796,000.00).

IT IS SO RESOLVED AND DONE on this ____ day of _____, 20__.

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: _____
Eric S. Stuckey
City Administrator

By: _____
Dr. Ken Moore
Mayor

Approved as to Form:

By: _____
William E. Squires
Assistant City Attorney

EXHIBIT A - BID FORM for COF Contract No. 2023-0299						
Main Barn at Harlinsdale (COF Project No. 2019-017)						
BASE BID						
FOOTNOTE(S)	ITEM NO.	ITEM DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE (\$)	EXT. AMOUNT (\$)
	1	MAIN BARN AT HARLINSDALE COMPLETE-IN-PLACE (FURNISHING ALL PRODUCTS, MATERIALS, AND EQUIPMENT AND PERFORMING ALL LABOR NECESSARY TO INSTALL, TO COMPLETE, AND TO PUT INTO OPERATION THE MAIN BARN AT THE PARK AT HARLINSDALE FARM, INCLUDING ALL WORK SHOWN ON THE DRAWINGS AND/OR SPECIFIED.)	LUMP SUM	1	\$2,546,000.00	\$2,546,000.00
	2	OWNERS CONTINGENCY (TO BE USED ONLY AS AUTHORIZED AND AS DIRECTED BY THE ENGINEER)	ALLOWANCE			\$250,000.00
BASE BID TOTAL:						\$2,796,000.00

TOTAL BID PRICE (IN WORDS) :

**Two Million Seven Hundred and Ninety-Six Dollars
and No/100 Dollars**

TOTAL BID PRICE (IN FIGURES) :

\$ 2,796,000.00

I hereby certify to the best of my knowledge that this a true and correct record with all errors and extension(s) of unit price(s) corrected.

By:

Shahad Abdulrahman, Project Manager

Shahad Abdulrahman



HISTORIC
FRANKLIN
TENNESSEE

PROJECT MANUAL

**Main Barn at Harlinsdale
COF Contract No. 2023-0299**

January 2024

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SECTION 00000
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DIVISION 0 – CONTRACT DOCUMENTS

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00412	Drug Free Workplace Affidavit
00413	Iran Divestment Act Certification
00414	Non-Boycott of Israel Requirements
00430	Bid Bond (Penal Sum Form)
00453	Notice of Award
00520	Agreement Between Owner and Contractor for Construction Contract
00540	Retainage Agreement (Required on all contracts greater than or equal to \$500,000)
00550	EJCDC Notice to Proceed
00610	EJCDC Construction Performance Bond
00615	Payment Bond
00620	Contractor's Application for Payment
00625	Certificate of Substantial Completion
00626	Notice of Acceptability of Work
00700	Standard General Conditions of the Construction Contract (EJCDC 2018)
00940	Work Change Directive
00941	Change Order
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Appendix A – Supplemental Specifications

Appendix B – Special Provisions

Appendix C - Permits

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 City of Franklin upon request.

END OF TABLE OF CONTENTS

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CITY OF FRANKLIN, TENNESSEE
ADVERTISEMENT FOR BIDS

NOTICE IS HEREBY GIVEN that the City of Franklin, Tennessee will receive sealed bids, subject to the conditions contained herein, in the **Building & Neighborhood Services (BNS) Department at Suite 110 of City Hall, 109 3rd Avenue South, Franklin, TN 37064** until **2:00 PM** (Central Time) on **Wednesday, January 24, 2024**, at which time the Bids will be publicly opened and read aloud for the following Project:

Main Barn at Harlinsdale
COF Contract No: **2023-0299**

The Project generally consists of the furnishing of all materials, equipment and labor for the construction of the following Work: **Minor grading, utilities, and paving; major restoration & renovation of the interior & exterior of the historic main barn at The Park at Harlinsdale Farm.**

The Issuing Office for the Bidding Documents is the Engineering Department for the City of Franklin, TN. Copies of the Contract Documents may be obtained at the Building and Neighborhood Services Office, City Hall, 109 Third Ave South, Suite 110, Franklin, Tennessee, by paying a **non-refundable** fee of **\$50.00** per set of said Bidding Documents. Receipt of payment will place Bidder on an approved list. Prospective bidders may examine the Bidding Documents at the Issuing Office or by visiting the City of Franklin, TN “Business Opportunities with the City” webpage at:

<https://www.franklintn.gov/business/business-opportunities-with-the-city-1494>

Each Bid must be submitted on the Bid Form(s) provided in the Contract Documents along with the other documents required, including but not limited to the Drug Free Affidavit as required by T.C.A. § 50-9-113, and either accompanied by a Bid security, properly executed on the form provided or a Certified Check or Cashier’s Check drawn on a National or Tennessee Bank in the amount of 5% of the Total Bid Price.

The envelope containing the vendors bid must be sealed and contain on the face of the envelope the word “BID”, the name of the Project, Bidder’s Name, license number, expiration date thereof and license classification in accordance with State law (TCA § 62-6-119). Masonry, electrical, plumbing, heating, ventilation, and air conditioning as well as any additionally required Subcontractors’ name, license number, expiration date thereof, and license classification in accordance with State Law (TCA § 62-6-119), and the Time and Date of the Bid Opening shall also appear on the envelope. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation “SEALED BID ENCLOSED” on the face thereof.

All Bidders’ must be licensed contractors as required by the Contractor Licensing Act of 1976 (TCA Title 62, ch.6).

The City of Franklin, TN 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.

The City of Franklin does not discriminate on the basis of race, color national origin, age, sex or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities with regard to all aspects of this Contract. By submitting a Bid, the Bidder certifies and warrants they will also comply.

Bids received more than seventy-two (72) hours, excluding Saturdays, Sundays, and legal holidays before the time set for opening of bids, as well as bids received after the time set for opening of bids, shall not be considered and will be returned unopened.

The Owner reserves the right to revise or amend the Bidding Documents prior to the date set for the opening of Bids and the right to waive any informality in or to reject any and all bids. Bids lacking required documents or not submitted in accordance with Tennessee State Bidding Laws will be rejected and may subject bidder to a one (1) year ban from submittal on future City of Franklin, TN projects. For additional information about this project, please contact the City's Project Manager, **Shahad Abdulrahman**, by phone at (615) 791-3218, ext. 6708, or by email at Shahad.Abdulrahman@FranklinTN.gov.

END OF ADVERTISEMENT FOR BID

INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACT

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ARTICLE 1—DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office*—The office from which the Bidding Documents are to be issued, and which registers plan holders.

ARTICLE 2—BIDDING DOCUMENTS

- 2.01 Bidder shall obtain a complete set of Bidding Requirements and proposed Contract Documents (together, the Bidding Documents). See the Agreement for a list of the Contract Documents. It is Bidder's responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.
- 2.02 Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download or distribution of the Bidding Documents does not confer a license or grant permission or authorization for any other use. Authorization to download documents, or other distribution, includes the right for plan holders to print documents solely for their use, and the use of their prospective Subcontractors and Suppliers, provided the plan holder pays all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.
- 2.03 Bidder may register as a plan holder and obtain complete sets of Bidding Documents, in the number and format stated in the Advertisement or invitation to bid, from the Issuing Office. Bidders may rely that sets of Bidding Documents obtained from the Issuing Office are complete, unless an omission is blatant. Registered plan holders will receive Addenda issued by Owner.
- 2.04 Plan rooms (including construction information subscription services, and electronic and virtual plan rooms) may distribute the Bidding Documents, or make them available for examination. Those prospective bidders that obtain an electronic (digital) copy of the Bidding Documents from a plan room are encouraged to register as plan holders with the Issuing Office. Owner is not responsible for omissions in Bidding Documents or other documents obtained from plan rooms, or for a Bidder's failure to obtain Addenda from a plan room.
- 2.05 *Electronic Documents*
- A. When the Bidding Requirements indicate that electronic (digital) copies of the Bidding Documents are available, such documents will be made available to the Bidders as Electronic Documents in the manner specified.
1. Bidding Documents will be provided in Adobe PDF (Portable Document Format) (.pdf) that is readable by Adobe Acrobat Reader. It is the intent of the Engineer and Owner that such Electronic Documents are to be exactly representative of the paper copies of the documents. However, because the Owner and Engineer cannot totally control the transmission and receipt of Electronic Documents nor the Contractor's means of reproduction of such documents, the Owner and Engineer cannot and do not

guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to the paper copies.

- B. Unless otherwise stated in the Bidding Documents, the Bidder may use and rely upon complete sets of Electronic Documents of the Bidding Documents, described in Paragraph 2.06.A above. However, Bidder assumes all risks associated with differences arising from transmission/receipt of Electronic Documents versions of Bidding Documents and reproductions prepared from those versions and, further, assumes all risks, costs, and responsibility associated with use of the Electronic Documents versions to derive information that is not explicitly contained in printed paper versions of the documents, and for Bidder's reliance upon such derived information.
- C. After the Contract is awarded, the Owner will provide or direct the Engineer to provide for the use of the Contractor documents that were developed by Engineer as part of the Project design process, as Electronic Documents in native file formats.
 - 1. Release of such documents will be solely for the convenience of the Contractor. No such document is a Contract Document.
 - 2. Unless the Contract Documents explicitly identify that such information will be available to the Successful Bidder (Contractor), nothing herein will create an obligation on the part of the Owner or Engineer to provide or create such information, and the Contractor is not entitled to rely on the availability of such information in the preparation of its Bid or pricing of the Work. In all cases, the Contractor shall take appropriate measures to verify that any electronic/digital information provided in Electronic Documents is appropriate and adequate for the Contractor's specific purposes.
 - 3. In no case will the Contractor be entitled to additional compensation or time for completion due to any differences between the actual Contract Documents and any related document in native file format.

ARTICLE 3—QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder's qualifications to perform the Work, after submitting its Bid and within 5 days of Owner's request, Bidder must submit the following information:
 - A. Written evidence establishing its qualifications such as financial data, previous experience, and present commitments.
 - B. A written statement that Bidder is authorized to do business in the state where the Project is located, or a written certification that Bidder will obtain such authority prior to the Effective Date of the Contract.
 - C. Bidder's state or other contractor license number, if applicable.
 - D. Subcontractor and Supplier qualification information.
 - E. Other required information regarding qualifications.
- 3.02 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.

- 3.03 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.

ARTICLE 4—PRE-BID CONFERENCE

- 4.01 Bidder shall refer to the Advertisement for Bids to determine if a pre-bid conference will be conducted for this Project and determine the time and location for the pre-bid conference.
- A. If the Advertisement or invitation to bid indicate there is a non-mandatory pre-bid conference, then representatives of Owner and Engineer will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference; however, attendance at this conference is not required to submit a Bid.
 - B. If the Advertisement or invitation to bid indicate there is a mandatory pre-bid conference, then, Representatives of Owner and Engineer will be present to discuss the Project. Proposals will not be accepted from Bidders who do not attend the conference. It is each Bidder's responsibility to sign in at the pre-bid conference to verify its participation. Bidders must sign in using the name of the organization that will be submitting a Bid. A list of qualified Bidders that attended the pre-bid conference and are eligible to submit a Bid for this Project will be issued in an Addendum.
- 4.02 Information presented at the pre-Bid conference does not alter the Contract Documents. Owner will issue Addenda to make any changes to the Contract Documents that result from discussions at the pre-Bid conference. Information presented, and statements made at the pre-bid conference will not be binding or legally effective unless incorporated in an Addendum.

ARTICLE 5—SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

- 5.01 *Site and Other Areas*
- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.
- 5.02 *Existing Site Conditions*
- A. *Subsurface and Physical Conditions; Hazardous Environmental Conditions*
 - 1. The Supplementary Conditions identify the following regarding existing conditions at or adjacent to the Site:
 - a. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data.
 - b. Those drawings known to Owner of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data.

- c. Reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
 - d. Technical Data contained in such reports and drawings.
- 2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
- 3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.
- 4. *Geotechnical Baseline Report/Geotechnical Data Report*: The Bidding Documents contain a Geotechnical Baseline Report (GBR) and Geotechnical Data Report (GDR).
 - a. As set forth in the Supplementary Conditions, the GBR describes certain select subsurface conditions that are anticipated to be encountered by Contractor during construction in specified locations ("Baseline Conditions"). The GBR is a Contract Document.
 - b. The Baseline Conditions in the GBR are intended to reduce uncertainty and the degree of contingency in submitted Bids. However, Bidders cannot rely solely on the Baseline Conditions. Bids should be based on a comprehensive approach that includes an independent review and analysis of the GBR, all other Contract Documents, Technical Data, other available information, and observable surface conditions. Not all potential subsurface conditions are baselined.
 - c. Nothing in the GBR is intended to relieve Bidders of the responsibility to make their own determinations regarding construction costs, bidding strategies, and Bid prices, nor of the responsibility to select and be responsible for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.
 - d. As set forth in the Supplementary Conditions, the GDR is a Contract Document containing data prepared by or for the Owner in support of the GBR.
- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05 of the General Conditions, and not in the drawings referred to in Paragraph 5.02.A of these Instructions to Bidders. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

5.03 *Other Site-related Documents*

- A. No other Site-related documents are available.

5.04 *Site Visit and Testing by Bidders*

- A. Bidder is required to visit the Site and conduct a thorough visual examination of the Site and adjacent areas. During the visit the Bidder must not disturb any ongoing operations at the Site.
- B. All access to the Site other than during a regularly scheduled Site visit must be coordinated through the following Owner or Engineer contact for visiting the Site. Bidder must conduct the required Site visit during normal working hours.
- C. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder general access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site. Bidder is responsible for establishing access needed to reach specific selected test sites.
- D. Bidder must comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- E. Bidder must fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

5.05 *Owner's Safety Program*

- A. Site visits and work at the Site may be governed by an Owner safety program. If an Owner safety program exists, it will be noted in the Supplementary Conditions.

5.06 *Other Work at the Site*

- A. Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 6—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS

6.01 *Express Representations and Certifications in Bid Form, Agreement*

- A. The Bid Form that each Bidder will submit contains express representations regarding the Bidder's examination of Project documentation, Site visit, and preparation of the Bid, and certifications regarding lack of collusion or fraud in connection with the Bid. Bidder should review these representations and certifications, and assure that Bidder can make the representations and certifications in good faith, before executing and submitting its Bid.
- B. If Bidder is awarded the Contract, Bidder (as Contractor) will make similar express representations and certifications when it executes the Agreement.

ARTICLE 7—INTERPRETATIONS AND ADDENDA

- 7.01 Owner on its own initiative may issue Addenda to clarify, correct, supplement, or change the Bidding Documents.
- 7.02 Bidder shall submit all questions about the meaning or intent of the Bidding Documents to Engineer in writing. Contact information and submittal procedures for such questions are as indicated in the Advertisement for Bids.
- 7.03 Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all registered plan holders. Questions received less than three days prior to the date for opening of Bids may not be answered.
- 7.04 Only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract Documents unless set forth in an Addendum that expressly modifies or supplements the Contract Documents.

ARTICLE 8—BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of **5** percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a Bid bond issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions. Such Bid bond will be issued in the form included in the Bidding Documents.
- 8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract, furnished the required Contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract and furnish the required Contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited, in whole in the case of a penal sum bid bond, and to the extent of Owner's damages in the case of a damages-form bond. Such forfeiture will be Owner's exclusive remedy if Bidder defaults.
- 8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of 7 days after the Effective Date of the Contract or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within 7 days after the Bid opening.

ARTICLE 9—CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to be (a) substantially completed and (b) ready for final payment, and (c) Milestones (if any) are to be achieved, are set forth in the Agreement.

- 9.02 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 10—SUBSTITUTE AND “OR EQUAL” ITEMS

- 10.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or “or-equal” item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.
- 10.02 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those “or-equal” or substitute or materials and equipment subsequently approved by Engineer prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by Engineer as an “or-equal” or substitute unless written request for approval has been submitted by Bidder and has been received by Engineer within 10 days of the issuance of the Advertisement for Bids or invitation to Bidders. Each such request must comply with the requirements of Paragraphs 7.05 and 7.06 of the General Conditions, and the review of the request will be governed by the principles in those paragraphs. The burden of proof of the merit of the proposed item is upon Bidder. Engineer’s decision of approval or disapproval of a proposed item will be final. If Engineer approves any such proposed item, such approval will be set forth in an Addendum issued to all registered Bidders. Bidders cannot rely upon approvals made in any other manner.
- 10.03 All prices that Bidder sets forth in its Bid will be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

ARTICLE 11—SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 11.01 A Bidder must be prepared to retain specific Subcontractors and Suppliers for the performance of the Work if required to do so by the Bidding Documents or in the Specifications. If a prospective Bidder objects to retaining any such Subcontractor or Supplier and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.
- 11.02 The apparent Successful Bidder, and any other Bidder so requested, must submit to Engineer a list of the Subcontractors or Suppliers proposed for the following portions of the Work within five days after Bid opening.
- 11.03 If requested by Owner, such list must be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor or Supplier. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor or Supplier, Engineer may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder will submit a substitute, Bidder’s Bid price will be increased (or

decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

- 11.04 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors and Suppliers. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor or Supplier, so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.07 of the General Conditions.

ARTICLE 12—PREPARATION OF BID

- 12.01 The Bid Form is included with the Bidding Documents.
- A. All blanks on the Bid Form must be completed in ink and the Bid Form signed in ink. Erasures or alterations must be initialed in ink by the person signing the Bid Form. A Bid price must be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
 - B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”
- 12.02 If Bidder has obtained the Bidding Documents as Electronic Documents, then Bidder shall prepare its Bid on a paper copy of the Bid Form printed from the Electronic Documents version of the Bidding Documents. The printed copy of the Bid Form must be clearly legible, printed on 8½ inch by 11-inch paper and as closely identical in appearance to the Electronic Document version of the Bid Form as may be practical. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the original paper version of the Bid Form, providing that all required information and submittals are included with the Bid.
- 12.03 A Bid by a corporation must be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown.
- 12.04 A Bid by a partnership must be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership must be shown.
- 12.05 A Bid by a limited liability company must be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown.
- 12.06 A Bid by an individual must show the Bidder’s name and official address.
- 12.07 A Bid by a joint venture must be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture must have been formally established prior to submittal of a Bid, and the official address of the joint venture must be shown.
- 12.08 All names must be printed in ink below the signatures.

- 12.09 The Bid must contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 12.10 Postal and e-mail addresses and telephone number for communications regarding the Bid must be shown.
- 12.11 The Bid must contain evidence of Bidder's authority to do business in the state where the Project is located.
- 12.12 If Bidder is required to be licensed to submit a Bid or perform the Work in the state where the Project is located, the Bid must contain evidence of Bidder's licensure.

ARTICLE 13—BASIS OF BID

13.01 *Unit Price*

- A. Bidders must submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity", which Owner or its representative has set forth in the Bid Form, for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

ARTICLE 14—SUBMITTAL OF BID

- 14.01 Each Bid must be submitted on the bid Form(s) provided in the Contract Documents along with the entire Project Manual and the other documents required, including but not limited to the Statement of License Certification, Drug Free Affidavit as required by T.C.A § 50-9-113, and either accompanied by a Bid Bond Form, properly executed on the form provided or a Certified Check or Cashier's Check drawn on a National or Tennessee Bank in the amount of 5% of the Total Bid Price.
- 14.02 A Bid must be received no later than the date and time prescribed and at the place indicated in the Advertisement or invitation to bid. The envelope containing the vendors bid must be sealed and contain on the face of the envelope the word "BID", the name of the Project, Bidder's Name, license number, expiration date thereof and license classification in accordance with State law (TCA § 62-6-119). Masonry, electrical, plumbing, heating, ventilation, and air conditioning as well as any additionally required Subcontractors' name, license number, expiration date thereof, and license classification in accordance with State Law (TCA § 62-6-119), and the Time and Date of the Bid Opening shall also appear on the envelope. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

- 14.03 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

ARTICLE 15—MODIFICATION AND WITHDRAWAL OF BID

- 15.01 An unopened Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 15.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 15.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 15.03 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, the Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, the Bidder will be disqualified from further bidding on the Work.

ARTICLE 16—OPENING OF BIDS

- 16.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.
- 16.02 Bids will be opened privately.

ARTICLE 17—BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 17.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 18—EVALUATION OF BIDS AND AWARD OF CONTRACT

- 18.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner also reserves the right to waive all minor Bid informalities not involving price, time, or changes in the Work.
- 18.02 Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible.
- 18.03 If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, whether in the Bid itself or in a separate communication to Owner or Engineer, then Owner will reject the Bid as nonresponsive.
- 18.04 If Owner awards the contract for the Work, such award will be to the responsible Bidder submitting the lowest responsive Bid.

18.05 *Evaluation of Bids*

- A. In evaluating Bids, Owner will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- B. For the determination of the apparent low Bidder when unit price bids are submitted, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Bid for that item, together with any lump sum items.

18.06 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

18.07 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

ARTICLE 19—BONDS AND INSURANCE

19.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds, other required bonds (if any), and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by required bonds and insurance documentation.

19.02 Article 8, Bid Security, of these Instructions, addresses any requirements for providing bid bonds as part of the bidding process.

ARTICLE 20—SIGNING OF AGREEMENT

When Owner issues a Notice of Award to the Successful Bidder, it will be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Agreement and any bonds and insurance documentation required to be delivered by the Contract Documents to Owner. Within 10 days thereafter, Owner will deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

EXHIBIT A - BID FORM for COF Contract No. 2023-0299						
Main Barn at Harlinsdale (COF Project No. 2019-017)						
BASE BID						
FOOTNOTE(S)	ITEM NO.	ITEM DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE (\$)	EXT. AMOUNT (\$)
	1	MAIN BARN AT HARLINSDALE COMPLETE-IN-PLACE (FURNISHING ALL PRODUCTS, MATERIALS, AND EQUIPMENT AND PERFORMING ALL LABOR NECESSARY TO INSTALL, TO COMPLETE, AND TO PUT INTO OPERATION THE MAIN BARN AT THE PARK AT HARLINSDALE FARM, INCLUDING ALL WORK SHOWN ON THE DRAWINGS AND/OR SPECIFIED.)	LUMP SUM	1		
	2	OWNERS CONTINGENCY (TO BE USED ONLY AS AUTHORIZED AND AS DIRECTED BY THE ENGINEER)		ALLOWANCE		\$250,000.00
BASE BID TOTAL:						

TOTAL BID PRICE (IN WORDS) :

TOTAL BID PRICE (IN FIGURES) :

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STATEMENT OF LICENSE CERTIFICATE

EACH CONTRACTOR BIDDING SHALL FILL IN AND SIGN THE FOLLOWING:

This is to certify that _____ has fully complied with all requirements of Chapter 6 of Title 62 of the Tennessee Code Annotated. The Contractor's name, license number, expiration date of registration, and license classification appears on the envelope containing the Bid, and I understand otherwise the Bid will not be considered.

Masonry, electrical, plumbing, heating, ventilation, and air conditioning subcontractor's name, license number, expiration date of registration, and license classification likewise appears on the envelope containing the bid, and I understand otherwise the Bid will not be considered. I further understand that failure to follow Tennessee State Bidding Laws will result in my bid being rejected and may subject my future Bids to be banned for at least one (1) year from the date of submittal of this Bid.

Were issued Certificate No. _____ on _____, _____ by
the Tennessee State Board for Licensing Contractors.

Contractor

By: _____

Print Name: _____

Title: _____

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DRUG-FREE WORKPLACE AFFIDAVIT

STATE OF _____

COUNTY OF _____

The Undersigned, principal officer of _____, an employer of five (5) or more employees contracting with the City of Franklin, TN to provide construction services, hereby states under oath as follows:

- 1) The undersigned is a principal officer of _____
(hereinafter referred to as the "Contractor") and is duly authorized to execute this Affidavit on behalf of the Contractor.
- 2) The Contractor submits this Affidavit pursuant to T.C.A 50-9-113, which required each employer with no less than five (5) employees receiving pay who contracts with the state or any local government to provide construction services to submit an affidavit stating that such employer has a drug-free workplace program that complies with Title 50, Chapter 9, of the Tennessee Code Annotated.
- 3) The Contract is in compliance with T.C.A. 50-9-113

Further affiant saith not.

Signature of Principal Officer

Printed Name of Principal Officer

(Printed Contractor Name)

(Notary on following Page)

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STATE OF _____

COUNTY OF _____

Personally appeared before me, the undersigned, a Notary Public of said State and County, the within named _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledge that he or she executed the within instrument for the purposes therein contained and who further acknowledged that he or she is the _____ of the maker or a constituent of the maker and is authorized by the maker or by its constituent, the constituent being authorized by the maker, to execute this instrument on behalf of the maker.

