



City of Franklin

Mailing Address:
109 3rd Ave S
Franklin, TN 37064
(615) 791-3217

Meeting Agenda

Work Session

Tuesday, June 10, 2025

5:00 PM

**Williamson County
Auditorium**

MEETING LOCATION
Williamson County Auditorium
1320 West Main Street

CALL TO ORDER

CITIZEN COMMENTS

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

WORK SESSION DISCUSSION ITEMS

1. Consideration Of Special Event Permit For The Harlinsdale Round-Up At The Park At Harlinsdale Farm To Be Held July 11, 2025 And July 12, 2025

Sponsors: Lisa Clayton, Heather Eusebio, Suzanne Carter, Monique McCullough

2. Consideration Of Resolution 2025-37, A Resolution Amending The East Works District PUD Subdivision To Extend The Vested Rights, For The Property Located North Of Meridian Boulevard And West Of Carothers Parkway, Located at 9009 Carothers Parkway. Establishing A Public Hearing On July 8, 2025. FMPC 5/22/25, 7-0

Sponsors: Emily Wright, Amy Diaz-Barriga, Chelsea Randolph

3. *Consideration Of Resolution 2025-32, A Resolution To Recommend Approval Of The Safe Streets And Roads For All (SS4A) Transportation Safety Action Plan Including A Commitment To Reduce Serious Injury And Fatality Crashes By 20% By the Year 2040

Sponsors: Paul Holzen, Adam Moser

4. Consideration Of Change Order 1 (Final Change Order) To COF Contract No. 2023-0335, With Jones Brothers Contractors, LLC For The Jordan Road Improvements Project In A Cost Decrease Of \$65,866

Sponsors: Paul Holzen, Jonathan Marston, David Hodnett

5. *Consideration Of Change Order 2 (Final Change Order) To COF Contract No. 2023-0024, With Bell & Associates Construction, LLC For Bundled Bridges Project In The Amount Of \$194,267.06

Sponsors: Paul Holzen, Jonathan Marston, David Hodnett

6. *Consideration Of COF Contract No. 2025-0174, With Garney Construction For Emergency Hobas Pipe Repair Behind The Ewingville Neighborhood In An Estimated Amount Of \$7,750,424

Sponsors: Michelle Hatcher, Brian Goodwin

7. *Consideration Of Resolution 2025-50, A Resolution Declaring The Intent Of The City Of Franklin, Tennessee, To Reimburse Itself In A Not To Exceed Amount Of \$15,000,000 For Certain Project Expenditures With The Proceeds Of Water And Sewer System Revenue Bonds, Notes, Or Other Debt Obligations To Be Issued By The City

Sponsors: Kristine Brock, Michelle Hatcher

8. *Consideration Of Contract 2025-0159, With AIG FRANKLIN, LLC (Developer Of The Margin District) For An Escrow Agreement For Required Project Performance Sureties

Sponsors: Eric Stuckey, Vernon Gerth

9. Consideration Of COF Contract No. 2025-0115, With Franklin Housing Authority To Reimburse Up To Two Hundred Fifty Thousand Dollars (\$250,000) For Construction Costs Associated With The Shawnee Development That Consists Of 36 Dwelling Units

Sponsors: Tom Marsh, Kathleen Sauseda

10. Residential Infrastructure Development Districts In Tennessee - Initial Policy Discussion Regarding Nexus Of Eligible Improvements, Nexus, And Community Benefit Project Criteria
WS 4/8/25

Sponsors: Eric Stuckey, Kristine Brock, Shauna Billingsley, Vernon Gerth

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.



File #: 21-0648

DATE: June 2, 2025
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Lisa Clayton, Director of Parks
Heather Eusebio, Research & Planning Specialist
Suzanne Carter
Monique McCullough, Public Outreach Specialist

SUBJECT:

Consideration Of Special Event Permit For The Harlinsdale Round-Up At The Park At Harlinsdale Farm To Be Held July 11, 2025 And July 12, 2025

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) and outline recommendations for The Harlinsdale Round-Up.

BACKGROUND/STAFF COMMENTS:

The Friends of Franklin Parks have approved the rental of the multipurpose arena to A2 Events, which is seeking a special event permit for the Harlinsdale Round-Up, scheduled to take place at The Park at Harlinsdale Farm in July 2025. This family-friendly event will bring together cowboys and cowgirls from across the country to showcase their skills in a series of exhilarating rodeo competitions. Designed to foster community engagement, the Round-Up offers entertainment for attendees of all ages and backgrounds.

The Harlinsdale Round-Up will feature seven competitive rodeo events, including:

- Bronc riding
- Steer wrestling
- Tie-down roping
- Cowgirls breakaway roping
- Team roping
- Cowgirls barrel racing
- The crowd-favorite—bull riding

Organized by A2 Events, the rodeo will present a full lineup of competitions, highlighting speed, skill, and teamwork. Spectators can look forward to a high-energy show featuring top rodeo athletes competing in bull riding, barrel racing, team roping, and more. The Round-Up will offer a variety of attractions, including food trucks, children's activities, and local vendors, ensuring a well-rounded

experience for all guests.

The event weekend coincides with the Dickson and Columbia Rodeo Events, allowing contestants to participate in multiple competitions across the region. With an anticipated total attendance of 3,000 guests, organizers expect approximately 1,500 spectators each day over the two-day event. The original application stated 6k. However, after meeting with the SEAT Team and discussing potential ticket sales, all were in agreement for this first year that a max of 3k is most likely accurate. Set-up will begin on July 8th, with event dates scheduled for July 11th and 12th. Tear-down is expected to conclude by July 14th.

FINANCIAL IMPACT:

The event is being held under a rental agreement between the Friends of Franklin Parks and the event organizer, utilizing the designated eight acres leased by Friends of Franklin Parks. The City will receive compensation for staff time dedicated to site preparation and for maintaining the multipurpose arena flooring throughout the event, ensuring a safe and suitable surface for all competitors. Following the conclusion of the event, the City will issue an invoice to the Friends of Franklin Parks for the associated costs.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen acknowledge:

- Applicant will provide Good Neighbor Letter which will be distributed to residents in the surrounding area at least 30 days in advance of the event. Addresses will be provided by staff.
- Applicant is responsible for all damage to the Park (grounds, buildings, and facilities) that occurs during the time they are on the property. Any damage should be reported to the City as soon as it occurs or is noticed.
- Applicant will provide certificate of insurance with liquor liability naming the City as additional insured and with coverage and limits approved by the City's Risk Manager. The Certificate of Insurance is due 30 days prior to event and needs to include the dates of set up through equipment pickups and cleanup. It must include all activities, equipment, vendors, booths, and food trucks that are part of the event. Any hired providers must have insurance covering their activity, equipment and service, naming the City as additional insured.
- Must obtain a Beer Permit from the City's Beer Board.
- Applicant will work with Police Department on parking and traffic control plan.
- Applicant will hire required number of extra-duty Franklin Police Officers to provide traffic control.
- Franklin Police Department will need to be notified of any contracted security company working the event.
- Pursuant to Franklin Municipal Code Section 11-403(3), amplified sound will only be permitted in the areas indicated on the application.
- Plan for clean-up must be provided at least 30 days prior to set-up.
- Applicant must meet with Fire Department to discuss tents, stages, emergency vehicle access and other life safety issues.
- Applicant must adhere to requirements provided by the Fire Marshal's office regarding tents, stages, and mobile food vendors.
- All coordinating regarding the event, including fees and pre-event site meetings, will be done with the Programming Division at the Parks Department.
- Any major changes to the event after approval by the Board of Mayor and Aldermen, must be reviewed by the Special Events Advisory Team and the Parks Department.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/9/2025

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

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MSC Insurance Agency P.O. Box 3220 Clarksville TN 37043	CONTACT NAME: PHONE (A/C, No, Ext): 931-552-4314 E-MAIL ADDRESS: info@mscinsurance.com FAX (A/C, No): 931-645-7615
INSURED A2 EVENTS LLC 4395 Clarence Murphy Rd Springfield TN 37172	INSURER(S) AFFORDING COVERAGE INSURER A: Amguard Insurance Company INSURER B: CSU Producer Resources, Inc. INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:** 638273571**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y	Y	CSU0255514	7/9/2025	7/13/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☐	N / A	R2WC688996	4/1/2025	4/1/2026	PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The Park at Harlinsdale Farm, 239 Franklin Road Franklin, TN 37064 on July 11th & July 12th 2025.