WITNESS my hand and seal this _____ day of _____, 20____.

Notary Public
My Commission Expires: _____

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IRAN DIVESTMENT ACT CERTIFICATION

By submission of a bid or proposal to the City of Franklin, the 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 neither they, nor any assignee of the resulting contract, is on the list created pursuant to T.C.A. § 12-12-106. The Bidder further certifies that it shall not utilize any subcontractor identified on the list created pursuant to T.C.A. § 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 pursuant to 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:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

This certification shall not be necessary and shall not apply to contracts valued at one thousand dollars (\$1,000.00) or less.

CERTIFICATION

The Bidder certifies that, to the best of its knowledge and belief, it is not on the Iran Divestment Act list as described above.

Signature

Date

Printed Name

Title

Name of Firm/Company

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NON-BOYCOTT OF ISRAEL REQUIREMENTS

Tennessee Code Annotated § 12-4-119 (as enacted by Chapter 775 of the Public Acts of 2022) prohibits a public entity from entering into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel. This requirement does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

CERTIFICATION

The Contractor 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

Signature

Date

Printed Name

Title

Name of Firm/Company

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BID BOND (PENAL SUM FORM)

Bidder Name: Address <i>(principal place of business)</i> :	Surety Name: Address <i>(principal place of business)</i> :
Owner Name: City of Franklin, TN Address <i>(principal place of business)</i> : 109 3rd Ave South Franklin, TN 37064	Bid Project <i>(name and location)</i> : Bid Due Date:
Bond Penal Sum: Date of Bond:	
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	
Bidder	Surety
_____ <i>(Full formal name of Bidder)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature) (Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.</i>	

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1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation will be null and void if:
 - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2. All Bids are rejected by Owner, or
 - 3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety, and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be litigated in the Tennessee Judicial Circuit Court in and for Williamson, County, Tennessee, and the prevailing party in any such litigation shall be entitled to an award of all reasonable attorney's fees, expenses and court cost incurred by the prevailing party against the non-prevailing party, including reasonable attorney's fees, expenses and taxed costs in connection with any appeals.
8. Notices required hereunder must be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond will be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

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NOTICE OF AWARD

CITY OF FRANKLIN, TN
109 3rd Ave South
Franklin, TN 37064

Date:
Owner Contract No.: **COF Contract No. 2023-0299**
Project Name: **Main Barn at Harlinsdale**
Bidder:
Bidder Address:

PROJECT: **Main Barn at Harlinsdale**, located in Franklin Tennessee for the City of Franklin, Tennessee

The Owner has considered your Bid dated _____ for the above-described Contract, and you are the successful Bidder and are awarded a Contract for the above-described Project.

The Contract Price of the Contract is: \$ _____

In accordance with the Instructions to Bidders and General Conditions, the Owner is providing you with two unexecuted counterparts of the Agreement. Within 15 days thereafter, you must provide the following:

1. Bidder must execute and deliver two counterparts of the Agreement;
2. Payment and Performance Bonds;
3. Deliver the certificates, endorsements and other evidence of insurance required in accordance with Article 6 of the General Conditions.

If you fail to comply with these conditions, the Owner will be entitled to consider you in default, annul this Notice of Award, and declare your Bid security forfeited. Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in the General Conditions.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Owner: City of Franklin, TN

Signature _____
Name: _____
Title: _____

Copy: Engineer

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**CONSTRUCTION AGREEMENT BETWEEN
OWNER AND CONTRACTOR (STIPULATED PRICE)
COF CONTRACT 2023-0299**

This Agreement is by and between the City of Franklin, Tennessee (“Owner”) and _____ (“Contractor”).

Terms used in this Agreement have the meanings stated in the City of Franklin General Conditions of the Construction Contract (“General Conditions”).

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified and indicated in the Contract Documents. The Work is generally described as follows: **minor grading, utilities, and paving; major restoration & renovation of the interior & exterior of the historic main barn at The Park at Harlinsdale Farm.**

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Main Barn at Harlinsdale.**

ARTICLE 3—ENGINEER

- 3.01 The Owner has retained **City of Franklin, TN (“COF”) Engineering Department Staff** (“Engineer”) as Owner’s design engineer for the Project. Engineer shall have only those duties, responsibilities, rights, and authority assigned to Engineer in the Contract Documents.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and Final Completion are of the essence of the Contract.

4.02 *Contract Times*

- A. The Work shall be substantially complete within **270** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and finally complete within **90** days after Substantial Completion.

4.03 *Milestones*

- A. If indicated below, parts of the Work shall be substantially completed on or before the following Milestone(s):
1. Milestone 1: **N/A**
 2. Milestone 2: **N/A**

3. Milestone 3: **N/A**

4.04 *Liquidated Damages and Bonus*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01, that Owner will suffer financial and other losses if the Work is not completed or any applicable Milestones are not achieved within the Contract Times, and that the extent of such losses is difficult to determine in advance. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay:
1. *Substantial Completion:* Contractor shall pay Owner **One Thousand and 00/100 Dollars (\$1000)** for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete.
 2. *Completion of Remaining Work:* Contractor shall pay Owner **One Thousand and 00/100 Dollars (\$1000)** for each day that expires after the time specified in Paragraph 4.02 for Final Completion until the Work is finally complete.
 3. *Milestones:* Contractor shall pay Owner \$ **N/A** for each day that expires after the time specified in Paragraph 4.03 for achievement of any applicable Milestones until the applicable Milestone is achieved or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.04.A.1 shall apply, rather than the Milestone rate.
 4. Liquidated damages for failing to timely achieve any applicable Milestones, Substantial Completion, and Final Completion are mutually exclusive, and shall not be imposed concurrently. If at any time Contractor has failed to achieve more than one applicable Milestones and/or Contract Times, liquidated damages shall be calculated using the highest applicable rate in Paragraph 4.04.A.1, 2, or 3.
- B. The parties acknowledge and agree that the foregoing liquidated damages are a fair and reasonable estimate of the losses Owner will suffer in the event of delay by Contractor and are not a penalty. If Owner recovers liquidated damages for a delay by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages as set forth in Paragraph 4.05.
- C. *Bonus:* Contractor and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Contractor agree that, as a bonus for early completion, Owner shall pay Contractor \$ **N/A** for each day prior to the time specified in Paragraph 4.02 for Substantial Completion that the Work is substantially complete. The maximum value of the bonus shall be limited to \$ **N/A**.

4.05 *Special Damages*

- A. Contractor shall reimburse Owner (1) for all fines and penalties imposed on Owner as a result of Contractor's failure to achieve Substantial Completion within the time specified in Paragraph 4.02 for Substantial Completion, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services

needed after the time specified in Paragraph 4.02 for Substantial Completion, until the Work is substantially complete.

- B. Contractor shall reimburse Owner for all actual costs reasonably incurred by Owner in mitigating or avoiding delays and disruptions to the Work caused by or within the control of any of the Contractor Parties.
- C. After Contractor achieves Substantial Completion, if Contractor fails to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Final Completion, until the Work is finally complete.
- D. The special damages imposed in this paragraph are in addition to any liquidated damages for delayed completion established in Paragraph 4.04.

ARTICLE 5—CONTRACT PRICE

- 5.01 Conditioned upon Contractor's performance and completion of the Work and other obligations in accordance with the Contract Documents, Owner shall pay Contractor as set forth in Article 6 for all Work at the price(s) stated in Contractor's Bid (attached as an exhibit to this Agreement), subject to adjustment under the Contract Documents.

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment shall be processed by Owner as provided in the General Conditions.

6.02 *Progress Payments*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the last day of each month during performance of the Work, as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made, and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract:
 - a. Ninety-five percent (95%) of Work completed (with the balance being retainage); and
 - b. Ninety-five percent (95%) of cost of materials and equipment purchased, but not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay the full amount due to Contractor for Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200% percent of Owner's estimate of the value of Work to be completed and corrected as shown on the punch list of items to be completed and corrected prior to Final Completion.

6.03 *Final Payment*

- A. Upon Final Completion and Owner's acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner shall not make final payment unless Contractor submits written consent of the surety to such payment.

ARTICLE 7—CONTRACT DOCUMENTS AND TECHNICAL DATA

7.01 *Contents of Contract Documents*

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement.
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - 3. Supplementary Conditions, if any.
 - 4. General Conditions.
 - 5. Specifications as listed in the table of contents of the project manual (copy of list attached).
 - 6. The most recent edition of the following specifications as of the Effective Date of the Contract, except to the extent such specifications (i) do not apply based on the nature of the Project (e.g., road, bridge, street, water, or sewer), or (ii) conflict with another Contract Document identified in this Paragraph 7.01.A, in which case the conflicting provision of other Contract Document shall take precedence and control:
 - a. TDOT Standard Specifications for Road and Bridge Construction.
 - b. City of Franklin Street Specifications.
 - c. City of Franklin Water and Sanitary Sewer Specifications.
 - 7. Drawings listed on the attached sheet index.
 - 8. Addenda (numbers ___ to ___, inclusive).
 - 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid
 - b. **[list other applicable exhibits]**

10. The following, if issued or signed on or after the Effective Date of the Contract and not attached hereto:
- a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond.
- B. The Contract Documents listed in Paragraph 7.01.A are incorporated by reference and are part of the Contract whether attached to this Agreement or not.
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented in a writing signed by Owner and as otherwise provided in the Contract Documents, and all such amendments, modifications, and supplementations are limited to the matters specifically addressed in the applicable writing. No one is authorized by Owner to orally amend, modify, supplement, or waive any provision, or any of Owner's or Contractor's duties and obligations under, the Contract Documents.
- E. Unless otherwise expressly stated, where reference is made in this Agreement or the General Conditions to a particular Paragraph or Article number, the reference refers to the corresponding Paragraph or Article in the document in which the reference appears.

7.02 Technical Data Regarding Existing Surface and Subsurface Conditions

- A. The following table lists the reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may reasonably rely: **[If there are no such reports, so indicate in the table.]**

Report Title	Date of Report	Technical Data
N/A	N/A	N/A

- B. The following table lists the drawings known to Owner of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may reasonably rely: **[If there are no such drawings, so indicate in the table.]**

Drawings Title	Date of Drawings	Technical Data
N/A	N/A	N/A

- C. Contractor may examine during regular business hours copies of reports and drawings identified in Paragraphs 7.02.A and 7.02.B that were not included with the Bidding Documents at **[109 3rd Ave South, Franklin, TN]**, or may request copies from Owner.

7.03 *Technical Data Regarding Hazardous Environmental Conditions*

- A. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may reasonably rely: **[If there are no such reports, so indicate in the table.]**

Report Title	Date of Report	Technical Data
N/A	N/A	N/A

- B. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may reasonably rely: **[If there are no such drawings, so indicate in the table.]**

Drawings Title	Date of Drawings	Technical Data
N/A	N/A	N/A

- C. Contractor may examine during regular business hours copies of reports and drawings identified in Paragraphs 7.03.A and 7.03.B that were not included with the Bidding Documents at **[109 3rd Ave South, Franklin, TN]**, or may request copies from Owner.

ARTICLE 8—INSURANCE LIMITS

- 8.01 Contractor shall purchase and maintain the following types of insurance as more fully set forth in Article 6 of the General Conditions. Such insurance shall be written for not less than the limits set forth below.

- A. *Commercial General Liability:*

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

- B. *Automobile Liability:*

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	\$1,000,000
Each Accident	\$1,000,000
Property Damage	
Each Accident	\$1,000,000

C. *Worker's Compensation and Employer's Liability*

Worker's Compensation and Employer's Liability	Policy limits of not less than:
State and Federal (as applicable)	Statutory Limit
Employer's Liability (accident – per occurrence)	\$1,000,000
Employer's Liability (disease – policy limit)	\$1,000,000
Employer's Liability (disease – policy limit)	\$1,000,000

D. *Umbrella or Excess Liability:*

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$5,000,000
General Aggregate	\$5,000,000

ARTICLE 9—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

9.01 *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that might affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that might affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Contract Documents or otherwise made available to Contractor with respect to the Technical Data in such reports and drawings.
 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions at or adjacent to the Site that have been identified in the Contract Documents or otherwise made available to Contractor, with respect to Technical Data in such reports and drawings.
 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and Technical Data, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to above, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other provisions of the Contract Documents.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents and Technical Data, and the resolution thereof by Owner or Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all requirements for performance of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performance of the Work as required by the Contract Documents.
12. Contractor is authorized to do business in Tennessee, and is properly licensed and registered as necessary by or with all governmental and public and quasi-public authorities having jurisdiction over the Contractor, the Work, and the Project.
13. Contractor possesses a high level of experience, expertise, and competence in the business of administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of the Project, and shall perform the Work with the care, skill, and diligence of such a contractor.

9.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, bidding for, or entering into the Contract. For the purposes of this paragraph:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding or contracting process, (b) to establish Bid or Contract prices at artificial, non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding or contracting process.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement shall be effective on _____, 20__ (which is the Effective Date of the Contract).

Owner:

City of Franklin, Tennessee

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name: Ken Moore

(typed or printed)

Title: Mayor

(typed or printed)

Attest:

(individual's signature)

Title: City Administrator

(typed or printed)

Address for giving notices:

109 3rd Ave South

Franklin, TN 37064

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

Contractor:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

(where applicable)

State:

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RETAINAGE AGREEMENT

(Required on all Contracts Greater than or equal to \$500,000)
(for COF Contract No. 2023-0299)

THIS AGREEMENT, is made and entered into on this ____ day of ____, 20____, by and among the **City of Franklin** ("Owner"); ____ ("Contractor"); and ____, a corporation organized and existing under the laws of the United States of America, with offices located in ____("Bank").

WITNESSETH:

WHEREAS, the Owner and the Contractor have heretofore entered into COF Contract No. 2023-0299, (the "Contract"), whereby the Contractor will make improvements to certain real property of the Owner, pursuant to a certain project known as **Main Barn at Harlinsdale** ("Project") located in Franklin, Tennessee, with the contract providing that the Owner is to retain a percent of all payment requests of the Contractor, all as more specifically set forth in the Contract, to which specific reference is hereby made; and

WHEREAS, the Owner and the Contractor are desirous of creating an escrow account with Bank for the deposit of such retainage; and

WHEREAS, the Bank has agreed to act as escrow agent to receive and hold the retainage paid to it until the receipt of a release or partial release by the Owner.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

1. The Owner hereby agrees to pay all retainage held pursuant to the Contract to the Bank, to be held in escrow by the Bank in a separate interest-bearing account (the "Escrow Account"). Funds held will not be commingled with any other funds owned by the Bank or any third party, but will at all times remain segregated and subject to identification as the particular funds deposited and held for the purposes of retainage for the Project.
2. The Escrow Account shall be owned by the Contractor, except to the extent ownership thereof is affected by the assignment to the Owner pursuant to the terms hereof.
3. The Contractor shall and hereby does conditionally assign all its ownership interest in the Escrow Account, including its power to make withdrawals therefrom, to the Owner. This conditional assignment shall terminate upon the Owner's execution of release, to the extent of such release.
4. So long as retainage remains on deposit and the Contractor is not in default of the Contract, all interest earned on deposited retainage shall go to the Contractor less any custodial care and servicing costs.

5. When the Owner determines, upon the request of the Contractor, in accordance with the provisions of the Contract, that the Contractor is entitled to all or a portion of the retainage, the Owner shall forward a written release to the Bank, substantially in the forms attached hereto as Exhibit A or Exhibit B, whereupon all or a portion of the amounts held in the Escrow Account will be released and paid, together with any remaining interest thereon, to the Contractor by the Bank within five (5) business days.
6. Should a dispute arise between the Owner and the Contractor whereby the Owner fails to execute and deliver a release to the Bank, the Bank shall not be liable to either the Owner or the Contractor for failure to deliver the amounts on deposit in the Escrow Account, with interest thereon, to the Contractor. The Bank shall transfer the amounts on deposit in the Escrow Account to the Owner upon the Owner's written request and shall not be liable to the Contractor for such action. In the event that litigation ensues between the Owner and the Contractor, the Bank shall tender into the registry or custody of any court of competent jurisdiction all assets or property held by the Bank pursuant to the terms of this Agreement, together with such pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement.
7. The Bank may resign as Escrow Agent by providing notice to the Owner. Upon termination, all money deposited shall be promptly transferred back to the Owner.
8. The Contractor will execute a retainage bank vendor form with the City's Finance Department no later than five (5) business days from execution of this Agreement.
9. On a monthly basis, within the first week following the end of the prior month, the Bank shall provide to the Owner a statement of the dedicated Escrow Account. The statements will be reconciled by the Owner. Should any discrepancies be found, the Owner will alert the Bank and the Bank will have ten (10) business days to respond to the Owner with their findings or resolution.
10. The Bank shall be liable to the Owner for any loss suffered by the Owner as a result of the Bank's breach of this Agreement.
11. This Agreement supersedes any existing contract between the parties hereto relative to the matters contained herein.

City of Franklin:

Signature: _____

Dr. Ken Moore
Mayor

Contractor:

Signature: _____

Print Name: _____

Title: _____

Bank:

Signature: _____

Print Name: _____

Title: _____

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EXHIBIT A – FULL RELEASE
(for COF Contract No. 2023-0299)

The undersigned, as owner of certain real property located in Franklin, Tennessee, which has been improved pursuant to a construction contract with ____ (“Contractor”), hereby certifies that the Contractor has completed all work required of it, pursuant to such contract, and the undersigned hereby authorizes ____ (“Bank”) to release \$_____ {also type figure} paid in escrow pursuant to that certain retainage agreement between and among the undersigned, and the Contractor and the Bank, dated the ____ day of, _____, which agreement is specifically incorporated herein as reference. This release is executed for the sole purpose of releasing the amounts held in escrow as aforesaid and specifically does not nor shall it be construed to release or otherwise affect any claims or rights which the undersigned has or may have against the Contractor pursuant to said contract or the work performed thereunder.

City of Franklin:

Signature: _____

Dr. Ken Moore
Mayor

ATTEST:

Signature: _____

Print Name: _____

Title: _____

STATE OF TENNESSEE)

COUNTY OF _____)

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

Notary Public

My Commission Expires: _____

(Seal)

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EXHIBIT A – PARTIAL RELEASE
(for COF Contract No. 2023-0299)

The undersigned, as owner of certain real property located in Franklin, Tennessee, which has been improved pursuant to a construction contract with ____ (“Contractor”), hereby certifies that the Contractor has completed a portion of all work required of it, pursuant to such contract, and the undersigned hereby authorizes ____ (“Bank”) to release \$____, paid in escrow pursuant to that certain Retainage agreement between and among the undersigned, and the Contractor and the Bank, dated the ____ day of, ____, which agreement is specifically incorporated herein as reference. This release is executed for the sole purpose of releasing the amounts held in escrow as aforesaid and specifically does not nor shall it be construed to release or otherwise affect any claims or rights which the understanding has or may have against the Contractor pursuant to said contract or the work performed thereunder.

City of Franklin

Signature: _____

Dr. Ken Moore
Mayor

ATTEST:

Signature: _____

Print Name: _____

Title: _____

STATE OF TENNESSEE)

COUNTY OF _____)

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

Notary Public

My Commission Expires _____

(Seal)

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NOTICE TO PROCEED

City of Franklin, TN
Engineering Department
109 3rd Avenue South, Suite 133
Franklin, TN 37064

Date: _____
Project Name: Main Barn at Harlinsdale
Owner's Contract No.: COF Contract No. 2023-0299
Contractor: _____
Contractor Address: _____

TO CONTRACTOR:

You are notified that the Contract Times under the above Contract will commence to run on _____ **NOTICE TO PROCEED DATE**. In accordance with Article 4 of the Agreement, the Work shall be substantially complete within 270 days and finally complete within 90 days after Substantial Completion.

Before you may start any Work at Site, you shall address all items in Article 2 – Preliminary Matters of the General Conditions to include:

- 1) Delivery of Performance and Payment Bonds; Evidence of Insurance; and
- 2) Delivery of Preliminary Schedules; and
- 3) Conduct a Preconstruction Meeting to include City Staff, Engineer, impacted utility companies and other impacted stake holders as determined by the Engineer.

Authorized by Owner: City of Franklin, TN

By: _____

Signature: _____
(Project Manager Signature)

Title: _____

Date Issued: _____

Copy: Engineer

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PERFORMANCE BOND

Contractor Name: _____ Address <i>(principal place of business)</i> : _____	Surety Name: _____ Address <i>(principal place of business)</i> : _____
Owner Name: City of Franklin, TN Mailing address <i>(principal place of business)</i> : 109 3rd Ave South Franklin, TN 37065	Contract Description <i>(name and Contract Number)</i> : _____ Contract Price: _____ Effective Date of Contract: _____
Bond Bond Amount: _____ Date of Bond: _____ <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: ☒ None ☐ See Paragraph 16	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____	By: _____
<i>(Signature)</i>	<i>(Signature)(Attach Power of Attorney)</i>
Name: _____	Name: _____
<i>(Printed or typed)</i>	<i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____	Attest: _____
<i>(Signature)</i>	<i>(Signature)</i>
Name: _____	Name: _____
<i>(Printed or typed)</i>	<i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

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1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

- 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 - 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.

12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
14. Definitions
 - 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
 - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
 - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows: **NONE**

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PAYMENT BOND

Contractor Name: Address <i>(principal place of business)</i> :	Surety Name: Address <i>(principal place of business)</i> :
Owner Name: City of Franklin, TN Mailing address <i>(principal place of business)</i> : 109 3rd Ave South Franklin, TN 37065	Contract Description <i>(name and location)</i> : Contract Price: Effective Date of Contract:
Bond Bond Amount: Date of Bond: <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: ☒ None ☐ See Paragraph 18	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____	By: _____
<i>(Signature)</i>	<i>(Signature)(Attach Power of Attorney)</i>
Name: _____	Name: _____
<i>(Printed or typed)</i>	<i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____	Attest: _____
<i>(Signature)</i>	<i>(Signature)</i>
Name: _____	Name: _____
<i>(Printed or typed)</i>	<i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

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1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Contractor
 - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety

shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1. *Claim*—A written statement by the Claimant including at a minimum:

16.1.1. The name of the Claimant;

16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;

- 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - 16.1.4. A brief description of the labor, materials, or equipment furnished;
 - 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.1.7. The total amount of previous payments received by the Claimant; and
 - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. Modifications to this Bond are as follows: **None**

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To: City of Franklin
Engineering Department
109 Third Ave South
Franklin, TN

From: _____

Invoice #:
Estimate #:
Date:
From Est. Period:
To Est. Period:

Attn: _____

Project Name: _____

Owner Contract Number: _____

CONTRACTOR OR DULY AUTHORIZED REPRESENTATIVE APPLICATION FOR PAYMENT AND CERTIFICATION

To the best of my knowledge and belief, I certify that all items, unit quantities, and prices of work and materials shown on this Periodical Estimate are correct and all work has been performed and materials supplied in full accordance with the terms and conditions of the corresponding construction Contract documents between the undersigned as Contractor and the City of Franklin as Owner, and all authorized changes thereto; that the following is a true and correct statement of the contract amount up to and including the last day of the period covered by this estimate and that no part of the "Total Amount Due This Estimate" has been received.

Original Contract Amount:	\$ _____	1. Value of Work Completed to date	\$ _____
Plus/Minus Approved Change Orders		2. Stored Materials	\$ _____
No. _____ Dated: _____	\$ _____	3. Total Completed and Stored to Date	\$ _____
No. _____ Dated: _____	\$ _____	4. Retainage (5%)	\$ _____
No. _____ Dated: _____	\$ _____	5. Total Earned Less Retainage	\$ _____
		6. Less Previous Certificates for Payment	\$ _____
Contract Amount to Date:	\$ _____	7. Total Amount Due This Estimate	\$ _____

I further certify that all claims outstanding as of the date against the undersigned as Contractor for Labor, Materials, and Expendable equipment employed in the performance of said contract up to this date have been paid in full in accordance with the requirements of said Contract.

Contractor: _____ Title: _____

Signed: _____ Date: _____

Engineer – Construction Management Section Approval

I certify that I have verified this Periodical Estimate and that to the best of my knowledge and belief it is a true and correct statement of work performed and material supplied under the Contract and that the Contractor's certified statement of his account and the amount due him is correct and just, and that all work and materials included in this Periodical Estimate have been performed in full accordance with the terms and conditions of the corresponding construction Contract Documents and authorized changes thereto.