CERTIFICATE HOLDER**CANCELLATION**

City of Franklin, Tennessee
109 Third Avenue South
Franklin TN 37064

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

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTOMATIC ADDITIONAL INSURED - SPECIFIED RELATIONSHIPS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION II - WHO IS AN INSURED is amended to include as an insured any person or organization described in Paragraph **B.** below (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of a written contract or agreement is an insured, provided:

1. The written contract or agreement is:
 - a. Currently in effect or becomes effective during the policy period; and
 - b. Executed prior to an "occurrence" or offense to which this insurance would apply; and
2. They are not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part.

B. Only the following persons or organizations are additional insureds under this endorsement, but only with respect to liability caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf. Insurance coverage provided to such additional insureds is limited as provided herein:

1. The manager or lessor of a premises leased to you with whom you have agreed per Paragraph **A.** above to provide insurance, but only with respect to the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- a. Any "occurrence" which takes place after you cease to be a tenant in that premises.
- b. Structural alterations, new construction or demolition operations per-

formed by or on behalf of such additional insured.

2. Any person or organization from which you lease equipment with whom you have agreed per Paragraph **A.** above to provide insurance. However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
3. Any state or political subdivision with which you have agreed per Paragraph **A.** above to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent or control and to which this insurance applies:

- a. The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- b. The construction, erection, or removal of elevators; or
- c. The ownership, maintenance, or use of any elevators covered by this insurance.

C. With respect to the insurance afforded to these additional insureds, **SECTION III - LIMITS OF INSURANCE** is amended to include:

The limits applicable to the additional insured are those specified in the written contract or agreement or in the Declarations of this Coverage Part, whichever is less. If no limits are specified in the written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations of this

Coverage Part. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

- D. With respect to the insurance afforded to these additional insureds, **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance** is amended to include:

Any coverage provided herein will be excess over any other valid and collectible insurance

available to the additional insured whether primary, excess, contingent or on any other basis unless you have agreed in a written contract or written agreement executed prior to any loss that this insurance will be primary. This insurance will be noncontributory only if you have so agreed in a written contract or written agreement executed prior to any loss and this coverage is determined to be primary.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US - PER CONTRACT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to Paragraph **8. Transfer of Rights of Recovery Against Others to Us** of **SECTION IV - CONDITIONS**:

If you have agreed, in a written contract or agreement, to provide a waiver of any right of recovery against a person or organization, we will waive any right of recovery we may have against that person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to that person or organization for which you have agreed to in a written contract to provide said waiver.

OFFICE USE

ONLY

Permit No: _____



City of Franklin

Special Event Permit Application

*Application is Due 90 Days Prior to Scheduled Event.
Please read application carefully and fully complete each section.
A non-refundable application fee of \$100 is due at time of filing.*

Note: Filing this application does not guarantee that you request will be granted.

Please list all that apply: Athletic/Recreation

1. **Name/purpose of event:** Harlinsdale Round-Up
2. **Location Requested:** (if Temporary Street Closure, list major roads to be closed):
239 Franklin Road Franklin, TN 37064

No street closures required
3. **Date or dates of event:** 07/11/2025, 07/12/2025
4. **Start/End Times of Event:**
7:30pm to 9:30pm each night. The event should be over at 9:30, but it could last a little longer to possibly 10PM

What date/time will set-up begin? 7/8/2025 5:00 PM

What date/time will tear-down be complete? 7/14/2025 5:00 PM

**Note: Event is responsible for cost of staff required during this time (including Franklin Police Officers). Read Additional Requirements section for more information).*

5. **Time of Street Closure** (if applicable):
6. **An estimated number expected to attend during the course of the event:**
Spectators/Attendees: 6,000 Event Staff/Volunteers: 25 Total: 6,025
7. **Name of applicant and Organization Requesting Permit** (at least one applicant must be a resident of the City of Franklin; or the organization must be located in the City limits of Franklin): **Applicant / Organization Requesting Permit**
Taylor Alley
Alley Land & Fencing LLC
4395 CLARENCE MURPHY RD
SPRINGFIELD, TN 37172
P: 931-624-2207
office@alleyfencing.com
Person in charge on day of event: John Alley
Cell: 615-913-7056 **E-mail address:** john@alleyfencing.com
Name and Cell Number of at least two others available on day of event:
Name: Taylor Alley **Cell:** 615-613-5076 **E-mail address:** taylor@alleyfencing.com
Name: Kaitlyn Houchins **Cell:** 931-624-2207 **E-mail address:** office@alleyfencing.com

8. **DETAILED description of the event** (include information regarding the appropriateness of the event for all ages. If available, include the names and descriptions of acts/performers) :

This event will offer entertainment for all ages as it will draw cowboys and cowgirls from across the country to demonstrate their talent. It will create an opportunity to bring people together of all ages and backgrounds to enjoy thrilling competitors and entertainment. This event will feature 7 events including: bronc riding, steer wrestling, tie-down roping, cowgirls breakaway roping, team roping, cowgirls barrel racing, and the crowd favorite, bull riding. We plan to also include additional family friendly fun such as live music, local food vendors, and games for children. We plan to invest in this rodeo annually and have a huge vision for an event that the City Of Franklin can proudly look forward to each year. We aim to preserve cultural heritage while promoting a sense of unity and enjoyment for all attendees.

9. **ENCLOSE A DETAILED PDF MAP** of the event site and/or route, detailing any temporary or permanent structures, street closures, parking, etc. If applicable, list the location, blocks, streets, and/or intersections in which such an event will occur.

For large-scale events, a map or maps should be obtained from the City's GIS division.

If also submitting a CAD file, please ensure that it is in DWG file format, and projected in TN State Plane NAD83

Please detail any restricted parking areas on the event map.

Event Map: [Harlinsdale Round-Up Map.pdf](#)

10.

Please attach a list (in PDF format) containing the names, addresses, and phone numbers of the Chairperson of the organization and all other persons involved in the management or control of the organization and/or committee.

Administrative Contact List: [contact list.pdf](#)

11. **Where is your organization based?** Robertson County
12. **Is your organization authorized to do business in Tennessee?** Yes
13. **Is your organization a tax-exempt organization as described by the Internal Revenue Code Section 501(c)(3) or a not-for-profit organization?** No
IRS tax exemption letter:
14. **Will you charge an admission fee?** Yes
Average admission fee: 20
15. **Will you charge a vendor participation fee?** Yes
Average vendor participation fee? 500
16. **Total Estimated Revenue from vendors, ticket sales, and sponsorship to event organizer:**
17. **Will any charity, gratuity, or offers be solicited or accepted during the event?** No
18. **Is this event a fundraiser?** No
What organization will be the benefactor of event?
What percentage of funds will they receive?
19. **Will parking in the area of the event need to be restricted or prohibited?** No
20. **Will any sound amplification equipment be used during the event?** Yes

21. **Applicant must also include a copy of the insurance certificate indicating coverage and listing the City of Franklin as an additional insured**

***For stages, tents, etc. constructed on site prior to the event, that date must be included on the Certificate of Insurance provided to the City of Franklin. Stages MUST be removed from the site at end of the event. ***Rented inflatables/interactives that are set up and manned by the applicant must be included specifically in the applicant's Certificate of Insurance.

If you already have your insurance certificate, please upload it now in pdf format. Otherwise, your insurance certificate will need to be submitted before your event is approved.

Insurance Certificate:

22. **What, if any, vendors will be present at event?** (i.e. medical related, shirts, arts, etc.) **Please provide detailed list.**
food vendors, local shopping vendors, all to be determined
23. **Will food, beverages, or merchandise be sold or given away?** Yes
Clean-up of the area is required. Please attach your clean-up and recycling plan, including name of clean-up provider with contact information for person who will be on on-site during event. See Question #26.
Clean Up Plan and Provider: [Clean Up Plan.pdf](#)
24. Events under 200 participants require a \$250 refundable security deposit at the time of approval. For events over 200, a \$1000 security deposit is required upon approval. If the applicant fails to restore the property to its prior condition, then the applicant shall be responsible to the City of Franklin for any costs incurred in restoring the property after the event. Surrender of the deposit in no way relieves the applicant of the responsibility for any costs incurred by the City of Franklin in excess of the deposit. Applicant's event coordinator or representative and a City of Franklin representative will conduct a Pre-Event meeting prior to event date for Pre-Event Check List Site Review. *At the end of the event, a Post-Event Check List shall be completed by the Applicant's event coordinator, or representative, and a City of Franklin representative to re-assess the site for trash and damage, and to secure with caution tape and signage (provided by event group) any tents left for removal.* Damage deposit will be refunded after a satisfactory Post Event Check List has been completed and signed off on by both the City of Franklin and organization requesting event. ***NOTE:** Events that include deep frying cooking oil operations are required to have a grease pit on-site and contract with a grease waste hauler to handle the grease waste and removal of the grease pit. A copy of this agreement shall be filed along with this application. The primary event sponsor is required to remove all cooking grease from the site immediately after the event. Illegal dumping of cooking grease will be prosecuted. *Please read Additional Requirements section of this application for more information.*
25. **Will you require a temporary water tap?** No
If yes, please list exact locations:
26. **Will alcohol, beer, and/or wine be given away or sold?** Yes
If yes, a permit from the relevant board is required. Please read Additional Requirements section of this application for more information.
27. **Will your event include tents or other temporary structures, propane use, or open flames?** Yes
Tents 400 sq. ft. or larger (or, if cooking operations are under the tent, 200 sq. ft. or larger) require a special inspection from the Franklin Fire Department. All tents must meet the requirements of Chapter 31 of the International Fire Code. Tents 20-ft by 20-ft or larger must have an approved label or documentation showing the tent fabric meets all flammability requirements. Tents larger than 400-SF must be inspected and approved by the fire department before the event opens. All cooking operations must be inspected and approved by the fire department before the event opens. Cooking operations will be periodically inspected throughout the event. Tents should be taken down on the date the event has ended. **Please read the Additional Requirements section of this application for more information.**
28. **Attach Good Neighbor Letter and Mailing List used.** *Please read Additional Requirements section of this application for more information.*
Good Neighbor Letter: [Good Neighbor Letter.pdf](#)
Good Neighbor Letter Mailing List: [Address List.pdf](#)



Rules and Regulations

Please Read All Attachments Before Signing Application.

1. I/We agree to abide by all ordinances and regulations of the City of Franklin and all State and Federal Laws.
2. I/We agree to abide by all conditions placed upon the event by the City Administrator and the Board of Mayor and Aldermen.
3. I/We do swear or affirm that all of the information given in this application is true and complete.
4. I/We do swear or affirm that the organization is located in the city limits of Franklin and/or one of the applicants is a resident of the City of Franklin, Tennessee.
5. I/We do hereby agree to assume the defense of and indemnify and save harmless the City, its mayor, aldermen, boards, commissions, officers, employees and agents, from all suits, actions, damages or claims to which the City may be subjected of any kind or nature whatsoever resulting from, caused by, arising out of or as a consequence of such event and the activities permitted in connection there with.
6. I/We agree to submit a certificate of insurance prior to the event in an amount determined by the City naming the City of Franklin and its employees as additional insured. The City may require the sponsor and/or vendor provide higher levels of insurance, coverage, and policies as deemed reasonable and necessary based on specific event risk factors and review by the City's insurer.
7. I/We agree, if holding the special event on City property, to return the site to its pre-event condition at the conclusion of the event.
8. I/We agree to provide a copy of the signed Event Application to any vendors, planners, and related parties associated with the event to ensure they are familiar with the guidelines set forth herein.
9. I/We understand and acknowledge that all vendors, acts, performers, organizers, and patrons must not violate any laws pertaining to adult entertainment as defined by Tennessee State law.
10. I/We understand that I/we assume the responsibility of the actions of any vendors, planners, and related parties for this event.
11. I/We understand that granting of Special Event Permit does not imply granting of other permits that are separately required.
12. The application for an event permit shall be filed not less than 90 days nor more than 364 days prior to the scheduled date of such event. Suggested filing is at least 180 days prior to scheduled event. Events should not be advertised or promoted until an event permit has been obtained from the City. Failure to file in a timely manner may result in denial of a permit.
13. I/We understand that event permit holders may be responsible for 100 percent of the costs incurred by the City for staff time and resources.

By: _____ Date: _____
(Signature and title – must be officer of organization)

Approved by the Board of Mayor and Aldermen on _____, 20_____.

Dr. Ken Moore, Mayor

Eric S. Stuckey, City Administrator

Return application to:

City Administrator's Office
City Hall
109 Third Ave South
Franklin, TN 37065
615-791-3217
615-790-0469 (FAX)

Event Name: Harlinsdale Round-Up

Signature: _____



FORM C

Buildings, Structures, & Power Sources

If your special event includes any of the following, you may need to obtain a permit from the Building and Neighborhood Services Department. Please check any that apply.

Any site-built platforms (stages) and/or bleachers

Building permits and/or inspections also may be required whenever deemed necessary, due to unique conditions, shoddy construction, substandard assembly or set-up, unqualified assemblers, lack of maintenance, or dilapidation of equipment, materials or systems.

All Permit applications are subject to permit fees.

If you have any questions about whether you need to apply for a permit from the Building & Neighborhood Services Department, please call 615-794-7012.

Event: Harlinsdale Round-Up
Name: _____

Signature: _____



FORM D

Sound Amplification

In accordance with Title 11 Chapter 4 of the Franklin Municipal Code (*Offenses Against the Peace and Quiet*), amplification of sound located in or within 100 feet of a residential property line which is plainly audible is prohibited between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 11:00 p.m. and 7:00 a.m. Friday and Saturday except for special events where a special permit has been obtained from the City of Franklin authorizing such event. In the event that a special event permit has been obtained from the City of Franklin, no other amplification of sound will be permitted within the area of the special event except that which has been applied for and authorized by the city pursuant to the permit application.

Applicant/Organization: Taylor Alley - Alley Land & Fencing LLC

Event Name: Harlinsdale Round-Up

Event Date(s): 07/11/2025, 07/12/2025

- Time amplification equipment will be used:** From: 7:00 PM To: 11:00 PM
- Exact locations sound amplification equipment will be used** (*i.e. stage located on Second Avenue*). Provide map/layout if necessary.:
The sound will be used in the arena at The Park at Harlinsdale. See the area marked Rodeo Arena on map

Sound Amplification Map: [Harlinsdale Round-Up Map.pdf](#)

- For what purpose will sound amplification be used?** Please list all that apply: Announcements/Speeches, Sound System
- Type of Amplifier:** PA System

5.

Number of Amplifiers: 1	Number of Speakers: 10	Number of Performers: 0
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- Name and Cell Number of at least two coordinators who will monitor the sound level and respond to complaints and violations:**