Name (Print): _____ Title: _____

Name (Signature): _____ Date: _____

Name (Print): _____ Title: _____

Name (Signature): _____ Date: _____

City of Franklin, TN Recommendation for Payment

CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner:	City of Franklin, TN
Engineer:	City of Franklin, TN ("COF") serving as "Engineer"
Contractor:	
Project Name:	Main Barn at Harlinsdale
Owners Contract No.:	COF Contract No. 2023-0299

This ☐ Preliminary ☐ Final Certificate of Substantial Completion applies to:

☐ All Work ☐ The following specified portions of the Work:

Date of Substantial Completion:

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work must be as provided in the Contract, except as amended as follows:

Amendments to Owner's Responsibilities: ☐ None ☐ As follows:

Amendments to Contractor's Responsibilities: ☐ None ☐ As follows:

The following documents are attached to and made a part of this Certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Engineer

By *(signature)*: _____

Name *(printed)*: _____

Title: _____

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NOTICE OF ACCEPTABILITY OF WORK

Owner: City of Franklin, TN
Engineer: City of Franklin, TN ("COF") serving as "Engineer"
Contractor: _____
Project Name: Main Barn at Harlinsdale
Owners Contract No.: COF Contract No. 2023-0299
Effective Date of the Construction Contract: _____
Notice Date: _____

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents"). This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner-Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

Engineer

By (signature): _____
Name (printed): _____
Title: _____

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**CITY OF FRANKLIN
GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT**

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CITY OF FRANKLIN

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, shall have the meaning indicated in the definitions in this Paragraph 1.01. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments that clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, signed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Owner, to request progress or final payments, and that is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document that is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Owner concerning the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the Contract.
 10. *Claim*
 - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract

EJCDC® C-700, Standard General Conditions of the Construction Contract.

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Law Approved TEMPLATE 03.09.20

- Price or Contract Times; contesting the acceptability of Work under the Contract Documents; or seeking other relief with respect to the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Owner's decision regarding a Change Proposal.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Owner has made a determination regarding Final Completion.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituents of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, or 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 (a) pollution, (b) protection of human health or the environment, or (c) any hazardous, toxic, or otherwise dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and that together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work, as such days or dates might be adjusted or modified under the Contract.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Contractor Parties*—Contractor, its Subcontractors, Suppliers, and anyone directly or indirectly employed, retained or contracted by any of them, and anyone for whose acts any of them is responsible or liable with respect to the Project.
18. *Cost of the Work*—See Paragraph 13.01 for definition.
19. *Critical Path*—The sequence and duration of activities of Work that control the duration of the Project.
20. *Drawings*—The part of the Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
21. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

22. *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.
23. *Electronic Means*—Electronic mail (email), 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 Contract. 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.
24. *Engineer*—The individual or entity named as such in the Agreement.
25. *Field Order*—A written order issued by Owner that requires minor changes in the Work but does not change the Contract Price or the Contract Times.
26. *Final Completion*—The stage at which all of Contractor's obligations under the Contract Documents, and specifically under Paragraph 15.06, have been satisfied and final payment is due from Owner to Contractor. The terms "finally complete" and "finally completed" as applied to the Work refer to Final Completion.
27. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that might present a danger to persons or property exposed thereto.
- a. The presence at the Site of materials that are necessary for the performance of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern that are part of the routine and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
28. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
29. *Liens*—Charges, liens, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
30. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
31. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.

32. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times shall commence to run and on which Contractor shall start to perform the Work.
33. *Owner*—The City of Franklin, Tennessee.
34. *Owner Parties*—Owner and its executives, officers, managers, board members, agents, and employees.
35. *Progress Schedule*—A schedule prepared and maintained by Contractor in accordance with the Contract, describing the sequence and duration of the activities comprising Contractor's obligation to accomplish the Work within the Contract Times.
36. *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 Work to be performed under the Contract Documents is a part.
37. *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 shall be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor in accordance with the Contract, of required submittals and the time requirements for review of the submittals.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor in accordance with the Contract, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information 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 Contract Documents.
41. *Site*—Lands or areas indicated in the 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 or areas furnished by Owner designated for the use of Contractor.
42. *Specifications*—The part of the Contract 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.
43. *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.
44. *Submittal*—A written or graphic document, prepared by or for Contractor, that the Contract Documents require Contractor to submit to Owner, or that is indicated as a Submittal in the Schedule of Submittals. Submittals include but are not limited to Shop Drawings and Samples; 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; certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project

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photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

45. *Substantial Completion*—The stage at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Owner, the Work (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be fully 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 of such Work. In addition to the foregoing, the Work shall not be considered to have achieved Substantial Completion until all of the following conditions have been met:
- a. All traffic lanes included as part of the Work, including shoulders and ramps, are in their final alignment, and the final wearing surface and all sidewalks, curbs, drainage features, markings, permanent safety appurtenances, lighting, traffic signals, and signing as shown in the Contract Documents have been installed.
 - b. All public utilities and private utility services included as part of the Work have been appropriately installed and successfully passed all required testing.
 - c. All final grading included as part of the Work is complete, and the Site has been 100% stabilized with permanent and temporary erosion and sediment control features.
 - d. The value of all remaining Work is less than 2.5% of the Contract Price, and the remaining Work will not affect the safety or operations of any infrastructure or roadway, and will not significantly impact the public.
46. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
47. *Supplementary Conditions*—Any part of the Specifications that purports to amend or supplement these General Conditions. These General Conditions shall take precedence and control over any such Supplementary Conditions, except with respect to any written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work.
48. *Supplier*—A manufacturer, fabricator, supplier, distributor, 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.
49. *Technical Data*
- a. Those items expressly identified as Technical Data in the Agreement, with respect to (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site, including existing surface or subsurface structures (except Underground Facilities), and (2) Hazardous Environmental Conditions.
 - b. Data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth

in any geotechnical, environmental, or other Site or facilities conditions reports regarding the Site that are identified in the Contract Documents or otherwise made available to Contractor.

- c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

50. *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.

51. *Unit Price Work*—Work to be paid for on the basis of unit prices.

52. *Work*—The entire construction, including the various separately identifiable parts thereof, required to be provided under the Contract Documents. Work includes and is the result of, without limitation, performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and might include, without limitation, related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

53. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms*

- 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by Owner. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Owner as to the Work. It is intended that such exercise of judgment, action, or determination shall be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Owner any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake

responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

2. The Contract Documents frequently omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. When used in the Contract Documents, unless the context clearly dictates otherwise, (1) the singular shall include the plural, and vice versa, (2) the use of the masculine, feminine or neuter gender shall include all other genders, as appropriate, and (3) the disjunctive “or” shall include the conjunctive “and,” and vice versa.
- C. *Day*: Except as otherwise specifically stated, the word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location approved by Owner) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, each as reasonably determined by Owner, even if the term “or both” is not expressed.

- G. *Set-Off*: As used in the Contract Documents, Owner's right to impose a "set-off" also includes, without limitation, Owner's right to payment and recovery of the pertinent amount from Contractor.
- H. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the policies, certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor one fully signed counterpart of the Agreement, and one copy in electronic portable document format (PDF).
- B. Owner shall maintain and safeguard at least one original printed version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed version of the Contract available to Contractor for review.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Owner for timely review a preliminary schedule including:
 - 1. The Critical Path.
 - 2. The planned start and completion dates for each activity, the duration of each activity, and the sequencing of all activities. If activities have durations of more than one updated period, break the activities into two or more activities distinguished by location or some other feature.
 - 3. Dates related to the procurement of materials, equipment and articles of special manufacture; and dates related to the submission of working drawings, plans and other data specified for review or approval by Owner.
 - 4. Dates related to key Owner inspections.
 - 5. Dates related to specified activities by the Owner and third parties, and times for starting and completing the various stages of Work, including but not limited to all Milestones specified in the Contract.

6. A preliminary Schedule of Submittals.
7. A preliminary Schedule of Values for all of the Work, which includes quantities and prices of items that, when added together, equal the Contract Price, and which subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices shall include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designated Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate shall be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. Owner's and Contractor's Designated Representatives are those individuals identified as such in the Agreement. Subject to Paragraph 9.01 with respect to Owner, each party's Designated Representative is authorized to act as its authorized representative with respect to the services and responsibilities under the Contract. Subject to Paragraph 9.01 with respect to Owner, such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment, a conference, attended by Owner, Contractor, Engineer, and others as appropriate, shall be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment shall be made to Contractor until acceptable schedules are submitted to Owner in accordance with the following:
 1. The Progress Schedule shall provide for an orderly progression of the Work to completion within the Contract Times.
 2. Contractor's Schedule of Submittals shall provide a workable arrangement for reviewing and processing the required Submittals.
 3. Contractor's Schedule of Values shall provide for a reasonable allocation of the Contract Price to the component parts of the Work.
 4. If a schedule is not acceptable to Owner, Contractor shall have an additional 10 days to revise and resubmit the schedule. Acceptance of a schedule by Owner shall not impose on Owner responsibility for sequencing, scheduling, or progress of the Work, and shall not relieve Contractor from Contractor's full responsibility therefor.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.

- C. Subject to any governing protocols for Electronic Means, 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.
- D. Notwithstanding anything in this Paragraph 2.06, all notices shall be sent as set forth in Paragraph 18.01.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe and require a functionally complete Project to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Owner or Engineer shall issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any rights or claims against Owner or any other Owner Parties in favor of Engineer, any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, or any other individual or entity not a party to the Contract; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as otherwise required by Laws and Regulations.

3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard

specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as otherwise specifically stated in the Contract Documents.

2. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall examine and carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation from Owner, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Owner in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation from Owner, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until Final Completion, Contractor shall submit to Owner in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Owner shall be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. Owner shall, with reasonable promptness, render or cause to be rendered a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Such written clarification, interpretation, or decision shall be final and binding on Contractor, unless it appeals by submitting a Change Proposal.
- C. If a submitted matter in question concerns the Contract Documents and Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including but not limited to electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 shall survive Final Completion or earlier termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. Unless the Contract states otherwise, the Contract Times shall commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 60 days after the Effective Date of the Contract. In no event shall the Contract Times commence to run later than the actual commencement of the Work on the Project.

4.02 *Starting the Work*

- A. Unless the Contract states otherwise, Contractor shall start to perform the Work on the date indicated in the Notice to Proceed. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction if reasonably necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it is adjusted from time to time as follows:
 - 1. Contractor shall submit to Owner for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible unreasonably delays, disrupts, or interferes with Contractor's performance or progress of the Work associated with the Critical Path, as shown on the Contractor's then-current Progress Schedule, then Contractor shall be entitled to an adjustment in the Contract Price or Contract Times, but only to the extent the delay, disruption, or interference affects Contractor's cost of, or time required for, performance of the Work, as reasonably determined by Owner. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of any of the Contractor Parties. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled under the Contract, to the extent such concurrent delay is not caused by any of the Contractor Parties.
- B. In any event, Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of any of the Contractor Parties.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an adjustment in Contract Times, but only to the extent the delay, disruption, or interference affects Contractor's cost

of, or time required for, performance of the Work, as reasonably determined by Owner. Causes of delay, disruption, or interference that might give rise to an adjustment in Contract Times under this paragraph include the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions;
3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
4. Acts of war or terrorism.
5. *Weather-Related Delays*
 - a. If “abnormal weather conditions” as set forth in Paragraph 4.05.C.2 are the basis for a request for an adjustment in the Contract Times, such request shall be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Critical Path.
 - b. The existence of abnormal weather conditions shall be determined on a month-by-month basis in accordance with the following:
 - 1) Every week day (excluding legal holidays) in a given month that exceeds the number of Foreseeable Bad Weather Days set forth in the table in Paragraph 4.05.C.5.b.3, and on which the following conditions exist, shall be considered a “bad weather day”:
 - A) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day through 7:00 p.m. on the day in question equals or exceeds 0.10-inch of precipitation as rain equivalent.
 - B) Dry-out or mud days, at a rate no greater than 1 make-up for each day or consecutive days of rain that total 1.0 inch or more, liquid measure.
 - 2) Determination of actual bad weather days during performance of the Work shall be based on the weather records measured and recorded by the National Oceanic and Atmospheric Administration’s National Centers for Environmental Information weather monitoring station located at the Franklin Sewage Plant, Franklin, TN, or another method approved in advance by Owner if specifically stated elsewhere in the Contract Documents.
 - 3) The Contract Times include the number of Foreseeable Bad Weather Days per month indicated in the following table:

Foreseeable Bad Weather Days

Month	Days
January	8
February	9
March	9
April	9
May	9
June	8
July	9
August	7
September	7
October	6
November	7
December	9

- 4) The existence of abnormal weather conditions shall not relieve Contractor of the obligation to demonstrate and document that delays caused by abnormal weather are specific to the planned work activities and that such activities thus delayed were on the Critical Path. Saturdays, Sundays, and legal holidays shall not constitute lost work days unless the Contract Documents specifically require it or Owner directs Contractor to work those days.
- D. Contractor's entitlement to an adjustment of Contract Times or, if applicable, Contract Price, is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the Critical Path, as of the time of the delay, disruption, or interference.
 2. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or, if applicable, Contract Price shall be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;

2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
3. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
4. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner requires, including but not limited to where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the Critical Path.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or one not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- H. Except as specifically set forth in the Contract, an adjustment of the Contract Times shall be Contractor's sole and exclusive remedy for any delay, disruption, interference, hindrance or obstruction in Contractor's commencement, performance or completion of the Work, loss of productivity, or other similar claims (collectively "Delays"), whether or not such Delays are foreseeable. In no event shall Contractor be entitled to any compensation or recovery of any damages in connection with any Delays, including but not limited to actual damages, consequential damages, lost opportunity costs, impact damages, extended general conditions, or other similar costs or damages. Owner's exercise of any of its rights or remedies under the Contract, including but not limited to ordering changes in the Work, directing suspension of the Work, rescheduling, correction of the Work, or terminating the Contract for convenience, regardless of the extent or frequency of such exercise, shall not be construed as a delay, disruption, or interference with Contractor's performance or progress of the Work under Paragraph 4.05.A.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any known encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor shall comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein.

- C. If necessary for timely and proper performance of the Work, Contractor shall arrange for use of and access to all additional lands required for temporary construction facilities and storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use or access through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any areas used for Contractor's operations; (c) damage to any other land or areas, or to improvements, structures, utilities, or similar facilities; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of any of the Contractor Parties.
2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of any of the Contractor Parties, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the full extent permitted by Laws and Regulations, defend (at Owner's option in its sole discretion), indemnify and hold harmless the Owner Parties and Engineer, and the consultants and subcontractors of each and any of them, from and against all such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against any of the Owner Parties, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, performance of the Work, or because of other actions or conduct of any of the Contractor Parties.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. Upon completion of the Work at the Site, Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, its contents or any person, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them or any contents or persons.

5.03 *Subsurface and Physical Conditions*

- A. *Underground Facilities*: Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- B. *Reliance by Contractor on Technical Data*: Contractor may reasonably rely upon the accuracy of Technical Data.
- C. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against any of the Owner Parties or Engineer, or any of their consultants or contractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including but not limited to any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to reasonably rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection

therewith (except with respect to an emergency) until the Owner has a reasonable opportunity to review the subsurface or physical condition in question.

- B. *Owner's Review:* After receipt of written notice as required by the preceding paragraph, Owner shall promptly review the subsurface or physical condition in question; determine whether it is necessary to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; and obtain any pertinent cost or schedule information from Contractor.
- C. *Owner's Statement to Contractor Regarding Site Condition:* Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, and indicating whether any change in the Drawings or Specifications will be made.
- D. *Early Resumption of Work:* If at any time Owner determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Owner's review or issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then Owner may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
 - 1. Contractor shall be entitled to an adjustment in Contract Times, and might be entitled to an adjustment in Contract Price (excluding any overhead or profit), each as reasonably determined by Owner, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition falls within one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price shall be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
 - 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment shall be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times no later than 14 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Human Remains; Artifacts.* If, in the course of the Work, Contractor encounters or recognizes the existence of human remains, burial markers, archaeological sites, historic sites or artifacts, or wetlands not indicated in the Contract Documents, Contractor shall immediately suspend any operations that would affect them and notify Owner. Upon receipt of such notice, Owner shall promptly take action to obtain any governmental authorization required to resume the operations. Contractor shall continue to suspend such operations until otherwise instructed by Owner in writing, but shall continue with all other operations that do not affect those remains or features. Any requests for adjustments in the Contract Price or Contract Times arising from the existence of such remains or features shall be governed by the foregoing provisions of this Paragraph 5.04.
- G. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;
 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or

performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner in writing regarding such Underground Facility.

C. *Owner's Review:* After receipt of such notice, Owner shall:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
2. identify and communicate with the owner of the Underground Facility; and, if necessary, issue any preliminary instructions to Contractor regarding the Contractor's resumption of Work in connection with the Underground Facility in question; and
3. obtain any pertinent schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility:* Owner shall issue a written statement to Contractor regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, and indicating whether any change in the Drawings or Specifications will be made.

E. *Early Resumption of Work:* If at any time Owner determines that Work in connection with the Underground Facility may resume prior to completion of Owner's review or issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Owner may at its discretion instruct Contractor to resume such Work.

F. *Possible Time Adjustments*

1. Contractor shall be entitled to an adjustment in the Contract Times, but no adjustment in Contract Price, as reasonably determined by Owner, to the extent any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's time required for performance of the Work; subject, however, to the following:
 - a. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the extent of any adjustment in the Contract Times, then any such adjustment shall be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to or the extent of any adjustment in the Contract Times, no later than 14 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions*

- A. *Reliance by Contractor on Technical Data Authorized:* Contractor may reasonably rely upon the accuracy of the Technical Data. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against any of the Owner Parties or Engineer, or any of their consultants or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including but not limited to any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by any of the Contractor Parties, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if any of the Contractor Parties creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area that could reasonably be affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner (and promptly thereafter confirm such notice in writing). Owner shall consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any. Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If any of the Contractor Parties created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained all required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to, or on the amount or extent of, any adjustment in Contract Price or Contract Times as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or

expenses incurred in response to the Hazardous Environmental Condition, then within 14 days after Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal and Owner, without waiting 14 days, may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08. In any event, Contractor shall not be entitled to increased overhead or profit in connection with any adjustment of the Contract Price under this Paragraph 5.06.

- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the full extent permitted by Laws and Regulations, Contractor shall defend (at Owner's option in its sole discretion), indemnify and hold harmless the Owner Parties and Engineer, and consultants and subcontractors of each and any of them, from and against 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 or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove any Constituents of Concern brought to the Site by any of the Contractor Parties, to a Hazardous Environmental Condition created by any of the Contractor Parties, or failure by any of the Contractor Parties to fulfill a specific responsibility under the Contract with respect to a Hazardous Environmental Condition or any other environmental matters. Nothing in this Paragraph 5.06.I obligates Contractor to defend or indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds shall remain in effect until at least one year after Final Completion or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by other provisions of the Contract.
- C. All bonds shall be in the form included in the Bidding Documents or otherwise specified by Owner prior to signing the Contract, except as provided otherwise by Laws or Regulations, and shall be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact shall be accompanied by a certified copy of that individual's authority to bind the

surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements of this Paragraph 6.01, then Contractor shall promptly notify Owner in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements in this Paragraph 6.01.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have performed or furnished labor, services, materials, or equipment used in the performance of the Work, Owner may provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have performed or furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance required of each of them, respectively, in this article and elsewhere in the Contract.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from and maintained with insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. All companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, 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 Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing

information and (2) any wording specific to a project or jurisdiction other than that applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than that relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds the Owner Parties and Engineer (and any other individuals or entities identified in the Contract as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change or lapse in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site shall end immediately, and Owner may impose a set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required under this Contract shall not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract, or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract shall contain a provision or endorsement that the coverage afforded shall not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days after receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured, additional insured, and the other party to the Contract.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain commercial general liability, automobile liability, worker's compensation and employer's liability, umbrella or excess liability, and other insurance pursuant to the specific requirements of the Contract.
- B. *General Provisions:* The policies of insurance required under this Contract shall:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits set forth in the Agreement, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until Final Completion, and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor is correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work by any of the Contractor Parties; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, shall:
 - 1. include and list as additional insureds the Owner Parties and Engineer, and any individuals or entities identified as additional insureds in the Contract;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including, as applicable, those arising from both ongoing and completed operations);
 - 4. not seek contribution from insurance maintained by the additional insured; and

5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.
- D. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
 2. damages insured by reasonably available personal injury liability coverage, and
 3. damages because of injury to or destruction of tangible property wherever located, including but not limited to loss of use resulting therefrom.
- E. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include at least the following coverages and endorsements:
1. Products and completed operations coverage.
 - a. Such insurance shall be maintained for at least five years after Final Completion.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Contract) evidence of continuation of such insurance at Final Completion and every required year thereafter.
 2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 4. Underground, explosion, and collapse coverage.
 5. Personal injury coverage.
 6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
- F. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, shall not include any of the following:
1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
 2. Any exclusion for water intrusion or water damage.

3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
 4. Any exclusion of coverage relating to earth subsidence or movement.
 5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).
 6. Any limitation or exclusion based on the nature of Contractor's work.
 7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- G. *Commercial General Liability—Minimum Policy Limits:* Contractor's commercial general liability policy shall be written for not less than the limits set forth in the Agreement.
- H. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis, and shall be written for not less than the limits set forth in the Agreement.
- I. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in this Paragraph 6.03. The coverage afforded shall be at least as broad as that of each and every one of the underlying policies, and shall be written for not less than the limits set forth in the Agreement.
- J. *Waiver of Subrogation:* Contractor shall obtain a waiver of subrogation endorsement to each insurance policy required by this Paragraph 6.03 that waives the insurer's right to subrogate a claim against any of the Owner Parties. Contractor also shall require each of its Subcontractors with such insurance policies applicable to the Project to obtain similar endorsements to those policies in favor of the Owner Parties.
- K. *Professional Liability Coverage (if applicable):* If any provision of the Contract requires any of the Contractor Parties to provide professional services, including but not limited to any architectural, engineering, design, construction management, surveying or other professional service, Contractor shall obtain and require such Contractor Party to obtain Professional Liability (errors and omissions) coverage applicable to that party's portion of the Work, with limits reasonably acceptable to Owner.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Contract, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as provided in the Contract or required by Laws and Regulations, whichever is less).
- B. *Property Insurance for Facilities of Owner Where Work Will Occur:* Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach

or be adjoined. Such property insurance shall be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and shall be maintained until the Work is complete, as set forth in Paragraph 15.06.

- C. *Property Insurance for Substantially Complete Facilities:* Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner shall obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06. Such property insurance shall be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) shall provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item shall be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Contract), shall contain provisions to the effect that in the event of payment of any loss or damage the insurer shall have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
 - 1. Owner and Contractor waive all rights against each other 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, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work, but only to the extent of insurance proceeds received for such losses and damages; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Contract as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused, but only to the extent of insurance proceeds received for such losses and damages.

2. None of the waivers in this Paragraph 6.05 extends to the rights that any party making such waiver has to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion, or after Final Completion, shall contain provisions to the effect that in the event of payment of any loss or damage the insurer shall have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract signed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the 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 fire or any of the perils, risks, or causes of loss covered by such policies, but only to the extent of insurance proceeds received for such losses and damages.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Contract as insureds, the Engineer and its consultants, and the 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, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 shall be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured shall state its position regarding a claim for insured loss in writing within 14 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and

distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 Contractor's Means and Methods of Construction

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written approval of Owner, except under extraordinary circumstances.

7.03 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner for all acts and omissions of the Contractor Parties, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor shall not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which shall not be unreasonably withheld.
 - 1. As used in the Contract, "regular working hours" shall mean 7:00 AM to 6:00 PM.
 - 2. As used in Contract, "legal holiday" shall mean each of the following:

Holiday	Date
New Year's Day	January 1
Martin Luther King's Birthday	3rd Monday in January
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Thanksgiving Day	4th Thursday in November
Friday after Thanksgiving	4th Friday in November
Christmas Day	December 25
Bonus Christmas Day	The first week day after Christmas Day, unless otherwise determined by Owner

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be new and of good quality, except as otherwise provided in the Contract Documents. All warranties and guarantees in or required by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Contractor shall furnish satisfactory evidence (including but not limited to reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or

description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that Owner authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the following circumstances:

1. If Owner in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Owner may deem it an “or equal” item. For the purposes of this paragraph, a proposed item of equipment or material shall be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Owner determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor’s Expense*: Contractor shall provide all data in support of any proposed “or equal” item at Contractor’s expense.
- C. *Owner’s Evaluation and Determination*: Owner shall be allowed a reasonable time to evaluate each “or-equal” request. Owner may require Contractor to furnish additional data about the proposed “or-equal” item. Owner shall be the sole judge of acceptability. No “or-equal” item shall be ordered, furnished, installed, or utilized until Owner’s review is complete and Owner determines that the proposed item is an “or-equal,” which shall be evidenced by an approved Shop Drawing or other written communication. Owner shall advise Contractor in writing of any negative determination.
- D. *Effect of Owner’s Determination*: Neither approval nor denial of an “or-equal” request shall result in any change in Contract Price. The Owner’s denial of an “or-equal” request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Owner determines that an item of equipment or material proposed by Contractor does not qualify as an “or-equal” item, Contractor may request that Owner consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Owner authorize the use of other items of equipment or material under the following circumstances (to the extent possible such requests shall be made before commencement of related construction at the Site):
1. Contractor shall submit sufficient information as provided in this Paragraph 7.06.A to allow Owner to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Owner shall not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Owner shall be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Owner decides is appropriate under the circumstances.
 3. Contractor shall make written application to Owner for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited for the same use as the item specified.
 - b. shall state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. shall identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

- B. *Owner's Evaluation and Determination:* Owner shall be allowed a reasonable time to evaluate each substitute request. Owner may require Contractor to furnish additional data about the proposed substitute item. Owner shall be the sole judge of acceptability. No substitute shall be ordered, furnished, installed, or utilized until Owner's review is complete and Owner determines that the proposed item is an acceptable substitute. Owner's determination shall be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Owner shall advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Owner Cost:* Contractor shall bear Owner's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Owner approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of an engineer or other consultant for assistance in evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of an engineer or other consultant for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Owner Determination:* If Owner approves the substitution request, Contractor shall sign the proposed Change Order and proceed with the substitution. Owner's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work, subject to acceptance by Owner of such Subcontractors and Suppliers. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work shall not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner in writing the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 14 days after receipt of Contractor's written submission.

- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days after Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Owner a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate written contractual agreement that specifically binds the Subcontractor or Supplier to the applicable provisions of the Contract for the benefit of Owner. Contractor shall furnish to Owner copies of all agreements with Subcontractors as requested by Owner.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer and Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 Patent Fees and Royalties

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its

use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed in the Contract Documents.

- B. To the full extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against 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 or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the proper use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the full extent permitted by Laws and Regulations, Contractor shall defend (at Owner's option in its sole discretion), indemnify and hold harmless the Owner Parties and Engineer, and consultants and subcontractors of each and any of them, from and against 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 or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work that are applicable at the time of the submission of Contractor's Bid. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.
- B. If Owner acquires any permits from CSX, U.S. Army Corps of Engineers, Tennessee Department Environment and Conservation, Tennessee Department of Transportation, Williamson County, City of Franklin, or other utilities or agencies, the terms of the restrictions and conditions applicable to such permits shall be disclosed to Contractor, and Contractor shall perform the Work in accordance with all such restrictions and conditions.

7.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with Laws and Regulations.

7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

- B. If any of the Contractor Parties performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall, to the full extent permitted by Laws and Regulations, defend (at Owner's option in its sole discretion), indemnify and hold harmless the Owner Parties and Engineer, and consultants, and subcontractors of each and any of them, from and against 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 or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 14 days after such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim at any time.

7.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, shall be available to Owner for reference. Upon Final Completion of the Work, Contractor shall deliver these record documents to Owner.

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors or Suppliers of their responsibility for the safety of persons or property in the performance of their Work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who might be affected by the Work;
 - 2. all the Work, materials, and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by any of the Contractor Parties shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them is liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of any of the Contractor Parties).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall promptly notify Owner of any damage, injury, or loss to the persons or property of the type referred to in Paragraph 7.13.C.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows the Work might affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any, but such responsibility shall not affect Contractor's other obligations under this Paragraph 7.13. Any of Owner's safety programs that are applicable to the Work are identified or included in the Contract Documents. Contractor shall immediately notify Owner if Contractor thinks any of Owner's safety programs might not be safe or might conflict with Contractor's other obligations.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives shall comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection shall continue until all the Work is completed and Contractor has left the Site (except as otherwise expressly provided in the Contract Documents in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Owner prompt written notice if Contractor believes that any significant changes in the Work or variations or deviations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Owner determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order shall be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
 2. Each Shop Drawing or Sample shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.
 3. With each Shop Drawing or Sample, Contractor shall give Owner specific written notice of any variations that the Submittal has from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Owner for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Owner the services, materials, and equipment Contractor proposes to provide, and to enable Owner to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Owner requires to enable Owner to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Owner's review and approval of the pertinent submittal shall be at the sole expense and responsibility of Contractor.
- C. *Owner's Review of Shop Drawings and Samples*
1. Owner shall provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Owner's review and approval shall be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Owner's review and approval shall not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Owner's review and approval of a separate item as such shall not indicate approval of the assembly in which the item functions.
 4. Owner's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Owner has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Owner shall document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.
 5. Owner's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
 6. Owner's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Owner's receipt, review, acceptance, or approval of a Shop Drawing or Sample shall result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Owner and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Owner on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Contractor shall bear Owner's costs for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for an engineer's or other consultant's charges to Owner for assistance with such review. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for an engineer's or other consultant's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to Owner in accordance with the Schedule of Submittals and pursuant to the applicable provisions of the Contract Documents.
 - b. Owner shall provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals shall be deemed accepted.
 - c. Owner's review shall be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Contractor shall confer with Owner regarding the reason for the non-acceptance, and resubmit an acceptable document.
 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs:** Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be of good quality, new (unless the Contract Documents permit otherwise) and in accordance with the Contract Documents, and will not be defective. Owner is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days after Owner's discovery that such Work is defective; and
 - 2. Such notice shall be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim shall be brought within 30 days after the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than any of the Contractor Parties; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligations to perform and complete the Work and other obligations in accordance with the Contract Documents is absolute. No approval, consent, acceptance, or other action or exercise of rights by Owner, including but not limited to those set forth below in this Paragraph 7.17.D, shall constitute an acceptance of Work or performance by Contractor that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under the Contract Documents:
 - 1. Any of Owner's or Engineer's rights or obligations under Article 10, including but not limited to site visits or observations by Owner or Engineer;
 - 2. Payment by Owner of any progress or final payment;
 - 3. Use or occupancy of the Work or any part thereof by Owner;
 - 4. Any review and approval of a Submittal, Shop Drawing, Sample submittal or schedule;
 - 5. The issuance of a notice of acceptability;
 - 6. The end of the correction period established in Paragraph 15.08;
 - 7. Any inspection, test, or approval by others; or
 - 8. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the

assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 Indemnification

- A. To the full extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall defend (at Owner's option in its sole discretion), indemnify and hold harmless the Owner Parties and Engineer, and consultants and subcontractors of each and any of them, from and against all claims, actions, liabilities, losses, damages, costs, expenses and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of, relating to or resulting from the performance, or failure in performance, of the Work, provided that such claim, action, liability, loss, cost, expense, judgment or damage is attributable, in whole or in part to any act or omission of any of the Contractor Parties.
- B. In any and all claims against any of the Owner Parties or Engineer, or any of their consultants or subcontractors, by any employee (or the survivor or personal representative of such employee) of any of the Contractor Parties, the defense and indemnification obligations under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for any of the Contractor Parties under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation shall specify the performance and design criteria that such services shall satisfy, and the Submittals that Contractor shall furnish to Owner with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional shall issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, then such Shop Drawing or other Submittal shall bear the written approval of Contractor's design professional when submitted by Contractor.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Owner's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals

furnished by Contractor pursuant to an Owner-delegated design shall be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.19;
 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations, and Contractor shall promptly notify Owner if Contractor relies on or invokes this provision.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the performance of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that is required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Owner and the others whose work will be affected.
- E. If the proper performance or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper performance and results of Contractor's Work. Contractor's failure to so report shall constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and latent deficiencies in such other work.

- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following shall be provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an adjustment in the Contract Price or the Contract Times, each as reasonably determined by Owner. Contractor shall submit any Change Proposal seeking an adjustment in the Contract Price or the Contract Times under this paragraph within 14 days after the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or

utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.

2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, any of the Owner Parties, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) to the full extent permitted by Laws and Regulations, defend (at Owner's option in its sole discretion), indemnify and hold harmless the Owner Parties and Engineer, and consultants and subcontractors of each and any of them from and against all such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications directly to Contractor.
- B. Owner's Designated Representative identified in the Agreement, and Owner's City Administrator, Assistant City Administrator, City Engineer, and Department Directors, are the only individuals authorized to give approvals, consents, and otherwise act on Owner's behalf under the Contract Documents, including with respect to, but not limited to, Change Orders, Work Change Directives, Change Proposals, Field Orders, amendments, and other modifications to the Contract. From time to time, Owner may also designate in writing other representatives who are authorized to act on Owner's behalf.
- C. In any event, any modification to the Contract in the amount of \$25,000 or greater shall be effective only if signed by Owner's City Administrator, and all modifications to the Contract are subject to final written approval by the City of Franklin Board of Mayor and Aldermen.

9.02 *Replacement and Role of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

- B. At Owner's sole discretion, Owner may utilize Engineer to assist with any of Owner's rights, duties, responsibilities, and obligations under the Contract during construction of the Work, and, with prior written notice to Contractor, may engage Engineer to carry out and administer such rights, duties and obligations on Owner's behalf.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner shall not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon the reasonable request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S AND OWNER'S STATUS DURING CONSTRUCTION

10.01 *Authority of Engineer*

- A. The duties and responsibilities and the limitations of authority of Engineer during construction, if any, are set forth in the Contract.

10.02 *Visits to Site*

- A. Owner and Engineer may make visits to the Site at intervals appropriate to the various stages of construction as Owner deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor's Work. Based on information obtained during such visits and observations, Owner may determine, in general, if the Work is proceeding in accordance with the Contract Documents. Owner shall not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Owner's efforts shall be directed toward providing for Owner a degree of confidence that the completed Work will conform generally to the Contract Documents.

10.03 *Determinations for Unit Price Work*

- A. Owner shall determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.04 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Owner shall render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work.

10.05 *Limitations on Owner's Authority and Responsibilities*

- A. Neither Owner's authority or responsibility under this Article 10, nor any decision made by Owner in good faith either to exercise or not exercise such authority or responsibility, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Owner to any of the Contractor Parties.
- B. Owner shall not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner shall not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Owner shall not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

- D. Owner's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, shall only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with, the Contract Documents.

10.06 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement shall be set forth in a Change Order.

11.02 *Change Orders*

- A. Owner and Contractor shall sign appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off by submitting a Claim;
 - 3. Changes in the Work: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Contractor refuses to sign a Change Order that is required to be signed under Paragraph 11.02.A, it shall be deemed to be of full force and effect, as if fully signed.

11.03 *Work Change Directives*

- A. A Work Change Directive shall not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the

Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

B. If Owner has issued a Work Change Directive and:

1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 14 days after the completion of the Work set out in the Work Change Directive.
2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Owner may authorize changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes shall be accomplished by a Field Order and shall be binding on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then, before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.

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- B. An adjustment in the Contract Price shall be determined as follows:
1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which might include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent of the costs;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be 5 percent of the costs;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, or 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change that results in a net decrease in Cost of the Work shall be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee shall be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs,

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Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Owner to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Owner concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief or changes under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal shall address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Owner within 14 days after the start of the event giving rise thereto; otherwise any request by Contractor for an adjustment in the Contract Times or Contract Price associated with such Change Proposal shall be deemed waived.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including but not limited to the proposed change in Contract Price or Contract Time (if any), to Owner within 14 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference shall comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price shall include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Owner's Initial Review:* If in its discretion Owner concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Owner may request that Contractor submit such additional supporting data by a date specified by Owner, prior to Owner beginning its full review of the Change Proposal.

4. *Owner's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Owner), Owner shall conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions shall be in writing, with a copy provided to Contractor. If Owner does not take action on the Change Proposal within 30 days, then the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 5. *Binding Decision:* Owner's decision is final and binding upon Contractor, unless Contractor timely appeals the decision by filing a Claim under Article 12.
- C. *Post-Completion:* Contractor shall not submit any Change Proposals after Final Completion.
- 11.10 *Notification to Surety*
- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including but not limited to Contract Price or Contract Times), the giving of any such notice shall be Contractor's responsibility. The amount of each applicable bond shall be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process:* Claims between Owner and Contractor, including but not limited to the following, are subject to the process set forth in this article:
1. Appeals by Contractor of Owner's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Final Completion.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 14 days after the decision under appeal. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled. Claims by Contractor seeking an increase in the Contract Times or Contract Price that are not made within the time limits set forth in this Paragraph 12.01.B shall be deemed waived.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for

resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party.

D. Mediation

1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.
 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs, unless otherwise agreed.
- E. Partial Approval:** If Owner approves a Claim by Contractor in part and denies it in part, such action shall be final and binding unless within 30 days after such action Contractor invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. Denial of Claim:** If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days after the written notice of denial, then the Claim is deemed denied. A denial of the Claim shall be final and binding unless within 30 days after the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. Final and Binding Results:** If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

- A. Purposes for Determination of Cost of the Work:** As used in the Contract Documents, the term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined in this Paragraph 13.01. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those

additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

- B. *Costs Included:* Except as otherwise agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those commonly incurred in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs include salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the costs included in this Paragraph 13.01.B.1 to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including but not limited to costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments to which the discounts apply, in which case the cash discounts shall accrue to Owner. Contractor may not keep any cash discounts unless it has provided Owner seven days' prior written notice thereof and the opportunity to deposit funds with Contractor with which to make payments to which the discounts apply. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they can be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which shall then determine which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
 5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, that are consumed

in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration shall be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor shall not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity shall be paid at a rate shown for such equipment in the equipment rental rate book specified in the Contract Documents or, in the absence of such a book, at rates no higher than standard rates paid in Williamson County, Tennessee. An hourly rate shall be computed by dividing the monthly rates by 176. These computed rates shall include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs shall be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is responsible, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of any of the Contractor Parties, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of any of the Contractor Parties. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and

expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office in connection with the Work, who are not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
- 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 5. Costs due to the negligence or breach of contract of any of the Contractor Parties, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 6. Expenses incurred in preparing and advancing or defending Claims.
- 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract shall be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee shall be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee shall automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions shall be determined in accordance with Paragraph 11.07.C.2.

2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work shall be determined in accordance with Paragraph 11.07.C.2.
- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors shall establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner shall be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of five years after Final Completion. Pertinent Subcontractors shall afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for no more than such sums and by persons or entities acceptable to Owner.
- B. *Cash Allowances*: Contractor agrees that:
 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing shall be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to Final Completion, an appropriate Change Order shall be issued to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price shall be correspondingly adjusted.
- E. Contractor shall not exceed any allowance amount set forth in the Contract Documents, and shall not be entitled to payment for any such excess amounts, without Owner's prior written approval.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price shall be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work shall be based on actual quantities.

- C. Each unit price shall be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner shall determine the actual quantities and classifications of Unit Price Work performed by Contractor. Owner shall review with Contractor the Owner's preliminary determinations on such matters before rendering a written decision thereon. Owner's written decision thereon shall be final and binding upon Contractor, and the final adjustment of Contract Price shall be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. *Adjustments in Unit Price*
 - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
 - 2. The adjustment in unit price shall account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
 - 3. Adjusted unit prices shall apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they can comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Owner timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work specifically to be inspected, tested, or approved by an employee or other representative of such public

body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner.

- E. If the Contract Documents require the Work to be approved by Owner or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Owner, Contractor shall, if requested by Owner, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Owner timely notice of Contractor's intention to cover the same and Owner had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Owner's Authority:* Owner has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Reasonably timely written notice of all defective Work of which Owner has actual knowledge shall be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Owner has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines

levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to Final Completion, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to Final Completion, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a set-off against payments due under Article 15. If the acceptance of defective Work occurs after Final Completion, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Owner has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Owner, then Contractor shall, if requested by Owner, uncover such Work for Owner's observation, and then replace the covering, all at Contractor's expense.
- C. If Owner considers it necessary or advisable that covered Work be observed by Owner or inspected or tested by others, then Contractor, at Owner's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner requires, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 14 days after the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work

shall conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of any of the Contractor Parties.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Owner to correct defective Work, or to remove and replace defective Work as required by Owner, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 shall be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages shall include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 shall serve as the basis for progress payments and shall be incorporated into a form of Application for Payment acceptable to Owner. Progress payments for Unit Price Work shall be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work shall be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. Not more often than once a month, Contractor shall submit to Owner for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by: (a) a bill of sale,

invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which shall be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor, acceptable to Owner, stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

C. Review of Applications

1. Owner may, after receipt of each Application for Payment, including each resubmittal, return the Application to Contractor indicating in writing any reasons for refusing the Application in whole or in part. In such case, Contractor shall make the necessary corrections and resubmit the Application.
2. Contractor's Application for Payment shall constitute a representation by Contractor to Owner that to the best of Contractor's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents; and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled.
3. By approving any Application for Payment Owner shall not be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
 - b. there are not other matters or issues between the parties that might entitle Owner to withhold payment to Contractor.
4. Owner may reject, in whole or in part, an Application for Payment if necessary in Owner's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove, remediate, or otherwise address a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Owner has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor.

D. *Payment Becomes Due*

1. Thirty days after Owner's approval of the Application for Payment, the amount approved by Owner (subject to any Owner set-offs and Owner's rights to withhold payment under this Paragraph 15.01) shall become due, and when due shall be paid by Owner to Contractor.

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment by Owner under Paragraph 15.01.C, Owner is entitled to impose a set-off against payment, and withhold payment in whole or in part, based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, or patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove, remediate, or otherwise address a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to Submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination of the Contract for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or Final Completion of the Work;
 - k. Liens have been asserted or filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to impose a set-off against the amount requested.
2. If Owner withholds or imposes any set-off against payment, Owner shall give Contractor prompt written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or

any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.D.1.
- F. If Owner reasonably believes it is necessary, Owner may, at its sole option, issue joint checks to Contractor and any Subcontractor or Supplier, or issue direct payments to any Subcontractor or Supplier, to whom Contractor has failed to make payment for Work properly performed or material or equipment suitably delivered.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment performed and furnished under the Contract shall pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, upon payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use, Contractor shall notify Owner in writing that the entire Work is substantially complete and submit to Owner an initial draft of punch list items to be completed or corrected before Final Completion.
- B. Promptly after Contractor's notification, Owner and Contractor shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner shall notify Contractor in writing, giving the reasons therefor.
- C. If Owner considers the Work substantially complete, Owner shall deliver to Contractor a revised punch list of items to be completed or corrected, reflecting Owner's changes, if any, to the initial draft punch list.
- D. At the time of Owner's receipt of Contractor's initial notification that Contractor believes the Work is substantially complete, Owner and Contractor also shall confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion, the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to Final Completion. In appropriate cases, Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth in Paragraph 15.01.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion, subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work that has specifically been identified in the Contract Documents, or that Owner and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor and Owner shall follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
 2. At any time, Contractor may notify Owner in writing that Contractor considers any such part of the Work substantially complete and request Owner to follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
 3. Within a reasonable time after either such request, Owner and Contractor shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner shall notify Contractor in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 shall apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that it considers the entire Work or an agreed portion thereof to be finally complete, Owner shall promptly make a final inspection with Contractor and shall notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work and remedy such deficiencies.

15.06 *Final Completion and Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Owner, satisfactorily completed all corrections and other Work identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in, and in the format required by, the Contract Documents, including but not limited to as-built drawings and specifications reflecting all changes to, and the final condition of, the Work as constructed;
 - b. consent of all sureties to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2, if approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or that might in any way result in Liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers. In any event, to the full extent permitted by Laws and Regulations, Contractor shall defend (at Owner's option in its sole discretion), indemnify and hold harmless the Owner Parties from and against 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 or arbitration or other dispute resolution costs) arising out of or relating to any Liens and claims asserted or filed because of the Work.
- B. *Owner's Review of Final Application for Payment:* If, on the basis of Owner's observation of the Work during construction and final inspection, and Owner's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner is satisfied that the Work has been finally completed and Contractor's other obligations under the Contract have been fulfilled, final payment shall become due under Paragraph 15.06.D Such determination shall account for any set-offs against payment that are necessary in Owner's opinion to protect Owner from loss for the reasons stated in Paragraphs 15.01.C and 15.01.E with respect to progress payments. Otherwise, Owner shall return the Application for Payment to Contractor, indicating in writing the reasons for refusing to make final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Completion of Work:* The Work is finally complete (subject to surviving obligations) when final payment is due from Owner to Contractor as established under this Paragraph 15.06.

- D. *Final Payment Becomes Due*: Upon Final Completion, Owner shall set off against the amount for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under Paragraphs 15.01.C and 15.01.E with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days after Owner's receipt and approval of the final Application for Payment from Contractor.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor shall constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If, within one year after the date of Substantial Completion (or such longer period of time prescribed by the Contract Documents or the terms of any applicable warranty or guarantee required by or contained in the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. correct the defective repairs to the Site or such adjacent areas;
 2. correct such defective Work;
 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give Contractor reasonably timely notice of any such defect after Owner discovers it. If such notice is given after the end of the correction period, the notice shall be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect, Contractor does not promptly comply with the Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days after invoice from Owner shall be deemed the start

of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim shall be brought within 30 days after the failure to pay.

- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work shall be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable warranty or statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor. Such notice shall fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an extension of the Contract Times directly attributable to any such suspension, to the extent not caused by any of the Contractor Parties. Any Change Proposal seeking such adjustment shall be submitted no later than 14 days after the date fixed for resumption of Work.

16.02 *Contractor Default; Owner May Terminate the Contract for Cause*

- A. The occurrence of any one or more of the following events shall constitute a default by Contractor and entitle Owner to all rights and remedies available to it under the Contract and Laws and Regulations, including but not limited to Owner's termination of the Contract for cause:
 - 1. Contractor's failure to perform the Work in accordance with the Contract Documents (including but not limited to failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard or violation of Laws or Regulations; or
 - 4. Contractor's disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated;

2. enforce the rights available to Owner under any applicable performance bond; and/or
 3. exercise or pursue any other rights and remedies available to Owner under the Contract and Laws and Regulations.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but that are stored elsewhere, and complete the Work as Owner deems expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor, within 7 days after receipt of notice of intent to terminate, begins to correct its failure to perform and diligently cures such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including but not limited to all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess shall be paid to Contractor. If the cost to complete the Work, including but not limited to such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where the Contract has been so terminated by Owner, the termination shall not affect any rights or remedies of Owner against Contractor then existing or that thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner shall not release Contractor from liability.

16.03 Owner May Terminate the Contract for Convenience

- A. Upon 7 days' written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work performed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate the Contract*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails to act on any Application for Payment within 60 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed to act on an Application for Payment within 60 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner, stop the Work until payment is made of all such amounts due Contractor. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in the Contract directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 - 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after Final Completion.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
 - 1. Before bringing any action in court pertaining to any Claim, dispute or other matter in question arising out of or related to the Contract Documents or the breach thereof, the claimant shall first provide notice of the Claim, dispute or other matter in question to the other party to this Contract in writing and make a specific demand for settlement of said Claim, dispute or matter. If the other party fails to agree to an acceptable resolution to said Claim, dispute or matter, or offer a specific counter-proposal thereto within five days after the receipt of such notice, or the claimant fails to accept any counter-proposal from the other party within five days after receipt thereof, either party shall be free to submit the Claim, dispute or other matter to litigation in accordance with Paragraph 17.01.B.2.
 - 2. Any Claim, dispute, or other matter in question arising out of or related to the Contract or the Project shall be litigated in the Tennessee Judicial Circuit Court in and for Williamson, County, Tennessee, and the prevailing party to any such litigation shall be entitled to an award of all reasonable attorneys' and experts' fees, expenses and court costs incurred by such prevailing party against the non-prevailing party, including in connection with any appeals.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner or Contractor, it shall be deemed to have been validly given only if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, if also sent by one of the methods in Paragraph 18.01.A.1 or .2.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or legal holiday, such day shall be omitted from the computation.