Name: Taylor Alley

Cell: 615-613-5076

E-Mail: taylor@alleyfencing.com

Name: John Alley

Cell: 615-913-7056

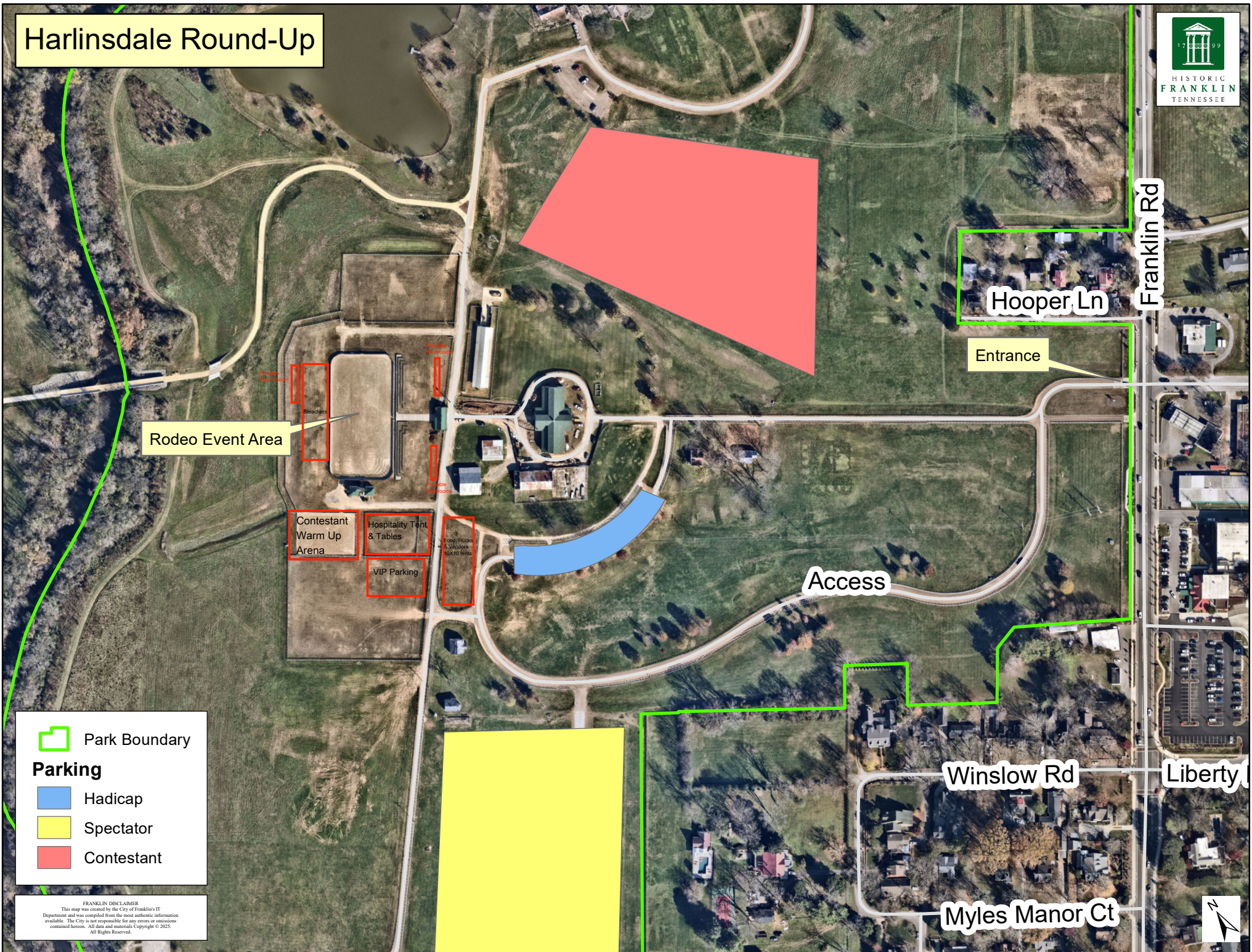
E-Mail: john@alleyfencing.com

Authorized Signature: Taylor Alley

Date: 02/07/2025

The City of Franklin's Municipal Code (Title 11, Chapter 4) allows for exceptions to the City's noise standards for City authorized or sponsored events. However, the City retains the right to ask for a change of an event's location or time in an attempt to decrease the number of people impacted by event noise. The City may refuse a special event application based on noise complaints by neighboring businesses and residents. The City therefore encourages event-holders to work with neighbors to alleviate negative impacts wherever possible. At minimum, you should plan to point speakers away from residences.

Harlinsdale Round-Up



- Park Boundary
- Parking**
- Hadicap
 - Spectator
 - Contestant

FRANKLIN DISCLAIMER
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File #: 21-02524

DATE: May 20, 2025
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Emily Wright, Director of Planning and Sustainability
Amy Diaz-Barriga, Asst Director of Planning Development
Chelsea Randolph, Principal Planner

SUBJECT:

Consideration Of Resolution 2025-37, A Resolution Amending The East Works District PUD Subdivision To Extend The Vested Rights, For The Property Located North Of Meridian Boulevard And West Of Carothers Parkway, Located at 9009 Carothers Parkway. Establishing A Public Hearing On July 8, 2025.
FMPC 5/22/25, 7-0

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Municipal Planning Commission (FMPC) and Board of Mayor and Aldermen (BOMA) concerning a vesting extension request for the Eastworks PUD Subdivision.

BACKGROUND/STAFF COMMENTS:

VESTED PROPERTY RIGHTS INFORMATION

State Law establishes vested property rights. It states that a vested property right is established with the approval of an entitling document (in this case a Development Plan), and during a defined vesting period, the locally adopted development standards which are in effect on the date of approval shall remain the development standards applicable to that property during the vesting period.

The law describes the vesting period as beginning with a three-year time frame during which an applicant must secure final approval of the plan (in this case a site plan), secure any necessary permits, and begin site preparation. Should the project meet these three requirements, the vesting period is extended for an additional two years. Within these two years, an applicant must begin construction and maintain any necessary permits. If a project gets to this point, and begins construction on at least one building, the vesting period is extended by a total of 10 years for single-phase projects or 15 years for multi-phase projects. This 10-15-year time period is measured from the original approval date of the entitling document, which in this case is the date the BOMA approved the Development Plan.

THE REQUEST

The request is to extend the vesting period by 18 months, from July 14, 2025, until January 14, 2027,

to allow the applicant to secure any necessary permits and commence site preparation.

APPROVAL HISTORY AND PROJECT DESCRIPTION

The development plan for the East Works District PUD was approved by BOMA on July 14, 2020. The plans include a mix of hotel, restaurant, retail, office, and multifamily uses. Overall, it was approved for 1,615 units, 9 town homes, 1,000,000 square feet of existing and proposed nonresidential space, including 605 hotel rooms. The project had seven Modifications of Standards, detailed below. Buildings range from one to twelve stories, and a communal gathering space further emphasizes the pedestrian-oriented design in addition to the smaller pockets of green space to the interior and around the perimeter of the property. Staff recommended approval, with conditions, of the Development Plan.

The Modification of Standards (MOS) requests were as follows:

MOS #1: Requesting to allow consolidated entrances for ground floor multifamily residential units. Approved by BOMA with an 8-0 vote.

MOS #2: Requesting the use of irregular shapes for hanging wall signs. The applicant is requesting to allow irregular shapes to represent items that identify the subject business for hanging and wall signs. Approved by BOMA with a 6-2 vote.

MOS #3: Request to allow additional band signs, in addition to wall signs. The applicant is requesting to allow additional band signs, one band sign per tenant, in addition to any allowed wall signage. Approved by BOMA with an 8-0 vote.

MOS #4: Request for internally illuminated canopy lighting. The applicant is requesting to use internal illumination for canopy signage. Approved by BOMA with a 6-2 vote.

MOS #5: Request to increase the maximum size of hanging sign to 6 square feet per side and allow internal illumination. As a consideration, BOMA approved increasing the size to 4.5 sq. ft. per side (9 sq. ft. total) as that is the current maximum for hanging signs in the local historic districts, as recommended by the Franklin Historic District Design Guidelines. Approved by BOMA with an 8-0 vote.

MOS #6: Request to allow one vertical blade sign per frontage in addition to allowed hanging signs for ground floor tenants. Approved by BOMA with an 8-0 vote.

MOS #7: Request to allow two wall signs per building in addition to allowed band signs. The applicant is requesting to allow two wall signs, located at the roof line of the building, in addition to the allowed band signs with only one wall sign allowed per frontage. As a condition of approval, the applicant shall include in the final language that this MOS is limited to buildings of 6 stories or higher. Approved by BOMA with an 8-0 vote.

CURRENT STATUS

This plan has requested and received a vesting extension for the first three-year period and their vesting was extended to July 14, 2025. The applicant submitted a site plan for the first section of the development, which was approved on the August 2023 Administrative Agenda. In addition, two site plans have been submitted to conduct offsite roadway improvements on Carothers Parkway at Mayfield Drive, which were approved on the February 2023 Administrative Agenda.

VESTING IMPACTS

If the vesting period is not extended, the project entitlements would cease to exist, and stop work orders would be issued, if applicable. A new development would need to be approved and would be

reviewed against the current local development standards.

In reviewing the plan against the current City regulations, the current plan generally complies. The differences in today's Zoning Ordinance versus their vested Ordinance (12/30/2019) are minor, and could be incorporated into the design without major changes to the plan. The sewer capacity for this project has been accounted for in Water Management models. A new parkland agreement would need to be approved for any new plan, as well as a new traffic impact offset agreement. Traffic volumes in the area have increased, negatively impacting the level of service on adjacent roadways and consequently, the required offsite improvements. Additionally, the Board of Mayor and Alderman have approved an increase in the road impact fees since the approval of this development to better support the City's ability to pay for much-needed infrastructure.

FINANCIAL IMPACT:

Unknown.

RECOMMENDATION:

Franklin Municipal Planning Commission recommends approval of Resolution 2025-37 by a vote of 7-0.

Staff recommends that the Board of Mayor and Aldermen approve Resolution 2025-37 if they determine that the continuation of vested rights is in the best interest of the community.

RESOLUTION 2025-37

A RESOLUTION AMENDING THE EAST WORKS DISTRICT PUD SUBDIVISION TO EXTEND THE VESTED RIGHTS, FOR THE PROPERTY LOCATED NORTH OF MERIDIAN BOULEVARD AND WEST OF CAROTHERS PARKWAY, LOCATED AT 9009 CAROTHERS PARKWAY.