18.03 *Cumulative Remedies*

- A. Except as otherwise specifically provided in the Contract Documents, the duties and obligations imposed by the Contract Documents, and the rights and remedies available thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them that are otherwise imposed or available by Laws or Regulations, by warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither the Owner Parties nor Engineer, nor any of their consultants or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all other obligations in the Contract that logically should survive Final Completion or earlier termination of the Contract, shall survive Final Completion or earlier termination of the Contract.

18.07 *Controlling Law*

- A. This Contract is to be governed by the laws of the State of Tennessee.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract shall be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that becomes due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction is limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors and assigns to the other party hereto and its successors and assigns in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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WORK CHANGE DIRECTIVE NO.: ____

Owner: City of Franklin, TN
Engineer: City of Franklin, TN ("COF") serving as "Engineer"
Contractor: _____
Project Name: Main Barn at Harlinsdale
Owner's Contract No.: COF Contract No. 2023-0299
Date Issued: _____
Effective Date of Field Order: _____

Contractor is directed to proceed promptly with the following change(s):

Description:

Attachments:

Purpose for the Work Change Directive:

Directive to proceed promptly with the Work described herein, prior to agreeing to change in Contract Price and Contract Time, is issued due to:

☐ Non-agreement on pricing of proposed change. ☐ Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price: \$ _____

Contract Time: _____ **days**

Basis of estimated change in Contract Price:

☐ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

	Recommended by Engineer	Authorized by Owner
By:	_____	_____
Title:	_____	_____
Signature:	_____	_____
Date:	_____	_____

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CHANGE ORDER NO.: ____

Owner:	<u>City of Franklin, TN</u>
Engineer:	<u>City of Franklin, TN ("COF") serving as "Engineer"</u>
Contractor:	_____
Project Name:	<u>Main Barn at Harlinsdale</u>
Owner's Contract No.:	<u>COF Contract No. 2023-0299</u>
Date Issued:	_____
Effective Date of Change Order:	_____

The Contract is modified as follows upon execution of this Change Order:

Description:

Attachments:

Change in Contract Price	Change in Contract Times [State Contract Times as number of days]
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for final payment: _____
[Increase] [Decrease] from previously approved Change Orders No. 1 to No. [Number of previous Change Order] : \$ _____	[Increase] [Decrease] from previously approved Change Orders No.1 to No. [Number of previous Change Order] : Substantial Completion: _____ Ready for final payment: _____
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for final payment: _____
[Increase] [Decrease] this Change Order: \$ _____	[Increase] [Decrease] this Change Order: Substantial Completion: _____ Ready for final payment: _____
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for final payment: _____

Recommended by Engineer		Recommended by Department Director	
By: _____		By: _____	
Signature: _____		Signature: _____	
Title: _____		Title: _____	
Date: _____		Date: _____	

Contractor Approval

Authorized by Owner

By: _____
Signature: _____
Title: _____
Date: _____

By: _____
Signature: _____
Title: _____
Date: _____

FIELD ORDER NO.: ____

Owner: City of Franklin, TN
Engineer: City of Franklin, TN ("COF") serving as "Engineer"
Contractor: _____
Project Name: Main Barn at Harlinsdale
Owner's Contract No.: COF Contract No. 2023-0299
Date Issued: _____
Effective Date of Field Order: _____

Contractor is hereby directed to promptly perform the Work described in this Field Order, issued in accordance with Paragraph 11.04 of the General Conditions, for minor changes in the Work without changes in Contract Price or Contract Times. If Contractor considers that a change in Contract Price or Contract Times is required, submit a Change Proposal before proceeding with this Work.

Reference:

Specification Section(s):

Drawing(s) / Details (s):

Description:

Attachments:

Issued by Engineer

By: _____

Title: _____

Signature: _____

Date: _____

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APPENDIX A – SUPPLEMENTAL SPECIFICATIONS

SUPPLEMENTAL SPECIFICATION INCLUDED WITH PROJECT MANUAL

The following Supplemental Specifications are included, in their entirety, in Appendix A and are made a part of the Bidding Documents for the **Main Barn at Harlinsdale (COF Contract No. 2023-0299)**.

- A. Section 012200 – Measurement and Payment
- B. Section 012973 – Schedule of Values
- C. Section 013300 – Submittal-RFI Procedures
- D. Section 014000 – Quality Requirements

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SECTION 012200 – MEASUREMENT AND PAYMENT

PART 1 – GENERAL

1.1 SCOPE

- A. The Bid lists each item of the Project which payment will be made. No payment will be made for any items other than those listed in the Bid.
- B. Required items of work and incidentals necessary for the satisfactory completion of the work, which are not specifically listed in the Bid, and which are not specified in this section to be measured or to be included in one of the items listed in the Bid, shall be considered as incidental to the work. All costs thereof, including Contractor's overhead costs and profit, shall be considered as included in the lump sum or unit prices bid for the various Bid items. The Contractor shall prepare the Bid accordingly.
- C. Work includes furnishing all plant, labor, equipment, tools, and materials, which are not furnished by the Owner and performing all operations required to complete the Work satisfactorily, in place, as specified and as indicated on the Drawings.

1.2 DESCRIPTIONS

- A. Measurement of an item of work will be by the unit indicated in the Bid.
- B. The precision of final payment quantities shall match the precision shown for that item in the Bid.
- C. Payment will include all necessary and incidental related work not specified to be included in any other item of work listed in the Bid.
- D. Unless otherwise stated in the individual sections of the Specifications of in the Bid, no separate payment will be made for any item of work, materials, parts, equipment, supplies, or related items required to perform and complete the work. The costs for all such items shall be included in the price bid for item of which it is a part.
- E. Payment will be made by extending unit prices multiplied by quantities provided and then summing the extended prices to reflect actual work. Such price and payment shall constitute full compensation to the Contractor for furnishing all plant, labor, equipment, tools, and materials, not furnished by the Owner and for performing all operations required to provide to the Owner the entire Project, complete in place, as specified as indicated on the Drawings.

1.3 ITEM NO. 1 – MAIN BARN AT HARLINSDALE COMPLETE-IN-PLACE

- A. The lump sum price bid shall include all costs for all Work shown on the Drawings and/or specified. Such costs include furnishing all products, materials, and equipment and performing all labor necessary to install, to complete, and to put into operation the Main Barn at The Park at Harlinsdale Farm.
- B. Monthly partial payment will be made based on the approved schedule of values.

1.4 ITEM NO. 2 – OWNER’S CONTINGENCY

- A. Any payments made from the Owner’s Contingency shall be in accordance with General Conditions Paragraph 13.02.C.

PART 2 – PRODUCT (NOT USED)

PART 3 – EXECUTION (NOT USED)

END OF DOCUMENT 012200

SECTION 012973 – SCHEDULE OF VALUES

PART 1 – GENERAL

1.1 SCOPE

- A. The work under this Section includes preparation and submittal of a schedule of values.

1.2 GENERAL

- A. Timing of Submittal: Submit to the Engineer, a schedule of values allocated to the various portions of the work, within ten (10) days after a Notice to Proceed. The first progress payment will not be made until the next pay cycle following the Engineer's approval of the Contractor's values.
- B. Supporting Data: Upon request of the Engineer, support the values with data that will substantiate their correctness to the satisfaction of the Engineer.
- C. Use of Schedule: The schedule of values, unless objected to by the Engineer, shall be used as a basis of the Contractor's Application for Payment, and, at the Engineer's option, as a basis for determining costs associated with changes in the Work.

1.3 FORM AND CONTENT OF SCHEDULE OF VALUES

- A. Form and Identification
 - 1. Schedule shall be formatted for 8.5 x 11-inch printing.
 - 2. Contractor's standard forms and automated printout may be considered.
 - 3. Identify schedule with:
 - a. Title of Project and location
 - b. Engineer
 - c. Name and address of Contractor
 - d. Contract designation
 - e. Date of submission
- B. Schedule shall list the installed value of the component parts of the work in sufficient detail to serve as a basis for computing values for progress payments during construction. Breakdown shall be by area and/or structure, then by components, for ease of field verification of quantities completed in each structure.

C. Format

1. Follow the Drawing Index of the Contract Documents as the order for listing component items.
2. Supplement each item with the number and title of the respective primary section of the Specifications.

D. For each major line item list sub-values of major products or operations under the item. Level of detail shall be subject to the approval of the Engineer.

E. For the Various Portions of the Work:

1. Each item shall include a directly proportional amount of the Contractor's overhead and profit.
2. For items on which progress payments will be requested for stored materials, break down the value into:
 - a. The cost of the materials, delivered and unloaded, with taxes paid.
 - b. The total installed value, including the Contractor's overhead and profit, less Section 1.3 item E.2.a above.

F. The sum of all values listed in the schedule shall equal the Bid Total.

PART 2 – PRODUCT (NOT USED)

PART 3 – EXECUTION (NOT USED)

END OF DOCUMENT 012973

SECTION 013300 – SUBMITTAL-RFI PROCEDURES

PART 1 – GENERAL

1.1 SUMMARY

- A. Section includes:
1. Submittal schedule requirements.
 2. Administrative and procedural requirements for submittals
 3. Requests for Information (RFIs).

1.2 DEFINITIONS

- A. Action Submittals: Written and graphic information and physical samples that require Architect's/Engineer's responsive action.
- B. Informational Submittals: Written and graphic information and physical samples that do not require Architect's/Engineer's responsive action. Submittals may be rejected for not complying with requirements.

1.3 SUBMITTAL SCHEDULE

- A. Submittal Schedule: Submit, as an action submittal, a list of submittals, arranged in chronological order by dates required by construction schedule. Include time required for review, ordering, manufacturing, fabrication, and delivery when establishing dates. Include additional time required for making corrections or revisions to submittals noted by Architect/Engineer and additional time for handling and reviewing submittals required by those corrections.

1.4 SUBMITTAL FORMATS

- A. Submittal Information: Include the following information, as applicable, in each submittal:
1. Project name.
 2. Date.
 3. Name of Architect/Engineer.
 4. Name of Contractor.
 5. Name of firm or entity that prepared submittal.
 6. Names of subcontractor, manufacturer, and supplier.
 7. Unique submittal number, including revision identifier. Include Specification Section number with sequential alphanumeric identifier; and alphanumeric suffix for resubmittals.
 8. Category and type of submittal.
 9. Submittal purpose and description.

10. Number and title of Specification Section, with paragraph number and generic name for each of multiple items.
11. Drawing number and detail references, as appropriate.
12. Indication of full or partial submittal.
13. Location(s) where product is to be installed, as appropriate.
14. Other necessary identification.
15. Remarks.
16. Signature of transmitter.

- B. Options: Identify options requiring selection by Architect/Engineer.
- C. Deviations and Additional Information: On each submittal, clearly indicate deviations from requirements in the Contract Documents, including minor variations and limitations; include relevant additional information and revisions, other than those requested by Architect/Engineer on previous submittals. Indicate by highlighting on each submittal or noting on attached separate sheet.
- D. Electronic Submittals: Prepare submittals as PDF package, incorporating complete information into each PDF file. Name PDF file with submittal number.
- E. Submittals for Utilizing Web-Based Project Management Software: Prepare submittals as PDF files, or other format indicated by Project management software.

1.5 SUBMITTAL PROCEDURES

- A. Prepare and submit submittals required by the Contract Documents and/or individual Specification Sections. Types of submittals are indicated in the Contract Documents and/or individual Specification Sections.
 1. Email: Prepare submittals as PDF package and transmit to Architect/Engineer by sending via email. Include PDF transmittal form. Include information in email subject line as requested by Architect/Engineer.
 2. Web-Based Project Management Software: Prepare submittals in PDF form, and upload to web-based Project management software website. Enter required data in web-based software site to fully identify submittal.
 3. Paper: Prepare submittals in paper form and deliver to Architect/Engineer.
- B. Coordination: Coordinate preparation and processing of submittals with performance of construction activities.
 1. Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity.
 2. Submit all submittal items required for each Specification Section concurrently unless partial submittals for portions of the Work are indicated on approved submittal schedule.

3. Submit action submittals and informational submittals required by the same Specification Section as separate packages under separate transmittals.
- C. Processing Time: Allow time for submittal review, including time for resubmittals, as follows. Time for review shall commence on Architect's/Engineer's receipt of submittal. No extension of the Contract Time will be authorized because of failure to transmit submittals enough in advance of the Work to permit processing, including resubmittals.
 1. Initial Review: Allow fifteen (15) calendar days for initial review of each submittal. Allow additional time if coordination with subsequent submittals is required. Architect/Engineer will advise Contractor when a submittal being processed must be delayed for coordination.
 2. Resubmittal Review: Allow fifteen (15) calendar days for review of each resubmittal.
 3. Submittals received by Architect/Engineer after 1:00 p.m. (Central Time) will be considered as received the following working day.
- D. Resubmittals: Make resubmittals in same form and number of copies as initial submittal.
- E. Distribution: Furnish copies of final submittals to manufacturers, subcontractors, suppliers, fabricators, installers, authorities having jurisdiction, and others as necessary for performance of construction activities. Show distribution on transmittal forms.
- F. Use for Construction: Retain complete copies of submittals on Project site. Use only final action submittals that are marked with approval notation from Architect's/Engineer's action stamp.

1.6 SUBMITTAL REQUIREMENTS

- A. Product Data: Collect information into a single submittal for each element of construction and type of product or equipment.
 1. If information must be specially prepared for submittal because standard published data are unsuitable for use, submit as Shop Drawings, not as Product Data.
 2. Mark each copy of each submittal to show which products and options are applicable.
 3. Include the following information, as applicable:
 - a. Manufacturer's catalog cuts.
 - b. Manufacturer's product specifications.
 - c. Standard color charts.
 - d. Statement of compliance with specified referenced standards.
 - e. Testing by recognized testing agency.
 - f. Application of testing agency labels and seals.
 - g. Notation of coordination requirements.
 - h. Availability and delivery time information.
 4. For equipment, include the following in addition to the above, as applicable:
 - a. Wiring diagrams that show factory-installed wiring.

- b. Printed performance curves.
 - c. Operational range diagrams.
 - d. Clearances required to other construction, if not indicated on accompanying Shop Drawings.
- 5. Submit Product Data before Shop Drawings, and before or concurrent with Samples.
- B. Shop Drawings: Collect information into a single submittal for each element of construction and type of product or equipment.
 - 1. Preparation: Fully illustrate requirements in the Contract Documents. Include the following information, as applicable:
 - a. Identification of products.
 - b. Schedules.
 - c. Compliance with specified standards.
 - d. Notation of coordination requirements.
 - e. Notation of dimensions established by field measurement.
 - f. Relationship and attachment to adjoining construction clearly indicated.
 - g. Seal and signature of professional engineer if specified.
- C. Samples: Submit Samples for review of kind, color, pattern, and texture for a check of these characteristics with other materials.
 - 1. Transmit Samples that contain multiple, related components such as accessories together in one submittal package.
 - 2. Identification: Permanently attach label on unexposed side of Samples that includes the following, as applicable:
 - a. Project name and submittal number.
 - b. Generic description of Sample.
 - c. Product name and name of manufacturer.
 - d. Sample source.
 - e. Number and title of applicable Specification Section.
 - f. Specification paragraph number and generic name of each item.
 - 3. Email Transmittal: Provide PDF transmittal. Include digital image file illustrating Sample characteristics, and identification information for record.
 - 4. Web-Based Project Management Software: Prepare submittals in PDF form, and upload to web-based Project software website. Enter required data in web-based software site to fully identify submittal.
 - 5. Paper Transmittal: Include paper transmittal including complete submittal information indicated.
 - 6. Disposition: Maintain sets of approved samples at Project site, available for quality-control comparisons throughout the course of construction activity. Sample sets may be used to determine final acceptance of construction associated with each set.

-
- a. Samples that may be incorporated into the Work are indicated in the Drawings and/or individual Specification Sections. Such Samples must be in an undamaged condition at time of use.
 - b. Samples not incorporated into the Work, or otherwise designated as Owner's property, are the property of Contractor.
 7. Samples for Initial Selection: Submit manufacturer's color charts consisting of units or sections of units showing the full range of colors, textures, and patterns available.
 - a. Number of Samples: Submit one full set of available choices where color, pattern, texture, or similar characteristics are required to be selected from manufacturer's product line. Architect/Engineer will return submittal with options selected.
 8. Samples for Verification: Submit full-size units or Samples of size indicated, prepared from same material to be used for the Work, cured and finished in manner specified, and physically identical with material or product proposed for use, and that show full range of color and texture variations expected. Samples include, but are not limited to, the following: partial sections of manufactured or fabricated components; small cuts or containers of materials; complete units of repetitively used materials; swatches showing color, texture, and pattern; color range sets; and components used for independent testing and inspection.
 - a. Number of Samples: Submit three (3) sets of Samples. Architect/Engineer will retain one Sample set; remainder will be returned. Mark up and retain one (1) returned Sample set as a project record Sample.
 - 1) Submit a single Sample where assembly details, workmanship, fabrication techniques, connections, operation, and other similar characteristics are to be demonstrated.
 - 2) If variation in color, pattern, texture, or other characteristic is inherent in material or product represented by a Sample, submit at least three sets of paired units that show approximate limits of variations.
 - D. Product Schedule: As required by the Contract Documents and/or in individual Specification Sections, prepare a written summary indicating types of products required for the Work and their intended location. Include the information in tabular form.
 - E. Qualification Data: Prepare written information that demonstrates capabilities and experience of firm or person. Include lists of completed projects with project names and addresses, contact information of architects/engineers and owners, and other information specified.
 - F. Design Data: Prepare and submit written and graphic information indicating compliance with indicated performance and design criteria in individual Specification Sections or as shown on the Drawings. Include list of assumptions and summary of loads. Include load diagrams if applicable. Provide name and version of software, if any, used for calculations. Number each page of submittal.

G. Certificates:

1. Certificates and Certifications Submittals: Submit a statement that includes signature of entity responsible for preparing certification. Certificates and certifications shall be signed by an officer or other individual authorized to sign documents on behalf of that entity. Provide a notarized signature where indicated.
2. Installer Certificates: Submit written statements on manufacturer's letterhead certifying that Installer complies with requirements in the Contract Documents and, where required, is authorized by manufacturer for this specific Project.
3. Manufacturer Certificates: Submit written statements on manufacturer's letterhead certifying that manufacturer complies with requirements in the Contract Documents. Include evidence of manufacturing experience where required.
4. Material Certificates: Submit written statements on manufacturer's letterhead certifying that material complies with requirements in the Contract Documents.
5. Product Certificates: Submit written statements on manufacturer's letterhead certifying that product complies with requirements in the Contract Documents.
6. Welding Certificates: Prepare written certification that welding procedures and personnel comply with requirements in the Contract Documents. Submit record of Welding Procedure Specification and Procedure Qualification Record on American Welding Society (AWS) forms. Include names of firms and personnel certified.

H. Test and Research Reports:

1. Compatibility Test Reports: Submit reports written by a qualified testing agency, on testing agency's standard form, indicating and interpreting results of compatibility tests performed before installation of product. Include written recommendations for substrate preparation and primers required.
2. Field Test Reports: Submit written reports indicating and interpreting results of field tests performed either during installation of product or after product is installed in its final location, for compliance with requirements in the Contract Documents.
3. Material Test Reports: Submit reports written by a qualified testing agency, on testing agency's standard form, indicating and interpreting test results of material for compliance with requirements in the Contract Documents.
4. Preconstruction Test Reports: Submit reports written by a qualified testing agency, on testing agency's standard form, indicating and interpreting results of tests performed before installation of product, for compliance with performance requirements in the Contract Documents.
5. Product Test Reports: Submit written reports indicating that current product produced by manufacturer complies with requirements in the Contract Documents. Base reports on evaluation of tests performed by manufacturer and witnessed by a qualified testing agency, or on comprehensive tests performed by a qualified testing agency.

6. Research Reports: Submit written evidence, from a model code organization acceptable to authorities having jurisdiction, that product complies with building code in effect for Project. Include the following information:
 - a. Name of evaluation organization.
 - b. Date of evaluation.
 - c. Time period when report is in effect.
 - d. Product and manufacturers' names.
 - e. Description of product.
 - f. Test procedures and results.
 - g. Limitations of use.

1.7 DELEGATED-DESIGN SERVICES

- A. Performance and Design Criteria: Where professional design services or certifications by a design professional are specifically required of Contractor by the Contract Documents, provide products and systems complying with specific performance and design criteria indicated.
 1. If criteria indicated are insufficient to perform services or certification required, submit a written request for additional information to Architect/Engineer.
- B. Delegated-Design Services Certification: In addition to Shop Drawings, Product Data, and other required submittals, submit digitally signed PDF file paper copies of certificate, signed and sealed by the responsible design professional, for each product and system specifically assigned to Contractor to be designed or certified by a design professional.
 1. Indicate that products are systems comply with performance and design criteria in the Contract Documents. Include list of codes, loads, and other factors used in performing these services.

1.8 CONTRACTOR'S REVIEW

- A. Action Submittals and Informational Submittals: Review each submittal and check for coordination with other Work of the Contract and for compliance with the Contract Documents. Note corrections and field dimensions. Mark with approval stamp before submitting to Architect/Engineer.
- B. Contractor's Approval: Indicate Contractor's approval for each submittal with a uniform approval stamp. Include name of reviewer, date of Contractor's approval, and statement certifying that submittal has been reviewed, checked, and approved for compliance with the Contract Documents.
 1. Architect/Engineer will not review submittals received from Contractor that do not have Contractor's review and approval.

1.9 ARCHITECT'S/ENGINEER'S REVIEW

- A. Action Submittals: Architect/Engineer will review each submittal, indicate corrections or revisions required, and return it.
 - 1. PDF Submittals: Architect/Engineer will indicate, via markup on each submittal, the appropriate action.
 - 2. Submittals by Web-Based Project Management Software: Architect/Engineer will indicate, on Project management software website, the appropriate action.
- B. Informational Submittals: Architect/Engineer will review each submittal and will not return it, or will return it if it does not comply with requirements. Architect/Engineer will forward each submittal to appropriate party.
- C. Partial submittals prepared for a portion of the Work will be reviewed when use of partial submittals has received prior approval from Architect/Engineer.
- D. Incomplete submittals are unacceptable, will be considered nonresponsive, and will be returned for resubmittal without review.
- E. Architect/Engineer will return without review submittals received from sources other than Contractor.
- F. Submittals not required by the Contract Documents will be returned by Architect/Engineer without action.

1.10 REQUEST FOR INFORMATION (RFI)

- A. General: Immediately on discovery of the need for additional information, clarification, or interpretation of the Contract Documents, Contractor shall prepare and submit an RFI in the form specified.
 - 1. Architect/Engineer will return without response those RFIs submitted to Architect/Engineer by other entities controlled by Contractor.
 - 2. Coordinate and submit RFIs in a prompt manner so as to avoid delays in Contractor's work or work of subcontractors.
- B. Content of the RFI: Include a detailed, legible description of item needing information or interpretation and the following, as applicable:
 - 1. Owner name.
 - 2. Owner's Project number.
 - 3. Name of Architect/Engineer.
 - 4. Architect's/Engineer's Project number.
 - 5. Date.
 - 6. Name of Contractor.
 - 7. RFI number, numbered sequentially.

8. RFI subject.
 9. Specification Section number and title and related paragraphs, as appropriate.
 10. Drawing number and detail references, as appropriate.
 11. Field dimensions and conditions, as appropriate.
 12. Contractor's suggested resolution. If Contractor's suggested resolution impacts the Contract Time or the Contract Sum, Contractor shall state impact in the RFI.
 13. Contractor's signature.
 14. Attachments: Include sketches, descriptions, measurements, photos, Product Data, Shop Drawings, coordination drawings, and other information necessary to fully describe items needing interpretation.
- C. RFI Forms: Software-generated form with substantially the same content as indicated above, acceptable to Architect/Engineer.
- D. Architect's/Engineer's Action: Architect/Engineer will review each RFI, determine action required, and respond. Allow four working days for Architect's/Engineer's response for each RFI. RFIs received by Architect/Engineer after 1:00 p.m. (Central Time) will be considered as received the following working day.
1. The following Contractor-generated RFIs will be returned without action:
 - a. Requests for approval of submittals.
 - b. Requests for approval of substitutions.
 - c. Requests for approval of Contractor's means and methods.
 - d. Requests for coordination information already indicated in the Contract Documents.
 - e. Requests for adjustments in the Contract Time or the Contract Sum.
 - f. Requests for interpretation of Architect's/Engineer's actions on submittals.
 - g. Incomplete RFIs or inaccurately prepared RFIs.
 2. Architect's/Engineer's action may include a request for additional information, in which case Architect's/Engineer's time for response will date from time of receipt by Architect/Engineer of additional information.
 3. Architect's/Engineer's action on RFIs that may result in a change to the Contract Time or the Contract Sum may be eligible for Contractor to submit Change Proposal.
 - a. If Contractor believes the RFI response warrants change in the Contract Time or the Contract Sum, notify Architect/Engineer in writing within five days of receipt of the RFI response.
- E. RFI Log: Prepare, maintain, and submit a tabular log of RFIs organized by the RFI number. Submit log weekly. Include the following:
1. Project name.
 2. Name and address of Contractor.
 3. Name and address of Architect/Engineer.
 4. RFI number including RFIs that were returned without action or withdrawn.

5. RFI description.
6. Date the RFI was submitted.
7. Date Architect's Engineer's response was received.

- F. On receipt of Architect's/Engineer's action, update the RFI log and immediately distribute the RFI response to affected parties. Review response and notify Architect/Engineer within three days if Contractor disagrees with response.

PART 2 – PRODUCT (NOT USED)

PART 3 – EXECUTION (NOT USED)

END OF DOCUMENT 013300

SECTION 014000 – QUALITY REQUIREMENTS

PART 1 – GENERAL

1.1 SUMMARY

- A. Section includes administrative and procedural requirements for quality assurance and quality control.
- B. Testing and inspection services are required to verify compliance with requirements specified or indicated. These services do not relieve Contractor of responsibility for compliance with the Contract Document requirements.
 - 1. Specified tests, inspections, and related actions do not limit Contractor's other quality-assurance and quality-control procedures that facilitate compliance with the Contract Document requirements.
 - 2. Requirements for Contractor to provide quality-assurance and quality-control services required by Architect/Engineer, Owner, Commissioning Authority, or authorities having jurisdiction are not limited by provisions of this Section.

1.2 DEFINITIONS

- A. Experienced: When used with an entity or individual, "experienced" unless otherwise further described means having successfully completed a minimum of five previous projects similar in nature, size, and extent to this Project; being familiar with special requirements indicated; and having complied with requirements of authorities having jurisdiction.
- B. Field Quality-Control Tests and Inspections: Tests and inspections that are performed on-site for installation of the Work and for completed Work.
- C. Installer/Applicator/Erector: Contractor or another entity engaged by Contractor as an employee, Subcontractor, or Sub-subcontractor, to perform a particular construction operation, including installation, erection, application, assembly, and similar operations.
 - 1. Use of trade-specific terminology in referring to a Work result does not require that certain construction activities specified apply exclusively to specific trade(s).
- D. Mockups: Physical assemblies of portions of the Work constructed to establish the standard by which the Work will be judged. Mockups are not Samples.
 - 1. Mockups are used for one or more of the following:
 - a. Verify selections made under Sample submittals.
 - b. Demonstrate aesthetic effects.
 - c. Demonstrate the qualities of products and workmanship.
 - d. Demonstrate successful installation of interfaces between components and systems.
 - e. Perform preconstruction testing to determine system performance.

- 2. Product Mockups: Mockups that may include multiple products, materials, or systems specified in a single Section.
- 3. In-Place Mockups: Mockups constructed on-site in their actual final location as part of permanent construction.
- E. Preconstruction Testing: Tests and inspections performed specifically for Project before products and materials are incorporated into the Work, to verify performance or compliance with specified criteria. Unless otherwise indicated, copies of reports of tests or inspections performed for other than the Project do not meet this definition.
- F. Product Tests: Tests and inspections that are performed by a nationally recognized testing laboratory (NRTL) according to 29 CFR 1910.7, by a testing agency accredited according to NIST's National Voluntary Laboratory Accreditation Program (NVLAP), or by a testing agency qualified to conduct product testing and acceptable to authorities having jurisdiction, to establish product performance and compliance with specified requirements.
- G. Source Quality-Control Tests and Inspections: Tests and inspections that are performed at the source; for example, plant, mill, factory, or shop.
- H. Testing Agency: An entity engaged to perform specific tests, inspections, or both. The term "testing laboratory" has the same meaning as the term "testing agency."
- I. Quality-Assurance Services: Activities, actions, and procedures performed before and during execution of the Work to guard against defects and deficiencies and substantiate that proposed construction will comply with requirements.
- J. Quality-Control Services: Tests, inspections, procedures, and related actions during and after execution of the Work to evaluate that actual products incorporated into the Work and completed construction comply with requirements. Contractor's quality-control services do not include contract administration activities performed by Architect/Engineer.

1.3 SUBMITTAL SCHEDULE

- A. Performance and Design Criteria: Where professional design services or certifications by a design professional are specifically required of Contractor by the Contract Documents, provide products and systems complying with specific performance and design criteria indicated.
 - 1. If criteria indicated are not sufficient to perform services or certification required, submit a written request for additional information to Architect/Engineer.
- B. Delegated Design Services Statement: Submit a statement, signed and sealed by the responsible design professional, for each product and system specifically assigned to Contractor to be designed or certified by a design professional, indicating that the products and systems are in

compliance with performance and design criteria indicated. Include list of codes, loads, and other factors used in performing these services.

1.4 CONFLICTING REQUIREMENTS

- A. Conflicting Standards and Other Requirements: If compliance with two or more standards or requirements is specified and the standards or requirements establish different or conflicting requirements for minimum quantities or quality levels, inform the Architect/Engineer regarding the conflict and obtain clarification prior to proceeding with the Work. Refer conflicting requirements that are different, but apparently equal, to Architect/Engineer for clarification before proceeding.
- B. Minimum Quantity or Quality Levels: The quantity or quality level shown or specified is the minimum provided or performed. The actual installation may comply exactly with the minimum quantity or quality specified, or it may exceed the minimum within reasonable limits. To comply with these requirements, indicated numeric values are minimum or maximum, as appropriate, for the context of requirements. Refer uncertainties to Architect/Engineer for a decision before proceeding.

1.5 ACTION SUBMITTALS

- A. Mockup Shop Drawings:
 - 1. Include plans, sections, elevations, and details, indicating materials and size of mockup construction.
 - 2. Indicate manufacturer and model number of individual components.
 - 3. Provide axonometric drawings for conditions difficult to illustrate in two dimensions.

1.6 INFORMATIONAL SUBMITTALS

- A. Contractor's Statement of Responsibility: When required by authorities having jurisdiction, submit copy of written statement of responsibility submitted to authorities having jurisdiction before starting work on the following systems:
 - 1. Seismic-force-resisting system, designated seismic system, or component listed in the Statement of Special Inspections.
 - 2. Main wind-force-resisting system or a wind-resisting component listed in the Statement of Special Inspections.
- B. Testing Agency Qualifications: For testing agencies specified in "Quality Assurance" Article to demonstrate their capabilities and experience. Include proof of qualifications in the form of a recent report on the inspection of the testing agency by a recognized authority.
- C. Permits, Licenses, and Certificates: For Owner's record, submit copies of permits, licenses, certifications, inspection reports, releases, jurisdictional settlements, notices, receipts for fee

payments, judgments, correspondence, records, and similar documents established for compliance with standards and regulations bearing on performance of the Work.

1.7 REPORTS AND DOCUMENTS

- A. Test and Inspection Reports: Prepare and submit certified written reports specified in other Sections. Include the following, as applicable:

1. Date of issue.
2. Project title and number.
3. Name, address, telephone number, and email address of testing agency.
4. Dates and locations of samples and tests or inspections.
5. Names of individuals making tests and inspections.
6. Description of the Work and test and inspection method.
7. Identification of product and Specification Section.
8. Complete test or inspection data.
9. Test and inspection results and an interpretation of test results.
10. Record of temperature and weather conditions at time of sample taking and testing and inspection.
11. Comments or professional opinion on whether tested or inspected Work complies with the Contract Document requirements.
12. Name and signature of laboratory inspector.
13. Recommendations on retesting and reinspecting.

- B. Manufacturer's Technical Representative's Field Reports: Prepare written information documenting manufacturer's technical representative's tests and inspections specified in other Sections. Include the following, as applicable:

1. Statement on condition of substrates and their acceptability for installation of product.
2. Statement that products at Project site comply with requirements.
3. Summary of installation procedures being followed, whether they comply with requirements and, if not, what corrective action was taken.
4. Results of operational and other tests and a statement of whether observed performance complies with requirements.
5. Other required items indicated in individual Specification Sections.

- C. Factory-Authorized Service Representative's Reports: Prepare written information documenting manufacturer's factory-authorized service representative's tests and inspections specified in other Sections. Include the following, as applicable:

1. Statement that equipment complies with requirements.
2. Results of operational and other tests and a statement of whether observed performance complies with requirements.
3. Other required items indicated in individual Specification Sections.

1.8 QUALITY ASSURANCE

- A. Qualifications paragraphs in this article establish the minimum qualification levels required; Contract Documents, Drawings, and/or individual Specification Sections specify additional requirements.
- B. Manufacturer Qualifications: A firm experienced in manufacturing products or systems similar to those indicated for this Project and with a record of successful in-service performance, as well as sufficient production capacity to produce required units. As applicable, procure products from manufacturers able to meet qualification requirements, warranty requirements, and technical or factory-authorized service representative requirements.
- C. Fabricator Qualifications: A firm experienced in producing products similar to those indicated for this Project and with a record of successful in-service performance, as well as sufficient production capacity to produce required units.
- D. Installer Qualifications: A firm or individual experienced in installing, erecting, applying, or assembling work similar in material, design, and extent to that indicated for this Project, whose work has resulted in construction with a record of successful in-service performance.
- E. Professional Engineer Qualifications: A professional engineer who is legally qualified to practice in jurisdiction where Project is located and who is experienced in providing engineering services of the kind indicated. Engineering services are defined as those performed for installations of the system, assembly, or product that are similar in material, design, and extent to those indicated for this Project.
- F. Specialists: Certain Contract Documents, Drawings, and/or Specification Sections require that specific construction activities be performed by entities who are recognized experts in those operations. Specialists will satisfy qualification requirements indicated and engage in the activities indicated.
 - 1. Requirements of authorities having jurisdiction supersede requirements for specialists.
- G. Testing and Inspecting Agency Qualifications: A Nationally Recognized Testing Laboratory (NRTL), a National Voluntary Laboratory Accreditation Program (NVLAP), or an independent agency with the experience and capability to conduct testing and inspection indicated, as documented according to ASTM E329; and with additional qualifications specified in individual Sections; and, where required by authorities having jurisdiction, that is acceptable to authorities.
- H. Manufacturer's Technical Representative Qualifications: An authorized representative of manufacturer who is trained and approved by manufacturer to observe and inspect installation of manufacturer's products that are similar in material, design, and extent to those indicated for this Project.

- I. Factory-Authorized Service Representative Qualifications: An authorized representative of manufacturer who is trained and approved by manufacturer to inspect, demonstrate, repair, and perform service on installations of manufacturer's products that are similar in material, design, and extent to those indicated for this Project.

- J. Preconstruction Testing: Where testing agency is indicated to perform preconstruction testing for compliance with specified requirements for performance and test methods, comply with the following:
 - 1. Contractor responsibilities include the following:
 - a. Provide test specimens representative of proposed products and construction.
 - b. Submit specimens in a timely manner with sufficient time for testing and analyzing results to prevent delaying the Work.
 - c. When testing is complete, remove test specimens and test assemblies, and mockups; do not reuse products on Project.
 - 2. Testing Agency Responsibilities: Submit a certified written report of each test, inspection, and similar quality-assurance service to Architect/Engineer and Commissioning Authority, with copy to Contractor. Interpret tests and inspections and state in each report whether tested and inspected work complies with or deviates from the Contract Documents.

- K. Mockups: Before installing portions of the Work requiring mockups, build mockups for each form of construction and finish required to comply with the following requirements, using materials indicated for the completed Work:
 - 1. Build mockups of size indicated.
 - 2. Build mockups in location indicated or, if not indicated, as directed by Architect/Engineer.
 - 3. Notify Architect/Engineer seven (7) days in advance of dates and times when mockups will be constructed.
 - 4. Employ supervisory personnel who will oversee mockup construction. Employ workers that will be employed to perform same tasks during the construction at Project.
 - 5. Demonstrate the proposed range of aesthetic effects and workmanship.
 - 6. Obtain Architect's/Engineer's approval of mockups before starting corresponding work, fabrication, or construction.
 - a. Allow seven (7) days for initial review and each re-review of each mockup.
 - 7. Promptly correct unsatisfactory conditions noted by Architect's/Engineer's preliminary review, to the satisfaction of the Architect/Engineer, before completion of final mockup.
 - 8. Approval of mockups by the Architect/Engineer does not constitute approval of deviations from the Contract Documents contained in mockups unless Architect/Engineer specifically approves such deviations in writing.
 - 9. Maintain mockups during construction in an undisturbed condition as a standard for judging the completed Work.
 - 10. Demolish and remove mockups when directed unless otherwise indicated.

1.9 QUALITY CONTROL

- A. Owner Responsibilities: Where quality-control services are indicated as Owner's responsibility, Owner will engage a qualified testing agency to perform these services.
1. Owner will furnish Contractor with names, addresses, and telephone numbers of testing agencies engaged and a description of types of testing and inspection they are engaged to perform.
 2. Costs for retesting and reinspecting construction that replaces or is necessitated by Work that failed to comply with the Contract Documents will be charged to Contractor.
- B. Contractor Responsibilities: Tests and inspections not explicitly assigned to Owner are Contractor's responsibility. Perform additional quality-control activities, whether specified or not, to verify and document that the Work complies with requirements.
1. Engage a qualified testing agency to perform quality-control services.
 - a. Contractor will not employ same entity engaged by Owner, unless agreed to in writing by Owner.
 2. Notify testing agencies at least twenty-four (24) hours in advance of time when Work that requires testing or inspection will be performed.
 3. Where quality-control services are indicated as Contractor's responsibility, submit a certified written report, in duplicate, of each quality-control service.
 4. Testing and inspection requested by Contractor and not required by the Contract Documents are Contractor's responsibility.
 5. Submit additional copies of each written report directly to authorities having jurisdiction, when they so direct.
- C. Retesting/Reinspecting: Regardless of whether original tests or inspections were Contractor's responsibility, provide quality-control services, including retesting and reinspecting, for construction that replaced Work that failed to comply with the Contract Documents.
- D. Testing Agency Responsibilities: Cooperate with Architect/Engineer, Commissioning Authority and Contractor in performance of duties. Provide qualified personnel to perform required tests and inspections.
1. Notify Architect/Engineer, Commissioning Authority, and Contractor promptly of irregularities or deficiencies observed in the Work during performance of its services.
 2. Determine the locations from which test samples will be taken and in which in-situ tests are conducted.
 3. Conduct and interpret tests and inspections and state in each report whether tested and inspected Work complies with or deviates from requirements.
 4. Submit a certified written report, in duplicate, of each test, inspection, and similar quality-control service through Contractor.

5. Do not release, revoke, alter, or increase the Contract Document requirements or approve or accept any portion of the Work.
 6. Do not perform duties of Contractor.
- E. Manufacturer's Field Services: Where indicated, engage a factory-authorized service representative to inspect field-assembled components and equipment installation, including service connections. Report results in writing as specified in Section 013300 "Submittal Procedures."
- F. Manufacturer's Technical Services: Where indicated, engage a manufacturer's technical representative to observe and inspect the Work. Manufacturer's technical representative's services include participation in preinstallation conferences, examination of substrates and conditions, verification of materials, observation of Installer activities, inspection of completed portions of the Work, and submittal of written reports.
- G. Contractor's Associated Requirements and Services: Cooperate with agencies and representatives performing required tests, inspections, and similar quality-control services, and provide reasonable auxiliary services as requested. Notify agency sufficiently in advance of operations to permit assignment of personnel. Provide the following:
1. Access to the Work.
 2. Incidental labor and facilities necessary to facilitate tests and inspections.
 3. Adequate quantities of representative samples of materials that require testing and inspection. Assist agency in obtaining samples.
 4. Facilities for storage and field curing of test samples.
 5. Preliminary design mix proposed for use for material mixes that require control by testing agency.
 6. Security and protection for samples and for testing and inspection equipment at Project site.
- H. Coordination: Coordinate sequence of activities to accommodate required quality-assurance and quality-control services with a minimum of delay and to avoid necessity of removing and replacing construction to accommodate testing and inspection.
1. Schedule times for tests, inspections, obtaining samples, and similar activities.
- 1.10 SPECIAL TESTS AND INSPECTIONS
- A. Special Tests and Inspections: Owner will engage a qualified testing agency to conduct special tests and inspections required by authorities having jurisdiction as the responsibility of Owner, and as follows:
1. Verifying that manufacturer maintains detailed fabrication and quality-control procedures and reviewing the completeness and adequacy of those procedures to perform the Work.
 2. Notifying Architect/Engineer, Commissioning Authority, and Contractor promptly of irregularities and deficiencies observed in the Work during performance of its services.

3. Submitting a certified written report of each test, inspection, and similar quality-control service to Architect/Engineer with copy to Contractor and to authorities having jurisdiction.
4. Submitting a final report of special tests and inspections at Substantial Completion, which includes a list of unresolved deficiencies.
5. Interpreting tests and inspections and stating in each report whether tested and inspected work complies with or deviates from the Contract Documents.
6. Retesting and reinspecting corrected Work.

PART 2 – PRODUCT (NOT USED)

PART 3 – EXECUTION

3.1 TEST AND INSPECTION LOG

- A. Test and Inspection Log: Prepare a record of tests and inspections. Include the following:
 1. Date test or inspection was conducted.
 2. Description of the Work tested or inspected.
 3. Date test or inspection results were transmitted to Architect/Engineer.
 4. Identification of testing agency or special inspector conducting test or inspection.
- B. Maintain log at Project site. Post changes and revisions as they occur. Provide access to test and inspection log for Architect's/Engineer's, Commissioning Authority's, and authorities' having jurisdiction reference during normal working hours.
 1. Submit log at Project closeout as part of Project Record Documents.

3.2 REPAIR AND PROTECTION

- A. General: On completion of testing, inspection, sample taking, and similar services, repair damaged construction and restore substrates and finishes.
 1. Provide materials and comply with installation requirements specified in Drawings and/or other Specification Sections or matching existing substrates and finishes. Restore patched areas and extend restoration into adjoining areas with durable seams that are as invisible as possible.
- B. Protect construction exposed by or for quality-control service activities.
- C. Repair and protection are Contractor's responsibility, regardless of the assignment of responsibility for quality-control services.

END OF DOCUMENT 014000

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APPENDIX B – SPECIAL PROVISIONS

SPECIAL PROVISIONS

The following Special Provisions are included, in their entirety, in Appendix B and are made a part of the Bidding Documents for the **Main Barn at Harlinsdale (COF Contract No. 2023-0299)**.

- A. City of Franklin Special Provision (SP100RD) Regarding Utility Record Drawing

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SPECIAL PROVISION
REGARDING
UTILITY RECORD DRAWINGS

PART 1 – GENERAL**1.1 SCOPE****1.1.1 General**

The following specifications define the requirements for the preparation and submittal of the Utility Record Drawings for all utilities included in the Contract Documents.

1.1.2 Work Included

The Contractor shall, unless specified otherwise, provide all materials, equipment, tools, and labor necessary for surveying as-built utility installations, and preparation and submittal of Utility Record Drawings. All surveying and Utility Record Drawings must be done by a Professional Surveyor licensed in the State of Tennessee.

1.1.3 Location of the Work

The location of this work is as shown in the Contract Documents.

1.1.4 Coordination of the Work

The Contractor shall be responsible for the satisfactory coordination of the surveying activities with other construction and activities in the area. Delays in work resulting from lack of such harmony shall not in any way be a cause for extra compensation by any of the parties.

1.1.5 Working Hours

The work shall be carried out in accordance with local ordinance and not to cause any unreasonable nuisance to affected residents. Under emergency conditions, this limitation may be waived by the consent of the City of Franklin, TN.

1.2 METHOD OF MEASUREMENT & PAYMENT

All surveying and record preparation must be done by a Professional Surveyor licensed in the State of Tennessee. The work shall be measured, and the compensation determined in the following manner:

1.2.2 Record Drawings

The preparation and submittal of the record drawings shall be paid for on a lump sum basis including preparing and submitting the Professional Surveyor signed and sealed set of Record Drawings in accordance with the requirements listed in this special provision.

1.3 SUBMITTALS

1.3.1 The contractor shall submit the Record Drawings, which are signed and sealed by a State of Tennessee Registered Surveyor, in the following formats: two (2) full-size (paper size shall be 22" x 34" or 24" x 36" with a maximum scale of 1"= 50'), one (1) digital PDF to the same scale as the full-size paper drawings, and Computer-Aided Design and Drafting (CADD) digital files in AutoCAD (DWG) or MicroStation (DGN) format, prepared utilizing the same coordinate system as shown in the Contract Documents.

PART 2 – PRODUCTS**2.1 MATERIALS**

The contractor shall furnish all materials of adequate quality for the purpose intended, including all stakes, pipes, paint, and all other materials necessary to properly perform the required work. Stakes and pipes shall be suitable for general field construction staking and shall be durable enough to last from installation of the utility to the surveying for the preparation of the Record Drawings. Any stakes and pipes damaged during the duration of the contract shall be replaced and re-set at their proper location with no additional compensation being made therefore.

PART 3 – EXECUTION**3.1 GENERAL**

3.1.1 The Engineer of Record will provide the CADD Drawings to the project's contractor for use by the Professional Surveyor for the production of the Record Drawings.

3.2 SURVEYING REQUIREMENTS

All surveying for the project shall be done by or under the supervision of a Tennessee licensed Professional Surveyor. The Professional Surveyor shall review the work, resolve problems, and make decisions in a timely manner.

3.3 SURVEYING FOR RECORD DRAWINGS

The contractor shall only be required to provide Record Drawings for the various systems listed below in sections 3.3.1 thru 3.3.10 that have been or will be modified, altered, installed, constructed, or otherwise disturbed as a part of the construction contract to which this Special Provision has been attached or included.

3.3.1 Property Lines and Easements

The surveyor shall show all property lines and easements included in the Contract Documents.

3.3.2 Stormwater Record Drawings

The following stormwater items shall be included: stormwater culverts and pipes (including: material, slope and length), structures (manholes, catch basins, junction boxes, end walls, outlet structures, etc. [including rim elevations and inverts]) and permanent stormwater Best Management Practices (BMPs) with depicting 1' contours and 25' around the permanent stormwater BMPs (including: detention ponds, retention ponds, bioretention ponds, infiltration trenches, etc.).

3.3.3 City of Franklin, TN Traffic Signals and Fiber Optics Record Drawings:

The following traffic signal and fiber optics shall be included: signal poles, pedestrian poles, CCTV poles, school zone flashers, signal cabinets, conduit (including: conduit size, number of conduit, material, length, description of utility located in conduit, etc.), electrical service pedestals, pull boxes and vehicle detectors.

3.3.4 Street and/or Site Lighting System:

The following street and pedestrian lighting systems shall be included: light poles, pull boxes, conduit (including: conduit size, number of conduit, material, length, description of utility located in conduit, etc.), controller cabinets and service pedestal.

3.3.5 Water Record Drawings:

The following potable water items shall be included: public and private water mains (including: size and material), private laterals (including: size and material), valves (including type: gate valve, blow off valve, air release valve, etc.), meters and enclosures (including: type, size and material), backflow preventers and enclosures (including: type, size and material) and fire suppression items (including: hydrants, meters, fire department connections, etc.). Reference specific utility provider technical specifications and guidelines for additional requirements.

3.3.6 Sanitary Sewer Record Drawings:

The following sanitary sewer items shall be included: public and private gravity sanitary sewer mains (including: material, slope and length), structures (including: rim elevations and all inverts), cleanouts, private laterals (including: size and material), low pressure pumps (including size), force mains (including: material, slope, depth and length), pump stations (including: buildings, driveways, fences, enclosures, etc.), and valves (including valve type).

3.3.7 Reclaimed Water Record Drawings:

The following reclaimed water items shall be included: public and private reclaimed water mains (including: size and material), private laterals (including size and material), valves (including type [e.g. gate valve, blow off valve, air release valve, etc.]), meters / meter boxes (including size), backflow preventers and enclosure (including: type, size and material) and fire hydrants.

3.3.8 Natural Gas Record Drawings:

The following natural gas items shall be included: public and private gas mains (including: size and material), valves (including: size and type), regulating stations, services, and meters.