WHEREAS, the Board of Mayor and Aldermen (BOMA) of the City of Franklin, Tennessee, has approved the zoning for the property as part of Ordinance 2020-11; and

WHEREAS, BOMA has approved the Planned Unit Development for the property as part of Resolution 2020-61; and

WHEREAS, in accordance with the provisions of the City of Franklin, Tennessee, Zoning Ordinance, and as required by *Tennessee Code Annotated* (T.C.A.) § 13-4-310, as amended, the approval of the Development Plan by the BOMA initiates a vesting period during which the development standards adopted by the City and in effect on the date of approval; and

WHEREAS, T.C.A. § 13-4-310 (d) (1) states that the vesting period applicable to a development plan shall be a period of three (3) years, beginning on the date of the local government's approval of the preliminary development plan; provided, that the applicant obtains local government secures any necessary permits and commences site preparation within the vesting period; and

WHEREAS, the East Works District PUD vesting period began on July 14, 2020, was set to expire on July 14, 2023, was extended by BOMA and is now set to expire on July 14, 2025, and the applicant has not yet secured necessary permits or begun site preparation; and

WHEREAS, T.C.A. § 13-4-310 (h) states that an amendment to an approved development plan by the developer must be approved by the local government to retain the protections of the vested property right, and a vested property right shall not terminate if the local government determines, in writing, that it is in the best interest of the community to allow the development to proceed under the amended plan without terminating the vested property right;

WHEREAS, the *Franklin Zoning Ordinance* § 2.4.2 (16) states that upon the expiration of a vesting period for a Development Plan, construction may not proceed unless a new Development Plan is approved by the BOMA that meets all development standards in effect at the time of approval for portions of the project not already constructed or under construction or, alternatively, the BOMA may grant an extension of the vesting period if it determines, in writing, that it is in the best interest of the community to allow the development to proceed without terminating the vested property right; and

WHEREAS, the applicant has requested an extension of the vesting period for 18 months, until January 14, 2027.

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

SECTION I. That the legal description of the property included in the Development Plan is as follows:

PREMISES CONSIDERED

Map-Parcel	Acres
53-142.00	49.93
Total	49.93
Map-Parcel	Acres
53-142.00	49.93
Total	49.93

SECTION II. That the attached Location Map and Survey shall serve the purpose of further delineating the geographical boundaries as described by this Resolution.

SECTION III. That the overall entitlements for the East Works District PUD Subdivision, as outlined below and through Exhibit A, are as follows:

Entitlements	East Works District PUD
Base Zone District	PD (32.5/1,110,300/605)
Other Zoning Overlays	N/A
Number of Dwelling Units	1,624
Number of Nonresidential Square Footage	1,110,300 SF
Number of Hotel Rooms	605
Open Space Requirements	108,745 SF
Number of Phases in Development	4
Entitlements	East Works District PUD
Base Zone District	PD (32.5/1,110,300/605)
Other Zoning Overlays	N/A
Number of Dwelling Units	1,624
Number of Nonresidential Square Footage	1,110,300 SF
Number of Hotel Rooms	605
Open Space Requirements	108,745 SF
Number of Phases in Development	4

SECTION IV. That the following Modifications of Development Standards (MOS) with the attached supplemental packet were requested and acted upon by the Board of Mayor and Aldermen, after review and recommendation by the Franklin Municipal Planning Commission:

MOS 1: Multifamily building types to have consolidated entrances. Approved: __X__ Denied: _____	6.7 – Multifamily Building Type Facades along a street or internal drive shall have individual entrances to... all ground floor dwelling units. <i>Staff recommended disapproval.</i>
MOS 2: Allow signs to be irregularly shaped of the items that is representative of the business. Approved: __X__ Denied: _____	15.1.3 - Sign Shape Signs shall not be irregularly shaped. <i>Staff recommended disapproval.</i>
MOS 3: Allow one band sign per tenant in addition to allowed wall signs. Approved: __X__ Denied: _____	15.4 – Band Signs Maximum of one per storefront, if no additional wall signage. <i>Staff recommended approval.</i>
MOS 4: Allow canopy signage to be illuminated internally. Approved: __X__ Denied: _____	15.5. – Canopy Signs External Illumination only. <i>Staff recommended disapproval.</i>
MOS 5: Revise maximum size per side for hanging signs to 6 sq. ft. and allow internal illumination. Approved: __X__ Denied: _____	15.10 – Hanging Signs Maximum of 3 sq. ft. per side and only externally illuminated <i>Staff recommended disapproval.</i>
MOS 6: Allow 1 Vertical blade signs per frontage in addition to additional hanging signs. Approved: __X__, with conditions. Denied: _____	15.14 – Vertical Blade Sign Maximum of one per building and only if no other hanging signs exist. <i>Staff recommended approval with conditions.</i>

MOS 7: Allow two roofline wall signs, one wall sign per frontage, in addition to band signs. Approved: ___X___ with conditions. Denied: _____	15.15 – Wall Sign Maximum of one per building if no band sign exists on the building. <i>Staff recommended approval with conditions.</i>
MOS 1: copy directly from previous RES Approved: ___X___ Denied: _____	Section x.x -copy directly from previous RES description <i>Staff recommended approval/disapproval.</i>

SECTION V. That the original vesting period was initiated on July 14, 2020 and was set to expire on July 14, 2023, the BOMA extended the original vesting period to expire July 14, 2025. The amended development plan will now have until January 14, 2027, to secure any necessary permits, and commence site preparation. If these requirements are met, then the vesting period shall be extended an additional two (2) years to commence construction and maintain any necessary permits to remain vested.

SECTION VI. That the total vesting period of fifteen (15) years shall not be extended. If construction commences during this extended vesting period, the development standards applicable during the vesting period shall remain in effect until the local government has certified final completion of the development or project; provided, the total vesting period for the project shall not exceed fifteen (15) years from the date of the original approval of the preliminary development plan July 14, 2020 and shall remain at July 14, 2035.

SECTION VII. That the Development Plan, the exhibits accompanying the Development Plan, and all conditions and restrictions placed upon the originally Development Plan by the Franklin Municipal Planning Commission and this Board shall be made a part of this Resolution as though copied verbatim herein, and that a permanent record of the Development Plan, the exhibits accompanying the Development Plan, and all such conditions and restrictions shall be kept in the Franklin Planning and Sustainability Department.

SECTION VIII. BE IT FINALLY ORDAINED by the Board of Mayor and Aldermen of the City of Franklin, Tennessee, that this Resolution shall take effect from and after its passage on final reading, the health, safety, and welfare of the citizens requiring it.

IT IS SO RESOLVED AND DONE on this ____ day of _____, 2025.

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: _____
Angie Skarp
City Recorder

By: _____
Dr. Ken Moore
Mayor

Approved as to form by:

Shauna R. Billingsley
City Attorney

PLANNING COMMISSION RECOMMENDED:

PUBLIC HEARING HELD:

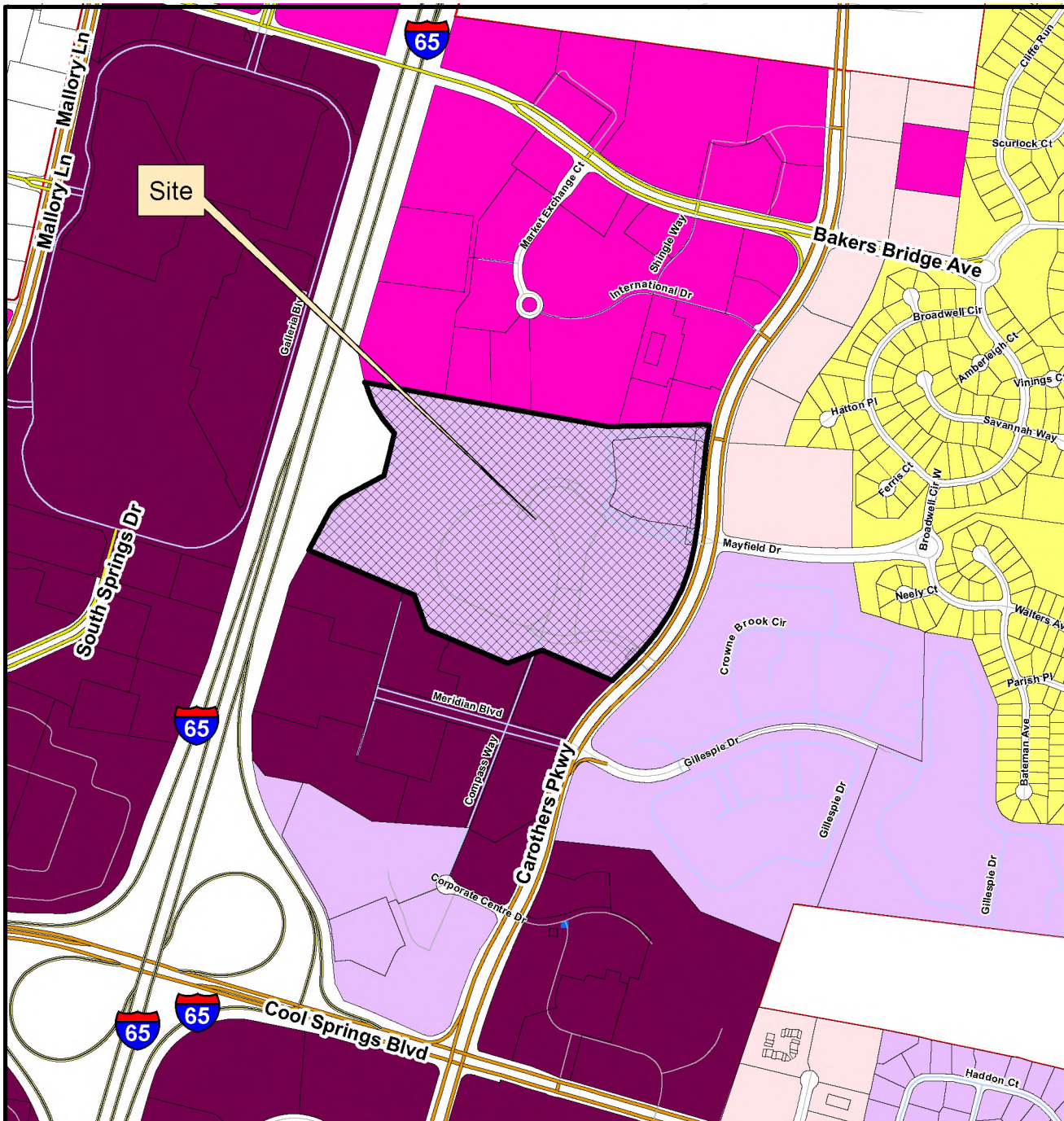
EAST WORKS DISTRICT PUD SUBDIVISION RESOLUTION 2025-37

Project Information

Vested Zoning: PD, Planned Development
Overlay Districts: None
Site Acreage: 49.93 acres
Number of Dwelling Units: 1,624
Nonresidential Square Footage: 995,084 SF
Hotel Keys: 605

Legend

-  East Works District PUD Subdivision
-  AG Agricultural District
-  ER Estate Residential District
-  R1 Residential 1 District
-  R2 Residential 2 District
-  R3 Residential 3 District
-  R4 Residential 4 District
-  R6 Residential 6 District
-  MR Mixed Residential District
-  PD Planned District
-  OR Office Residential District
-  CI Civic Institutional District
-  NC Neighborhood Commercial District
-  CC Central Commercial District
-  DD Downtown District
-  1ST Avenue District
-  5TH Avenue District
-  RC4 Regional Commerce 4 District
-  RC6 Regional Commerce 6 District
-  RC12 Regional Commerce 12 District
-  GO General Office District
-  LI Light Industrial District
-  HI Heavy Industrial District



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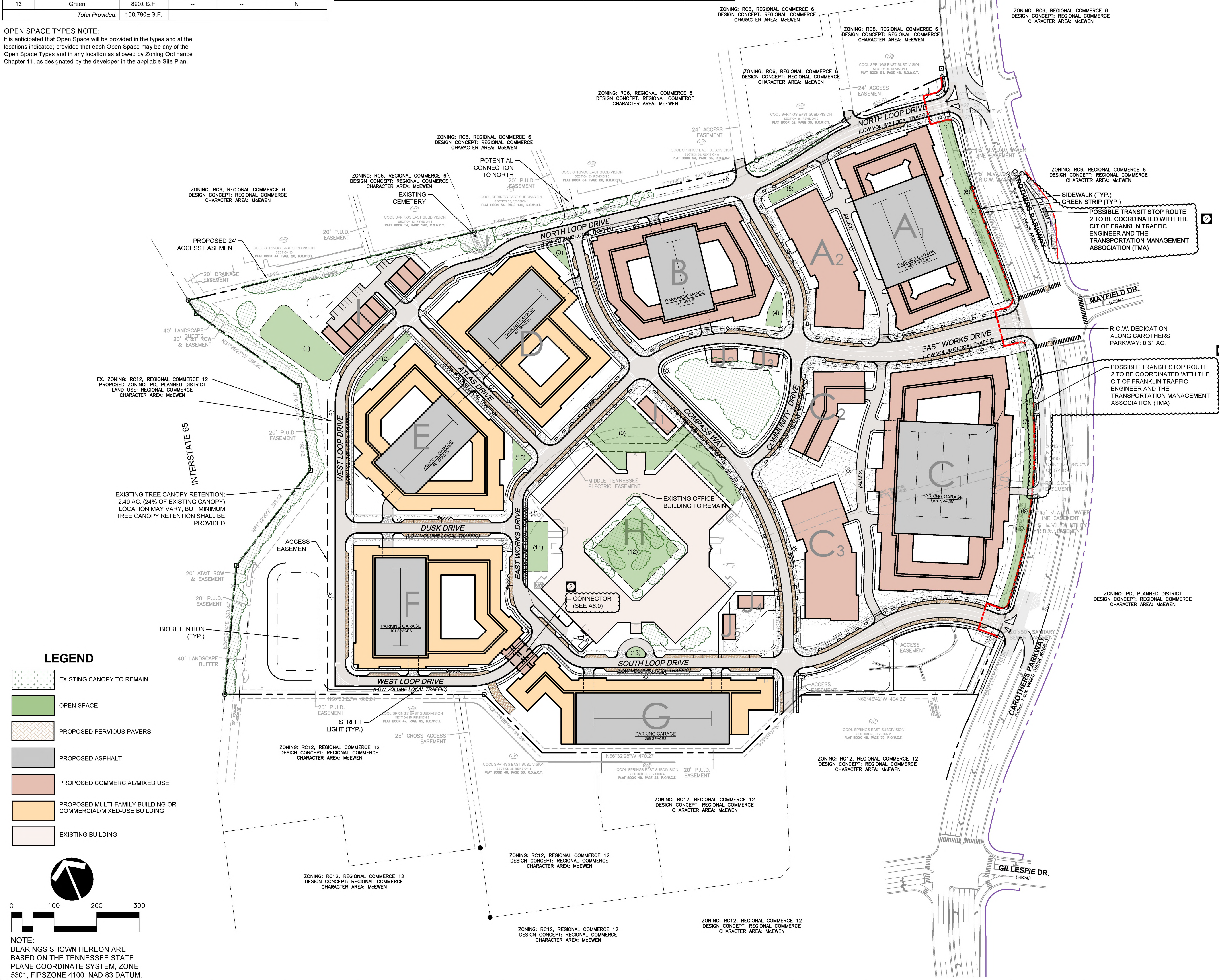
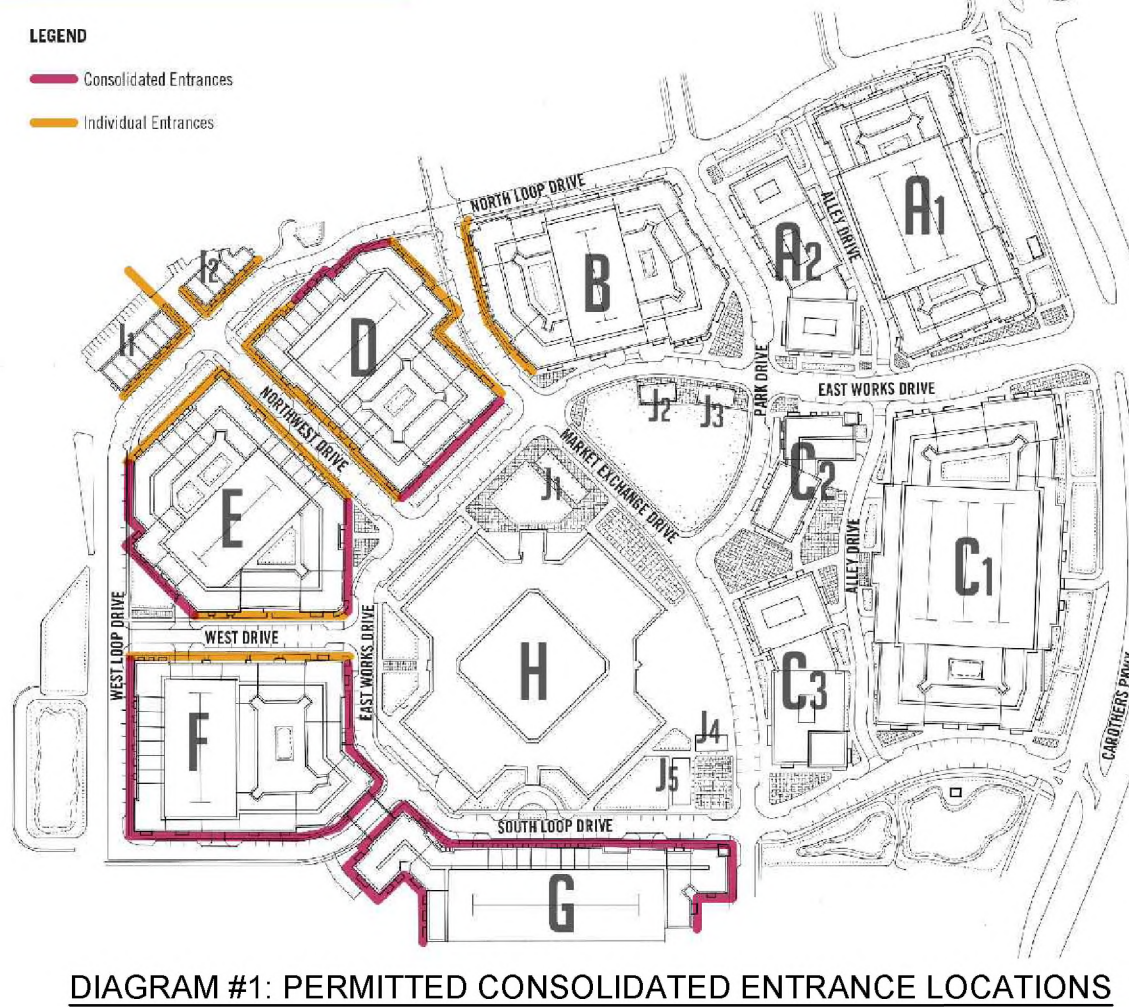
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Feet



HISTORIC
FRANKLIN
TENNESSEE

SITE INFORMATION					
Acreage / Square Footage of Site: 49,929 Ac. / 2,174,907 ± S.F.					
Minimum Open Space Acreage Required: 108.745± S.F. (5% or 2.5 Ac.)					
If Residential, Natural Area Required: N/A					
OPEN SPACE PROVIDED					
Key	Open Space Type	Area of Open Space	Hardscape Area (S.F.)	Hardscape Area (%)	Stormwater Feature Included? (Y/N)
1	Neighborhood Amenity	16,830± S.F.	--	--	N
2	Pocket Park	3,320± S.F.	--	--	N
3	Pocket Park	1,460± S.F.	--	--	N
4	Outdoor Dining Area/Plaza	2,440± S.F.	--	--	N
5	Plaza	2,560± S.F.	--	--	N
6	Greenway	12,100± S.F.	--	--	N
7	Greenway	7,950± S.F.	--	--	N
8	Greenway	6,010± S.F.	--	--	N
9	Outdoor Dining Area/Plaza	19,915± S.F.	--	--	N
10	Outdoor Dining Area/Plaza	27,640± S.F.	--	--	N
11	Outdoor Dining Area/Plaza	2,075± S.F.	--	--	N
12	Plaza	5,600± S.F.	--	--	N
13	Green	890± S.F.	--	--	N
Total Provided:		108,790± S.F.			

Development	Nonresidential Use	Square Footage	Single-Family Units	Multi-Family Units	Townhouse	Hotel Keys	Garage
Overall Entitlements	Restaurant, Retail, Hotel, Office	1,525,084± S.F.	N/A	1,615 Units	9 Units	605 Keys	4,864 Spaces
Pad A	Restaurant, Retail, Hotel	514,140± S.F.	N/A	0 Units	0 Units	381 Keys	986 Spaces
Pad B	Restaurant, Retail, Office	16,300± S.F.	N/A	243 Units	0 Units	0 Keys	491 Spaces
Pad C	Restaurant, Retail, Hotel, Office	464,644± S.F.	N/A	284 Units	0 Units	224 Keys	1,626 Spaces
Pad D	N/A	0± S.F.	N/A	292 Units	0 Units	0 Keys	491 Spaces
Pad E	N/A	0± S.F.	N/A	291 Units	0 Units	0 Keys	491 Spaces
Pad F	N/A	0± S.F.	N/A	337 Units	0 Units	0 Keys	491 Spaces
Pad G	N/A	0± S.F.	N/A	168 Units	0 Units	0 Keys	288 Spaces
Pad H	Existing Office	530,000± S.F.	N/A	0 Units	0 Units	0 Keys	0 Spaces
Pad I	N/A	0± S.F.	N/A	0 Units	9 Units	0 Keys	0 Spaces
Pad J	N/A	0± S.F.	N/A	0 Units	0 Units	0 Keys	0 Spaces



SITE DATA	
SITE INFORMATION	
	Project Name: East Works District
	Project #: ---
	Address: 9009 Carothers Parkway
	Franklin, Williamson County
	Map / Parcel: 053 / 142.00
Acreage / Square Footage of Site:	49.929 Ac. / 2,174,907± S.F.
Vesting Date:	N/A
REGULATIONS	
Base Zoning:	RC12 (Regional Commerce 12)
Proposed Zoning:	PD (Planned District)
Overlay Zoning:	N/A
Proposed Principle Use:	All principle uses permitted or permitted with additional use regulations for Planned Districts under Section 5.1 of the Zoning Ordinance
Proposed Accessory Use:	All accessory uses permitted or permitted with additional use regulations for Planned Districts under Section 5.2 of the Zoning Ordinance
Building Types Applied:	Commercial / Mixed-Use Building, Multifamily Building, & Townhouse
Frontage Types Applied:	Urban Landscape Frontage (Carothers Pkwy) Urban Frontage (All Other Streets)
Lot Width (Residential):	Townhouse (Min. 18')
Lot Size (Residential):	N/A
Setbacks	
Front Yard (Carothers Parkway):	40' (Prior to any R.O.W. Dedications/50' Stubbs)
Front Yard (Internal):	10' Min (From Face of Curb) & 30' Max (Unless otherwise shown on plan)***
Side Yard (External):	5' Min
Side Yard (Internal):	0' Min (Subject to buildings maintaining a minimum spacing of 10' feet)
Rear Yard (I-65):	25' Min
Rear Yard (Internal):	10' Min
Dwelling Unit Count, By Type:	
	Multi-Family: 1,615 Units
	Townhouse: 9 Units
Commercial S.F., By Use:	
	Offices: 1,048,000 S.F. (Total)
	530,000 S.F. (Existing)
	518,000 S.F. (New)
	Restaurants: 34,550 S.F.
	Retail: 27,750 S.F.
	Hotel Keys: 414,784 S.F. (605 Keys)
Building Height:	
	Multi-Family (D,E,F,G): 4 - 6 Floors; Type 3A
	Townhouse (I): 3 - 4 Floors; Type 3A
	Commercial/Mixed-Use Building (A ₁ , A ₂ , B, C, C ₁ , C ₂ , C ₃): 6 - 12 Floors; Type 1A or 1B
	Commercial/Mixed-Use Building (J): 1 - 2 Floors; Type 1A or 1B
	Min. Landscape Surface Area: 20%
	Open Space S.F. Required: 108,745± S.F. (5% or 2.5 Ac.)
	Natural Area S.F. Required: N/A- Mixed Use
	Tree Canopy Retention Acreage: 2.39± Ac. (24% of Existing Canopy Retention Req.)
	Parking Required, By Use: See Parking Supply Analysis conducted by Nelson\Nygaard on March 27, 2020
	Parking Provided, By Use: See Parking Supply Analysis conducted by Nelson\Nygaard on March 27, 2020
Historic Resource Treatment (Y/N):	No

Buildings A1, A2, B, C1, C2, C3, and J1, J2, J3, J4 and J5 are the Commercial / Mixed Use Building Type. It is presently anticipated that each of Buildings D, E, F, and G will be either the Multifamily Building Type or the Commercial / Mixed Use Building Type, as designated by the developer in the applicable Site Plan. Building Construction Type designations are for information only. Appropriate Building Construction Types will be determined at Site Plan and will meet all applicable requirements at such time.

Police, Fire & Recreation Facilities: - The site is located 5.5 miles from the new downtown Franklin police headquarters and approximately 2 miles from Fire Station 6 located at 1061 Cool Springs Boulevard. Currently, the site has a large open space for passive play. The site is 2.1 miles from Liberty Park and associated dog park; 5.4 miles to Pinkerton Park.

Consistent with the Major Objectives and Guiding Principles of Envision Franklin, East Works District is intended to be an exceptional place for residents, employees and visitors through its thoughtful and unprecedented site design, building forms, architecture, pedestrian environment, and activated streets. A first-of-its-kind redevelopment unlike anything Franklin has seen before, East Works District will attract a variety of businesses and commercial tenants by providing a unique and high-quality mixed-use environment for residents, employees, patrons and visitors to enjoy.