3.3.9 Electrical and Communications Record Drawings:

The following electrical and communications (*i.e.* phone, cable, fiber optic, etc.) items shall be included: pole locations, riser poles, conduit (including: conduit size, number of conduit, material, length, description of utility located in conduit, etc.), pull boxes, transformers/switches, equipment pads, vaults/manholes (including rim elevations), services runs, service pedestals and meters.

3.3.10 Irrigation:

The following irrigation items shall be included: irrigation tap locations, meter locations, pump stations, backflows, controllers, sensors, all pipe sizes/materials, sleeves, valve locations, sprinkler heads, etc. Plans shall include dimensional data from building walls, curbs, sidewalks, etc.

END OF SPECIAL PROVISION

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APPENDIX C – PERMITS

PERMITS

The following Permits are included, in their entirety, in Appendix C and are made a part of the Bidding Documents for the **Main Barn at Harlinsdale COF (Contract No. 2023-0299)**.

- A. City of Franklin, TN (“COF”) Building Permit – Letter of **Conditional Approval** for **COF Building Permit No. 163507**, dated November 11, 2023.
 - 1. City staff is actively working with Architect/Engineer to complete required resubmittal of plans to obtain final approval.
 - 2. Contractor shall be responsible for obtaining all individual trade permits (*e.g.*, electrical, plumbing, mechanical, etc.) and scheduling/coordinating required compliance inspections that are necessary to complete the Work.
- B. COF Stormwater Management & Grading (SWG) Permit and COF Utility Permit – To be completed by city staff (at no cost to the contractor) following a formal Bid Award.
 - 1. A blank copy of the COF Site Permit(s) Checklist has been provided for reference.

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HISTORIC
FRANKLIN
TENNESSEE

CONDITIONALLY APPROVED PLAN REVIEW

Date: 11/15/2023

Applicant: **REDACTED**
Project Name: One Stop 016 - Harlinsdale Main Barn Restoration
City of Franklin Building Permit #: COF no: 0124
Permit no: 163507
Project Address: 239 FRANKLIN RD
Project Administrator: **REDACTED**

The application submitted for the above-captioned building permit has been reviewed.

This application was **CONDITIONALLY APPROVED**. A building permit **may** be issued for this project, **but** this memo identifies deficiencies and issues that must be corrected or addressed before the project will receive full approval and a certificate of occupancy can be issued.

When resubmitting, please include the following:

- Respond to all open issues via the Contractor's Plan Room
- **For non-residential and multi-family projects, include a signed and sealed response letter that addresses each comment from each discipline that was part of the review.**
- "Closed" all plan revisions
- **Complete set of plans (including sheets that may not have revisions) must be submitted. PARTIAL SUBMITTALS WILL NOT BE ACCEPTED.**

Please have the general contractor contact the project administrator to **schedule an appointment** to obtain the permit. **Please do not show up to get your permit without an appointment.**

- If this is a **Residential** revision and you have already obtained your permit, please make sure the most recent approved plans are available on the jobsite.
- If this is a **Non-Residential** revision and you have already obtained your permit, please make sure the most recent approved and stamped plans are available on the jobsite.

Remember that you need to schedule an appointment to pick up your permit!

The project name and identification number assigned by Building and Neighborhood Services (see above) shall be included on all correspondence with any city department relative to this project.
Applications are processed within seven (7) working days for residential and ten (10) working days for non-residential re-submittals.

Open Issues: 1

Plumbing/Mechanical

Harlinsdale Barn 100% CDs_6-26-2023.pdf [0 redlines]

36. Fixture count

City of Frank in REDACTED REDACTED 7/18/23 3:51 PM 1 - Building Permit - Non Residential or Multifamily (NEW)	Plans indicate the correct calculations of restroom fixtures but are not located on drawings for compliance. Please clarify for approval.
906 Studio Architects, LLC REDACTED REDACTED 9/15/23 2:44 PM 1 - Building Permit - Non Residential or Multifamily (NEW)	See G100 for revised code compliant restroom fixture calculations.
City of Frank in REDACTED REDACTED 9/20/23 12:52 PM 3 - Building Permit - Non Residential or Multifamily (NEW)	Five total water closets for the public are required to be provided. Four are accounted for. Please provide fifth water closet. Plan notes one retained for employees. IPC 403.3 - ...The number of plumbing fixtures located within the required toilet facilities shall be provided in accordance with Section 403 for a users. Employee toilet facilities shall be either separate or combined employee and public toilet facilities. Facilities provided for the public shall not be located in private offices. Restrooms accessible to the public shall have a hard, non-absorbent material for a minimum height of 4 feet above finished floor & within 2 feet of rear & side walls for urinals & water closets to comply with Section 1209 in the 2018 IBC. [Ver. 2] [Edited By Randa Tosh]
906 Studio Architects, LLC REDACTED REDACTED 11/8/23 10:59 PM 3 - Building Permit - Non Residential or Multifamily (NEW)	Five total water closets available to all occupants have been provided – see updated G100. Note that finishes around water closets shall be painted with a non-absorbent paint or sea ant (for stained wood).
City of Frank in REDACTED REDACTED 11/15/23 10:04 AM 4 - Building Permit - Non Residential or Multifamily (NEW)	Per Randy Tosh - Restrooms accessible to the public shall have a hard, non-absorbent material for a minimum height of 4 feet above finished floor & within 2 feet of rear & side walls for urinals & water closets to comply with Section 1209 in the 2018 IBC. [Ver. 2] [Edited By Rodney Prince]

CITY OF FRANKLIN - SITE PERMIT(S) CHECKLIST

ALL ITEMS ON THIS CHECKLIST MUST BE INCLUDED TO APPLY FOR A SITE PERMIT:

STORMWATER/GRADING (SWG) or GRADING ONLY(GD) PERMIT:	
☐	PERMIT APPLICATION – MUST BE COMPLETE - Email to amanda.ray@franklintn.gov - PERMIT APPLICATION REQUIREMENTS: - Other Permits MUST be issued PRIOR to issuance of SWG or GD permit. Including ARAP, NPDES, ROW, Floodplain, etc. Include copy of approved TDOT Highway Entrance Permit – if required - Offsite easements/agreements established PRIOR to issuance of permit. - Owner MUST sign permit prior to issuance of permit.
☐	LTMP PACKAGE INCLUDING: - ORIGINAL LTMP AGREEMENT Signed and Notarized by Owner - MUST BE FULLY FILLED OUT - APPROVED LTMP Documents (PRINTED 8.5"x11") MUST BE SENT TOGETHER TO THE ENGINEERING OFFICE AT THE ADDRESS BELOW (MAY NOT BE REQUIRED FOR GRADING ONLY PERMIT)

UTILITY PERMIT *SUBMIT THESE ITEMS TOGETHER.	
☐	PERMIT APPLICATION – Must be complete Email to: amanda.ray@franklintn.gov
☐	RIGHT OF ENTRY AFFIDAVIT – Signed and Notarized by Owner - Must be submitted WITH permit application. - Email to: amanda.ray@franklintn.gov

FEES: TWO OPTIONS FOR PAYING FEES:	
OVER THE PHONE:	Call the BNS Dept (615-794-7012) and provide the COF # and list the fees you are paying and pay by Credit Card.
IN PERSON:	Complete the contact info on the project's <u>Fee Worksheet</u> and take to BNS Dept and pay by check or card.

PLEASE NOTE:

- WHERE NOTED ABOVE PERMIT DOCUMENTS CAN BE SCANNED AND EMAILED TO:
amanda.ray@franklintn.gov
- ORIGINAL LTMP AGREEMENT & APPROVED LTMP DOCUMENTS MUST BE SUBMITTED TOGETHER TO:

Building & Neighborhood Services Dept – City of Franklin, TN
Attn: Jeff Willoughby
109 3rd Ave South, Suite 110
Franklin, TN 37064



SITE PERMIT FEE WORKSHEET

PROJECT NAME:

COF #

This worksheet must be included with any check that is sent in & Indicate which fees are being paid with the check.

FEE DESCRIPTION	AMOUNT	UNIT	RATE	TOTAL	PAID WITH CHECK?
STORMWATER/GRADING PERMIT FEE		EA	\$100	\$ 0.00	☐
GRADING ONLY PERMIT FEE		EA	\$100	\$ 0.00	☐
GRADING & DRAINAGE PLAN REVIEW		EA	\$600	\$ 0.00	☐
DRAINAGE INSPECTION: (Minimum \$1,000)	INCLUDES: STORM PIPE & DITCH WORK: \$1/LF DETENTION POND: \$1/100 CY			\$ 0.00	☐
ROADWAY INSPECTION (Minimum \$1,000)		LF	\$2.00	\$ 0.00	☐
EPSC INSPECTION FEE (Minimum \$1,000) *acres disturbed		AC	\$100	\$ 0.00	☐
BUFFER SIGNS		EA	\$26.50	\$ 0.00	☐
ELECTRONIC RECORDING FEE		EA	\$100	\$ 0.00	☐
NOC FEE (SWPPP FEE)	* May be paid with Permit Fees or separately.			\$ 0.00	☐
WATER PLAN REVIEW		EA	\$300	\$ 0.00	☐
WATER LINE INSPECTION FEE (Minimum \$1,000)		LF	\$1.25	\$ 0.00	☐
SEWER PLAN REVIEW		EA	\$300	\$ 0.00	☐
SEWER LINE INSPECTION FEE – GRAVITY (Minimum \$1,000)		LF	\$2.00	\$ 0.00	☐
SEWER LINE INSPECTION FEE – FORCE MAIN (Minimum \$1,000)		LF	\$1.50	\$ 0.00	☐
RECLAIM PLAN REVIEW		EA	\$300	\$ 0.00	☐
RECLAIM LINE INSPECTION FEE (Minimum \$1,000)		LF	\$2.00	\$ 0.00	☐
TOTAL FEES:				\$ 0.00	☐

PAYORS CONTACT INFO: THIS MUST BE COMPLETED AND THIS FORM MUST BE SUBMITTED WITH ANY MAILED CHECKS.

MAIL OR DROP CHECKS OFF TO:

CITY HALL - BUILDING & NEIGHBORHOOD SERVICES
109 3RD AVE SOUTH, SUITE 110
FRANKLIN, TN 37064

MAKE CHECKS PAYABLE TO: CITY OF FRANKLIN

NAME:

PHONE NUMBER:

EMAIL:

OTHER WAYS TO PAY:

Pay over the phone with a credit card by calling the BNS Dept at 615-794-7012. Please have this sheet ready to provide the COF # and fees for which you will be paying.

QUESTIONS ABOUT THE FEES LISTED ON THIS FORM? Contact: Amanda Ray – 615-550-6669 or amanda.ray@franklintn.gov

CITY OF FRANKLIN STORMWATER MANAGEMENT & GRADING PERMIT (SWG)

STEP 1: COMPLETE PERMIT APPLICATION – INCOMPLETE PERMITS WILL NOT BE APPROVED.

SITE /PROJECT INFO:			COF #
PROPERTY SUBDIVISION/SECTION/REV/LOT #:			
STREET ADDRESS OR LOCATION:			
CONTROL MAP & PARCEL #:			
SIZE OF SITE (AC):	ACRES DISTURBED:	IMPERVIOUS SF:	
APPROX START & END DATE:		PLANS APPROVED:	

PERMITS & REQUIREMENTS:	CIRCLE ONE:	IF YES, PROVIDE PERMIT # AND DATE ISSUED
NPDES PERMIT	NO YES →	PERMIT # DATE ISSUED:
ARAP PERMIT	NO YES →	PERMIT # DATE ISSUED:
WORK IN FLOODPLAIN	NO YES →	PERMIT # DATE ISSUED:
TDOT ROW/HWY ENTRANCE	NO YES →	PERMIT # DATE ISSUED:
OFFSITE WORK?	NO YES →	<i>*if yes, easements/agreements must be submitted to engineering</i>
COF EASEMENTS?	NO YES →	

SITE OWNER OR DEVELOPER CERTIFICATION (Primary Permittee: person, company, or legal entity that has operational or design control over construction plans and specifications) (must be signed by president, vice-president or equivalent, or ranking elected official)			
I certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury. It is acknowledged that I shall be responsible for ensuring that all EPSC requirements as set forth in FMC Title 23 and the TN CGP are being followed onsite and that I am responsible for these requirements until a Notice of Termination is authorized by the City of Franklin or the City of Franklin authorizes a Notice of Transfer for 100% of the permit. I understand that these requirements will be inspected and enforced by the City of Franklin and failure to comply may result in the issuance of a "stop work order" and/or other penalties as specified in City of Franklin Municipal Code.			
Owner or Developer Company name (Print or Type):			
Owner or Developer Name (Print or Type)		Signature	
		Date	
Mailing Address:		City:	State: Zip:
Phone:		Email:	

TO BE COMPLETED BY STAFF:

SWG PERMIT APP APPROVED BY:	DATE:
SWG PERMIT #	COF CONTRACT #
FEES PAID:	ASSIGNED INSPECTOR:

***PERMIT APPROVAL EXPIRES 1 YEAR FROM DATE SIGNED UNLESS PERMIT IS ACTIVATED AT PRE-CON.**

STAFF NOTES:

SITE / PROJECT NAME: _____ SWG _____

STEP 2: PRE-CONSTRUCTION SITE INSPECTION. *MUST BE COMPLETE PRIOR TO PERMIT APPROVAL

THESE ITEMS MUST BE ON SITE FOR THE PRE-CONSTRUCTION MEETING & STAY ON SITE DURING CONSTRUCTION:

NPDES Stormwater Pollution Prevention Plan (SWPPP) & NOC	City Stamped and Approved Grading Plans
Recorded Long-Term Maintenance Agreement, Plan & Form	Copy of other Issued Permits (if applicable)
OTHER: ARAP, Easements, TOT Permits, Etc. (as applicable)	

CONTRACTOR(S) CERTIFICATION (must be signed by president, vice-president or equivalent) (Secondary Permittee)

I certify under penalty of law that I have reviewed this document, any attachments, and the SWPPP referenced above. Based on my inquiry of the construction site owner/developer identified above and/or my inquiry of the person directly responsible for assembling this Stormwater Plan, Grading Plan, Long Term Maintenance Agreement and SWPPP, I believe the information submitted is accurate. I am aware that this Permit, if approved, makes the above-described construction activity subject to all provision of the Franklin Stormwater Management Ordinance and Franklin Municipal Code, and that certain of my activities on-site are thereby regulated. I agree to contact the City for a Pre-Construction meeting per FMC 23-106 prior to starting any work onsite and have reviewed all info listed on the instruction sheet regarding the PreCon.

Contractor Company name (Print or Type):

Contractor Representative (print/type): (V.P. level or higher):	Signature:	Date:
Mailing Address:	City:	State: Zip:
Phone:	Email:	

TDEC LEVEL 1 CERTIFIED INSPECTOR:

Name:	
PHONE:	CERTIFICATION # & EXP DATE:
EMAIL:	

ADDITIONAL PERMIT AGREEMENTS:

- Upon issuance of this Stormwater/Grading permit the Owner and/or Contractor are agreeing to and shall do the following:
- Twice Weekly Inspections by a TDEC Level 1 Certified Inspector – These inspection reports shall be kept on site in a box easily accessible to City Inspectors. This will be discussed during the pre-construction meeting.
 - Any site that is inactive for a period of 1 year shall be administratively terminated. A new pre-construction meeting is required for work to resume.
 - To terminate permit coverage PERMITTEE MUST contact the stormwater inspector to complete a Notice of Termination form and receive a list of punch list items that must be completed before termination.
 - To transfer Contractor or Ownership contact, contractor or owner MUST contact the Stormwater Inspector and complete a Notice of Transfer form.

PRE-CONSTRUCTION CHECKLIST – COMPLETED BY INSPECTOR:

CONTRACTOR SHALL INSTALL THE FOLLOWING AS SHOWN ON THE APPROVED CONSTRUCTION PLANS. Schedule a Pre-Construction Site inspection with assigned City of Franklin Stormwater Inspector. These items will be inspected and checked off at the pre-construction meeting.

Silt Fence or other Sediment Barriers (These BMPs shall be installed properly along topographical contours downslope of the area to be disturbed prior to any grading, clearing and/or any other construction activity. Erosion and sediment control measures shall be designed to control the rainfall and runoff from the design storm indicated on SWPPP.)
Temporary Stone Construction Entrance: (100 FT Temporary stone construction entrance that conforms to the City of Franklin's Stormwater Ordinance and Best Management Practice Manual within 24 hours of grading commencement or the permit will be revoked. The stone shall be 3 inch in diameter and shall be kept clean by adding stone as needed. It shall be at least 6 inches deep underlain with filter fabric and 20 feet wide.)
Inlet Protection (Where applicable, approved inlet protections for nearby storm sewer curb and drop inlets have been installed.)
Water Quality Buffer Signs (Where applicable, Water Quality Buffer Signs shall be installed as shown on the approved EPSC plans)
Tree Protection Fencing (Where applicable, tree protection fencing has been installed as shown on the approved construction drawings.)

TO BE SIGNED AT PRE-CON:

DATE OF PRE-CON:

CITY INSPECTOR'S SIGNATURE:

CONTRACTOR'S SIGNATURE*:

*By signing this permit, you acknowledge and agree to follow all rules and requirements listed on this permit as well as any additional requirements added under the notes section on page 1 of the permit at the time of issuance or during the pre-construction meeting.

Instructions for the Stormwater & Grading (SWG) Permit & Documents

PURPOSE OF STORMWATER & GRADING PERMIT & LONG TERM MAINTENANCE PLAN & AGREEMENT:

A Completed Stormwater and Grading (SWG) Permit must be submitted to obtain coverage based on Title 23 of City of Franklin Municipal Code for discharges of Stormwater Associated with Construction Activity (permit). Requesting coverage under this permit means that an applicant has obtained and examined a copy of this permit and City of Franklin Municipal Code, and thereby acknowledges applicant's claim of ability to be in compliance with permit terms and conditions. This permit is required for stormwater discharge(s) from construction activities including clearing, grading, filling and excavating (including borrow pits) of one or more acres of land.

WHO MUST SUBMIT THE STORMWATER & GRADING (SWG) PERMIT & DOCUMENTS

All new development and redevelopment under the jurisdiction of Franklin Municipal Code, Title 23 shall be required to obtain a Stormwater Management and/or Grading Permit. All Operators must submit a Stormwater & Grading Permit. "Operator" for the purpose of this permit and in the context of stormwater associated with construction activity means any person associated with a construction project who meets either or both of the following two criteria: (1) The person has operational or design control over construction plans and specifications, including the ability to make modifications to those plans and specifications. This person is typically the owner or developer of the project or a portion of the project (e.g. subsequent builder), or the person that is the current land owner of the construction site. This person is considered the primary permittee; or (2) The person has day-to-day operational control of those activities at a project which are necessary to ensure compliance with SWPPP for the site or other permit conditions. This person is typically a contractor or a commercial builder who is hired by the primary permittee, and is considered a secondary permittee.

COMPLETING THIS FORM, STEPS FOR PERMITTING & CONSTRUCTION

Incomplete permits will not be accepted.

- Step 1: Complete Applications & Submit all documents to Engineering, Submit Fees to BNS Dept.
 - Inc: Permit & Long Term Maintenance Agreement (LTMA) (ORIGINAL) WITH Approved Long Term Maintenance Plan (LTMP) Documents (printed 8.5" X 11")
 - Engineering will record LTMA & LTMP and Approve permits
 - Contractor can begin installing EPSC, Construction Entrance, Tree Protection, etc (items listed on pg 2 of the Stormwater/Grading Permit) **DO NOT START ANY GRADE WORK YET!**
- STEP 2: Stormwater/Grading permit is **APPROVED**.
 - Applicant will NOTIFIED OF APPROVAL and emailed a copy of recorded LTMP. The assigned SW Inspector will be copied on the email, so you have their contact info.
 - Applicant can now apply for any Demo or Building permits needed. **DO NOT START ANY GRADE WORK YET!**
- STEP 3: Contractor shall finish installing EPSC, Construction Entrance, Tree Protection, etc (items listed on pg 2 of the SWG Permit)
- STEP 4: Contractor will work with inspector to set time for Pre-Con/Stormwater Inspection.
- STEP 5: Inspector will conduct inspection and at conclusion of Pre-Con Contractor and Inspector will sign the permit(s).
 - The Stormwater/Grading permit is now **ACTIVE** and grading work may begin on site.
 - Contractor **MUST** print the signed permit and put on site ASAP.

DESCRIBE AND LOCATE THE PROJECT

Use the legal or official name of the construction site. If a construction site lacks street name or route number, give the most accurate geographic information available to describe the location (reference to adjacent highways, roads and structures; e.g. intersection of state highways 70 and 100). Latitude and longitude (expressed in decimal degrees) of the center of the site can be located on USGS quadrangle maps. The quadrangle maps can be obtained at the USGS World Wide Web site: <http://www.usgs.gov/>; latitude and longitude information can be found at numerous other web sites. Provide estimated starting date of clearing activities and completion date of the project, and an estimated of the number of acres of the site on which soil will be disturbed, including borrow areas, fill areas, stockpiles and the total acres. For linear projects, give locations at each end of the construction area.

ARAP PERMIT MAY BE REQUIRED

If your work will disturb or cause alteration of a stream or wetland, you must obtain an appropriate Aquatic Resource Alteration Permit (ARAP). If you have a question about the ARAP program or permits, contact your local TDEC Environmental Field Office (EFO)

LONG TERM MAINTENANCE PLAN & AGREEMENT (LTMP & LTMA)

All projects that involve the construction of structural and non-structural permanent stormwater management practices (BMP's) require a detailed narrative explanation (Plan) including how and by whom these practices will be maintained and inspected as well as a notarized INSPECTION AND MAINTENANCE AGREEMENT OF PRIVATE STORMWATER MANAGEMENT FACILITIES (Agreement) and a Stormwater Management Plan showing the locations of all BMP's on the site. These documents shall be reviewed and approved, signed and notarized by the City Stormwater Coordinator then recorded together at the Williamson County Register of Deeds office. If your project involves post construction stormwater quality units or an oil/grit/water separator you are required to have at least a 2 year inspection and maintenance agreement with some company. This two (2) year agreement must begin at the time of installation of the device and go for 2 years. (at least 2 complete cycles of inspection and maintenance over a two year time frame). Submit a copy of this agreement with your Long Term Maintenance Plan.

All parts on PG 1 of the agreement MUST be completed along with the signatory and notary on page 2 by the Owner. Incomplete submittals will not be recorded. City will fill in Contract # & Permit # after agreement is received- all else shall be completed by "Owner".

TDEC LEVEL 1 INSPECTOR – TWICE WEEKLY INSPECTIONS

TDEC Level 1 Certified Inspector is an inspector hired by the Owner to inspect the site twice weekly. Records shall be kept on site.

CITY OF FRANKLIN - UTILITY PERMIT

SITE /PROJECT INFO:	PLANS APPROVED:	COF #
PROPERTY SUBDIVISION/SEC/REV/LOT #:		
STREET ADDRESS OR LOCATION:		
CONTROL MAP & PARCEL #:	WATER DISTRICT:	

PERMIT REQUIREMENTS:			
INSPECTION TYPES:	☐ Modify System ☐ New System	TYPE OF UTILITIES:	☐ WATER ☐ SEWER ☐ RECLAIM
AVAILABILITY	DATE:	SFUES:	METER SZ:
SWG PERMIT ISSUED:	DATE:	PERMIT #	
OFFSITE WORK?	NO YES →	<i>*if yes, easements/agreements must be submitted to engineering</i>	
COF EASEMENTS?	NO YES →		

SITE OWNER OR DEVELOPER CERTIFICATION (Primary Permittee: person, company, or legal entity that has operational or design control over construction plans and specifications) (must be signed by president, vice-president or equivalent, or ranking elected official)			
I certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury. It is acknowledged that I shall be responsible for ensuring that all EPSC requirements as set forth in FMC Title 23 and the TN CGP are being followed onsite and that I am responsible for these requirements until a Notice of Termination is authorized by the City of Franklin or the City of Franklin authorizes a Notice of Transfer for 100% of the permit. I understand that these requirements will be inspected and enforced by the City of Franklin and failure to comply may result in the issuance of a "stop work order" and/or other penalties as specified in City of Franklin Municipal Code.			
Owner or Developer Company name (Print or Type):			
Owner or Developer Name (Print or Type)		Signature	
		Date	
Mailing Address:		City:	State: Zip:
Phone:		Email:	

TO BE COMPLETED BY STAFF:

PERMIT APP APPROVED BY:		DATE:
UTILITY PERMIT #	FEES PAID:	

***PERMIT APPROVAL EXPIRES ONE YEAR FROM DATE SIGNED UNLESS PERMIT IS ACTIVATED AT PRE-CON.
CALL WATER DEPT TO SCHEDULE PRE-CON (615-794-4554). NO WORK ALLOWED UNTIL SIGNED BY INSPECTOR**

PRE-CON COMPLETED BY:		DATE:
CONTRACTOR:		

STAFF NOTES:	

CITY OF FRANKLIN, TENNESSEE - RIGHT OF ENTRY

PROJECT NAME _____ COF # _____

This agreement, entered into this ____ day of _____, 20__ by and between the **CITY OF FRANKLIN, TENNESSEE**, hereinafter called the "*City*", and, _____, hereinafter called the "*Owner*", whether one or more.

The *Owner* hereby grants unto the *City* the right to enter upon the following described property located in Franklin, Williamson County, Tennessee;

PROPERTY OWNER: _____

PROPERTY ADDRESS: _____

TAX MAP: _____

PARCEL: _____

said right to entry to the property for the purpose of inspecting, operating and maintaining *City* Water, Sanitary Sewer and Reclaimed Water Infrastructure.

1. The *Owner* agrees to permit the *City and its* Contractor(s) to go upon the described premises as necessary in order to inspect, operating and maintaining *City* Water, Sanitary Sewer and Reclaimed Water Infrastructure.
2. The Right of Entry herein granted shall terminate upon the dedication of all Right-of-Way and easements necessary to inspect, operate and maintain *City* Water, Sanitary Sewer and Reclaimed Water infrastructure. All Right-of-Way and easements shall be recorded at the Williamson County Register of Deeds.
3. It is further understood that no claim for damages for wrongful entry or for trespass shall be made by the *Owner* against the *City* or its Contractor(s)

The *Owner* hereby covenant with said City of Franklin, Tennessee, that I/We are lawfully seized and possessed of said land in fee simple and have a good right to make this conveyance.

WITNESS my hand this ____ day of _____, 20__

OWNERS NAME

STATE OF _____

COUNTY OF _____

Personally appeared before me, the undersigned, a Notary Public of said State and County, the within named _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledge himself to be the within named bargainor, and that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal this ____ day of _____, 20__.

NOTARY PUBLIC

My Commission Expires: _____

Notary stamp here

Instructions for the Utility Permit & Right of Entry Affidavit

PURPOSE OF UTILITY PERMIT & RIGHT OF ENTRY AFFIDAVIT:

A Completed Utility Permit must be submitted to obtain coverage to construct water, sewer or reclaim water main line extensions. The Right of Entry Affidavit grants the City of Franklin (City) right to entry to the property for the purpose of inspecting, operating & maintaining City Water, Sanitary Sewer & Reclaim Water.

COMPLETING THIS FORM

Type or print clearly, using ink and not markers or pencil. Answer each item or enter "NA," for not applicable, if a particular item does not fit the circumstances or characteristics of your construction site or activity. If you need additional space, attach a separate piece of paper to the Utility Permit. The Utility Permit will be considered incomplete without the items listed in Step 1.

DESCRIBE AND LOCATE THE PROJECT

Use the legal or official name of the construction site. If a construction site lacks street name or route number, give the most accurate geographic information available to describe the location (reference to adjacent highways, roads and structures; e.g. intersection of state highways 70 and 100). Latitude and longitude (expressed in decimal degrees) of the center of the site can be located on USGS quadrangle maps which can be obtained at the USGS World Wide Web site: <http://www.usgs.gov/>; or at numerous other web sites. For linear projects, give locations at each end of the construction area.

RIGHT OF ENTRY AFFIDAVIT

Right of Entry Affidavit must be completed, signed and notarized by the Owner of the property. If there are multiple properties that the work shall pass through there must be a ROE form completed by each owner.

UTILITY INSTALLATION PROCESS

1. Utility Permit APPROVED by Engineering. This requires:

- Completed Permit Application,
- Completed Right of Entry Affidavit,
- Fee Paid to BNS Dept
- Approved, Stamped Plans
- Active Grading Only or Stormwater/Grading Permit (If disturbing 10,000~~ft~~ or more)
- Issued Availability

2. Contractor shall call for Utility locates (COF Water Dept)

3. Call Water Dept. (615-794-4554) for Pre-Construction Meeting no less than 72 hours prior to expected date of construction. Water Dept. will return call to schedule a pre-con.

4. Utility Pre-Construction Meeting takes place. Contractor & Inspector sign permit and each keep a copy. Following items must be present on site during meeting:

- Approved, stamped plans,
- Availability Letter,
- State Approval letter (included with Approved Plans at time of approval)
- cut sheets, materials submittals, shop drawings, bypass pumping plan (if applicable)

5. Contractor must call for inspections at the following times:

- Installation of utility prior to backfill (water, sewer and reclaim).
- All sewer connections to existing structures.
- tapping sleeve installation
- testing, filling water lines, testing phase of water, sewer and reclaim
- final Inspection for release of use → This requires contractor to be on site for walk thru.

6. Call for Inspections & Bond Release. The following items must have been completed:

- Turn in As-built (Mylar copies) for approval: CAD, PDF and 2 Paper copies.
- Copies of all COMPLETED testing forms for bacteria results of NEW water/reclaim water main lines.
- Utility connections and repair line bacteria samples are complete.
- Punch list items complete

Noted, no residential building permits until job completion Commercial permits can be attained prior to accepted use, Mark has discussed not allowing commercial permits until utilities are complete, but no for sure answer.

AVAILABILITY

Availability requests must be completed and submitted to the Water Dept. Follow directions included in the request application.

[City of Franklin - Availability Request](#) and submit to: availability@franklinton.gov

WATER & SEWER CONNECTIONS (MAIN LINE AND SERVICE)

Water Dept MUST be scheduled 1 week



Harlinsdale Main Barn
COF Contract No. 2023-0299

BID OPENING - Apparent Bid Results (UNOFFICIAL)
Wednesday, February 29, 2024 @ 1:00 PM (CDT)

NAME	TOTAL BID PRICE
MTLC Building Group	\$2,796,000.00
Sain Construction Company	\$4,293,000.00
FellowShip Construction	\$2,974,234.00



File #: 21-06358

DATE: March 14, 2024
TO: Capital Investment Committee
FROM: Paul Holzen, Director of Engineering
Jimmy Wiseman, Asst. Director of Engineering

SUBJECT:

Consideration Of DRAFT COF Contract No. 2024-0079, With In-N-Out (Goose Creek Bypass Subdivision) For A Road Impact Fee Offset Agreement For An Amount Not To Exceed \$168,300

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning COF Contract 2024-0079.

BACKGROUND/STAFF COMMENTS:

As part of the Goose Creek Bypass Subdivision, the developers traffic impact study recommended and identified two improvements as listed below:

- 1) Increase the length of the eastbound left turn lane on Goose Creek Bypass at Village Plains Blvd.
- 2) A minor lane realignment at the intersection of Lewisburg Pike and Moss Lane.

If approved by the Board of Mayor and Aldermen, both improvements would qualify for an arterial road impact fee offset.

FINANCIAL IMPACT:

The total eligible costs of design, permits, and construction of the above arterial roadway improvements is \$168,300.00. The total arterial impact fees generated by the development is estimated to be \$516,630.00.

RECOMMENDATION:

Staff recommends that COF Contract No. 2024-0079 be recommended to the Board of Mayor and Aldermen for approval.

ROAD IMPACT FEE REIMBURSEMENT AGREEMENT
COF CONTRACT NO. ~~2024-0079~~ 2023-0186

This agreement ("Agreement") is entered into between THE CITY OF FRANKLIN, TENNESSEE ("City") and ~~Cool Springs Corporate Centre, LLC In-N-Out Burgers, A California Corporation~~, ("Developer"), on this the _____ day of _____, 20__, pursuant to Title 16, Chapter 4 of the Franklin Municipal Code ("FMC").

WHEREAS, the Developer has previously submitted to the Franklin Municipal Planning Commission Goose Creek Bypass PUD Subdivision , Development Plan (In-N-Out) COF Project #8381 for approval (the "Development Project"); and

WHEREAS, the City has required the Developer to design, acquire right-of-way, acquire easements, obtain permits, and construct certain roadway improvements (the "Improvements") as a requirement of the Development Project and as shown on Exhibit A; and

WHEREAS, the Improvements required as part of the Development Project are identified in the City's Major Thoroughfare Plan, Connect Franklin; and

WHEREAS, the Developer has made application to offset a portion of the costs of these improvements against any Road Impact Fees due from the Development Project.

NOW THEREFORE, the City and the Developer, their successors and assigns, do hereby agree as follows:

- **PURPOSE.** The purpose of this Agreement is to define the obligations of the parties necessary to carry out the intent of this Agreement for the provision of reimbursement of collector and arterial road impact fees pursuant to the FMC.

- **TERM.** This Agreement shall become effective on the date it is fully executed and shall continue until the parties have fully fulfilled their obligations provided hereunder or until the agreement is terminated as provided herein. Understanding the large financial investment each party is making, this Agreement shall only be terminated for convenience upon written agreement of the parties.

- **PROJECT.** The Developer has submitted reliable information related to the costs of construction of the following:

- a. An eastbound left turn lane extension on Goose Creek Bypass at Village Plains Blvd

- ~~b. A lane realignment on Lewisburg Pike at Moss Lane Improvements Extension of the northbound left turn lanes at Carothers Parkway and Cool Springs Boulevard~~

- **ELIGIBLE ARTERIAL ROAD IMPACT FEE REIMBURSEMENT.** The total eligible costs of design, right-of-way acquisition, easement acquisition, permits, and construction of the above arterial roadway Improvements is ~~Seven One Hundred Eighty Five Sixty Eight Thousand Four Three Hundred and Zero and No/100 Dollars (\$168,300.00785,400.00)~~ for the Development Project and the total arterial impact fees generated by the Development is estimated to be ~~Three Five Hundred Seventeen Sixteen Six Three Hundred Thirty Nine and No/100 Dollars (\$516,630.00317,390.00.)~~ The total reimbursement request from the Developer is ~~One Hundred Sixty Eight Thousand Three Hundred Seven Hundred Eighty Five Thousand Four Hundred and Zero and No/100 Dollars (\$168,300.00785,400.00).~~

- **APPROVAL OF CONTRACTS AND AGREEMENTS.** The City Engineer shall review and approve all professional services agreements, right-of-way and easement acquisition offers (that exceed the appraised value of the acquisition), and construction bids associated with the Improvements. The Developer shall obtain approval prior to the spending of any funding in which the Developer is seeking reimbursement from the City. The Developer agrees that failure to obtain contract approval from the City Engineer may result in loss of City reimbursement as determined by the City Engineer.
- **APPROVAL OF CONSTRUCTION DOCUMENTS.** Prior to starting right-of-way acquisition, easement acquisition, and construction, the Developer shall submit construction documents to the City Engineer for review and approval. The Developer agrees that failure to obtain approval from the City Engineer may result in loss of City reimbursement as determined by the City Engineer.
- **PERMITS.** The Developer shall be solely responsible for obtaining and complying with all necessary local, state, and federal permits associated with the Improvements.
- **ON-SITE RIGHT-OF-WAY AND EASEMENT DEDICATION.** The reimbursement value of on-site right-of-way shall be based on the fair market value of the land at the date of application for the development approval for which the condition of dedication was imposed. The value of right-of-way is hereby established as ~~\$46.10~~ **40.00** per SF, and all other necessary temporary slope, temporary construction, access easements, and utility easements shall be dedicated at no cost to the City.
- **OFF-SITE RIGHT-OF-WAY AND EASEMENT ACQUISITION.**
 - a. The Developer shall be responsible for obtaining all off-site right-of-way and easements associated with the off-site Improvements.
 - b. At a minimum, the Developer shall offer fair market value for all right-of-way and or easements necessary as part of the Improvements. The value of right-of-way and easements shall be determined by a professional real estate appraiser or other means as approved by the City Engineer.
 - c. Should negotiations fail, the City agrees to assist, to the maximum extent allowable by law, in the acquisition of the necessary off-site right-of-way and easements associated with the Improvements.
- **Reimbursement and Final Acceptance.**
 - a. The Developer may submit periodic invoices to the City during the course of design, right-of-way acquisition, easement acquisition, permitting and construction (not more frequently than every 90 days), which invoices shall be payable within 30 days after approval by the Road Impact Fee Administrator (City Engineer), subject to collected impact fees as specified within this Agreement.
 - b. No reimbursement on Construction shall be allowed until all right-of-way and easements have been properly deeded to the City and/or State and recorded at the Williamson County Register of Deeds.
 - c. Invoices shall include copies of approved contracts and invoices associated with the roadway Improvements, partial lien waivers for all contracts and copies of checks to show proof of payment. The Developer shall submit invoices based on the latest approved City forms as required by the Road Impact Fee Administrator (City Engineer).

- d. Prior to final reimbursement and City acceptance of off-site Improvements, the Developer shall coordinate final inspections with the City and obtain letters of acceptance from the Street Department or City Engineer.
 - e. The following costs are specifically excluded from reimbursement: fiscal cost, including interest of money borrowed to finance the construction, cost for utility relocations, landscaping, turn lanes, internal management fees and turn lanes / signal improvements that benefit solely the development and not the arterial and/or collector roadway.
- **INDEMNIFICATION.**
 - a. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Developer under this Agreement or otherwise, Developer shall indemnify and hold harmless the City, and the officers, directors, members, partners, employees, agents, consultants and subcontractors, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Improvements, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the improvements itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Developer, and any contractor and any subcontractor, and any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Improvements, or anyone for whose acts any of them may be liable.
 - b. In any and all claims against City, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Developer, and contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Improvements, or anyone for whose acts any of them may be liable, the indemnification obligation under the paragraph above will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Developer, or any contractor or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

13. MISCELLANEOUS.

- a. **Binding.** This Agreement shall be binding upon the parties and shall take effect from and after its ratification and signing by all parties after obtaining appropriate approval pursuant to the requirements of applicable law.
- b. **Severability.** The parties agree that if any part, term, or provision of this Agreement is determined to be illegal or in conflict with any law of the State of Tennessee by any court with jurisdiction, the validity of the remaining portions or provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- c. **Specific Performance.** The parties recognize that the rights afforded to each under this Agreement are unique and, accordingly, the individual parties shall, in addition to such other remedies as may be available to them in equity, have the right to enforce their respective rights hereunder by an action for injunctive relief and/or specific performance to the extent permitted by law.

- d. Cooperation. The parties agree to cooperate fully in order to successfully execute the terms and conditions of this Agreement, including obtaining all regulatory and governmental approvals required to carry out the terms of this Agreement, recognizing that the intent of each party to the other is to serve the individual interests of each party while respecting the conditions and obligations of this Agreement.
- e. Assignment. The rights and obligations of this Agreement are not assignable without prior written consent of the City.
- f. Law/Venue. This Agreement shall be exclusively governed by the laws of the State of Tennessee. In the event that any section and/or term of this Agreement, or any exhibits hereto, becomes subject to litigation, the venue for such action will be exclusively maintained in a court of competent jurisdiction sitting in Williamson County, Tennessee.
- g. Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the subject matter hereof. This Agreement may be amended only by written instrument signed by all parties.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by an authorized person effective as of the date and year written below.

Approved by the Franklin Board of Mayor and Aldermen on _____, 20__.

WITNESS our hands on the dates as indicated.

DEVELOPER

 By: _____
 Print Name: _____
 Title: _____

STATE OF TENNESSEE)
)
 COUNTY OF _____)

Before me, _____, a Notary Public of said County and State, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged _____ self to be _____ (or other officer authorized to execute the instrument) of _____, the within named bargainer, a _____, and that _____ as such _____ executed the foregoing instrument for the purposes therein contained.

Witness my hand and seal on this _____ day of _____, 20__.

 Notary Public

My Commission Expires:

CITY

CITY OF FRANKLIN, TENNESSEE, a

municipality By:

DR. KEN MOORE
Mayor

Date:

By: _____

ERIC S. STUCKEY
City Administrator

Date:

STATE OF TENNESSEE)

)

COUNTY OF WILLIAMSON)

Before me, the undersigned Notary Public of said County and State, personally appeared DR. KEN MOORE and ERIC S. STUCKEY, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged themselves to be the Mayor and City Administrator, respectively, of the City of Franklin, Tennessee, the within named bargainor, a municipality, and that as such Mayor and City Administrator executed the foregoing instrument for the purposes therein contained, by signing the name of the municipality by themselves as Mayor and City Administrator.

Witness my hand and seal this ____ day of _____, 20____.

Notary Public

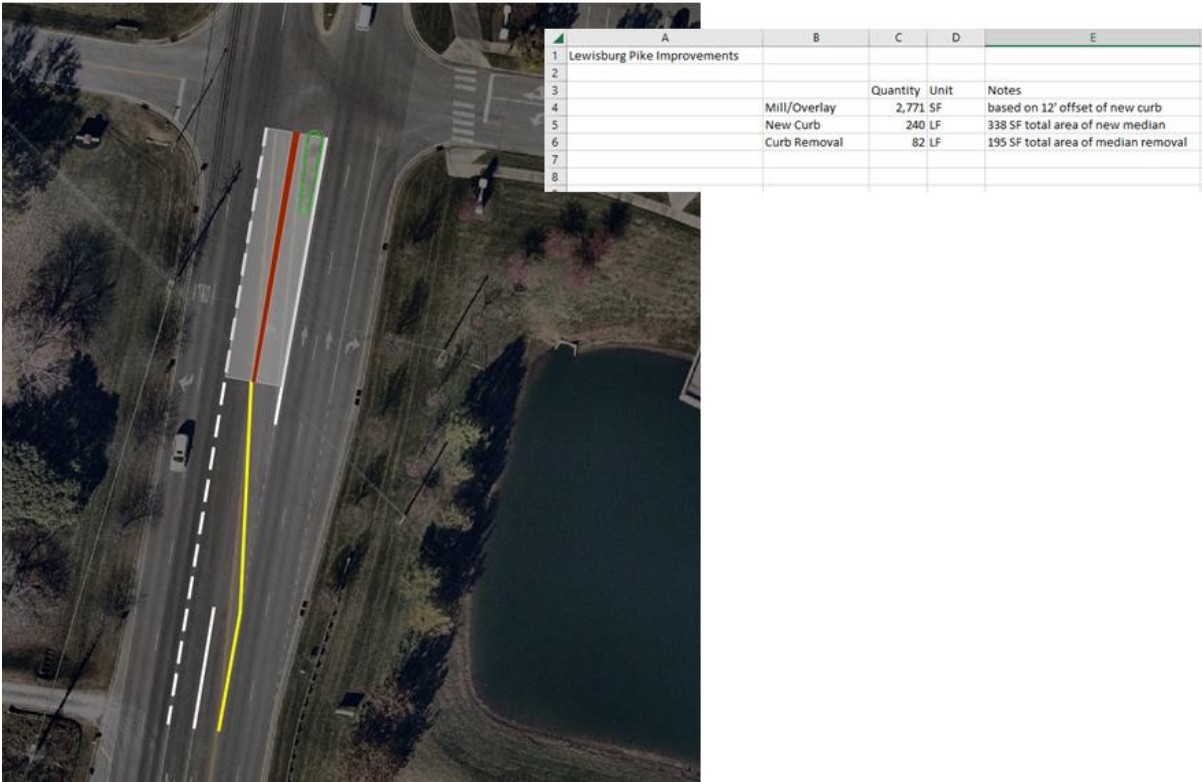
My Commission Expires:

Approved as to form by:

William E. Squires, Assistant City Attorney

•

Lewisburg Pike Roadway Improvements:



Goose Creek Bypass Left Turn Lane Extension:





File #: 21-06087

DATE: February 15, 2024
TO: Capital Investment Committee
FROM: Paul Holzen, Director of Engineering
Jonathan Marston, Asst. Director of Engineering

SUBJECT:

Capital Projects Dashboard And Status Updates For March 2024

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning the status of some of the City's transportation, stormwater, and parks capital projects.

BACKGROUND/STAFF COMMENTS:

To access the live dashboard for the City of Franklin Capital Investment Projects, please go to the following City webpage:

[COF Dashboard Link](#)

Manually locate the dashboard following the instructions below:

Go to the City of Franklin's main website at: <https://www.franklinton.gov/>,
Hover your cursor over "**Our City**" or "**Business**",
Click on "[City Projects](#)",
Click on "[Capital Projects Dashboard](#)".

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

None

City of Franklin Capital Investment Projects Dashboard

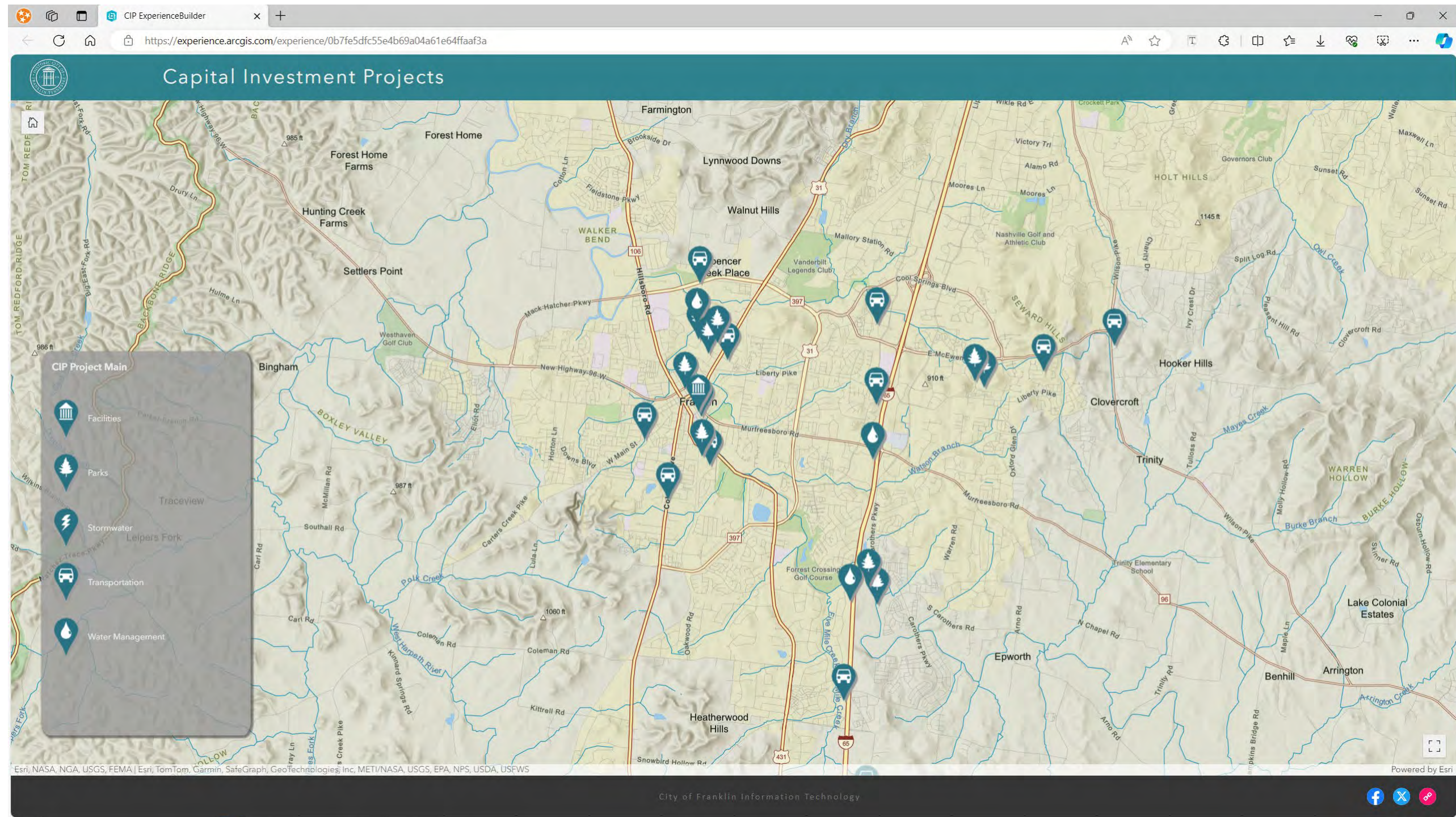


Image Captured from City of Franklin Website on 03/21/2024

Go to www.franklinton.gov >> Hover over “Our City” >> Click on “City Projects” >> Click on “[Capital Projects Dashboard](#)”

OR

Go to www.franklinton.gov >> Hover over “Business” >> Click on “City Projects” >> Click on “[Capital Projects Dashboard](#)”