The location of East Works District along Carothers Parkway and the I-65 corridor is ideally suited for higher intensity development, taller buildings, and a mix of uses. The Envision Franklin "Design Concepts Map" identifies this area as "Regional Commerce." The proposed development is in keeping with the description of this area as "high intensity activity centers that attract large numbers of people and employers from both within and outside the City." With prominent visibility from both I-65 and Carothers Parkway, East Works District will set the standard for corridor redevelopment, integrated design and innovative architecture (*Envision Franklin Guiding Principle: Exceptional Design*).

The existing Carothers Building site is currently underutilized and dominated by surface parking. The proposed East Works District development will convert an under-utilized single-use commercial parcel into a dynamic mixed-use environment that maximizes the land use potential of the site through the development of multi-story mixed-use buildings with carefully integrated parking and activated, pedestrian-oriented streets. The development will include a mix of uses, including retail, office, parking structures, shallow building setbacks, generous sidewalks, main entrances oriented to the street, pedestrian-scale signage and lighting, and street-level shopfront windows. East Works District will include a variety of public spaces, each easily accessible from an interconnected network of sidewalks and paths. The plan will help the City achieve its goal of "inviting neighborhoods with memorable character through a balanced mix of dwellings, parks and open spaces, civic buildings, shops and workplaces" (*Envision Franklin Guiding Principle: Vibrant Neighborhoods*). East Works District will also include a mix of public and private facilities, such as parks, recreation facilities and landscaping [that works] together to enhance the public realm and create exceptional places for people (*Envision Franklin Guiding Principle: Exceptional Design*).

The City of Franklin seeks “responsible and purposeful growth that enhances quality of life [and] provides a dynamic mix of land uses” (*Envision Franklin Guiding Principle: Managed Growth*). East Woods District is situated in an existing commercial and mixed-use corridor with existing infrastructure and services. The plan reflects a compact land-use pattern that supports the City’s goals of efficient resource utilization and transportation alternatives. The new development will be complementary to its surroundings and will “enhance the quality of life and the economic health of the community” (*Envision Franklin Guiding Principle: Context-Responsive Infill*).

Envision Franklin also aims to “attract new businesses, and to stimulate a climate for entrepreneurial ventures and investment” (*Envision Franklin Guiding Principle: Economic Vitality*). East Works District will feature new medium- to high-density residential housing and attached single-family housing in the form of urban rowhouses. Incorporating additional residential uses west of Carothers Parkway will enhance the economic vitality of both this project and the adjacent Meridian Court Springs). The single- and multi-family neighborhoods in the surrounding Carothers Parkway area, as well as the numerous existing office buildings and hotels, will benefit from a variety of new restaurants, shops, and employment opportunities within East Works District.

East Works District will provide both on- and off-street parking, in numbers that capitalize on the efficiency of shared parking. Additionally, the project will be the first in the region to contemplate a future that includes advances in motorized transportation including self-parking, autonomous vehicles. The project will have a “well-designed, effective, convenient, and active transportation network” that is “achieved through a complete system of streets, bicycle and pedestrian routes” (*Envision Franklin Guiding Principle: Connected Community*).

EAST WORKS DISTRICT

FOR
MarketStreet™
ENTERPRISES

DATE:	APRIL 13, 2020	REVISIONS:	05/07/20 Rev. Per Staff Comments
SALE:	1" = 100'	05/07/20 Rev. Per Cond. of Approval	
DRAWN:	S. BERNICK		
DESIGNED:	B. WRIGHT		
PROJECT NO.	2067	WK. ORDER	0362

OVERALL DEVELOPMENT PLAN

C2.0

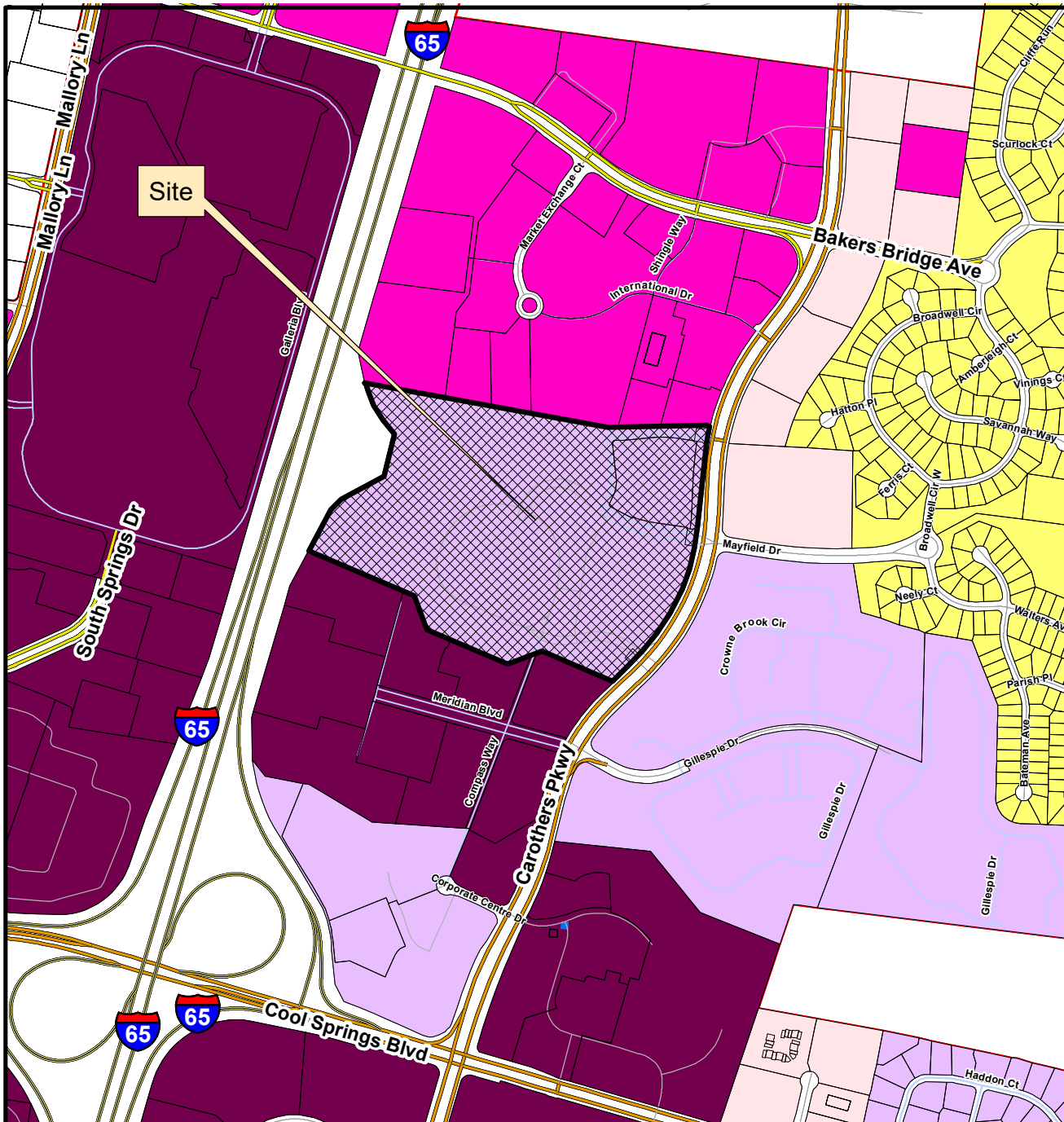
EAST WORKS DISTRICT PUD SUBDIVISION RESOLUTION 2025-37

Project Information

Vested Zoning: PD, Planned Development
Overlay Districts: None
Site Acreage: 49.93 acres
Number of Dwelling Units: 1,624
Nonresidential Square Footage: 995,084 SF
Hotel Keys: 605

Legend

-  East Works District PUD Subdivision
-  AG Agricultural District
-  ER Estate Residential District
-  R1 Residential 1 District
-  R2 Residential 2 District
-  R3 Residential 3 District
-  R4 Residential 4 District
-  R6 Residential 6 District
-  MR Mixed Residential District
-  PD Planned District
-  OR Office Residential District
-  CI Civic Institutional District
-  NC Neighborhood Commercial District
-  CC Central Commercial District
-  DD Downtown District
-  1ST Avenue District
-  5TH Avenue District
-  RC4 Regional Commerce 4 District
-  RC6 Regional Commerce 6 District
-  RC12 Regional Commerce 12 District
-  GO General Office District
-  LI Light Industrial District
-  HI Heavy Industrial District



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0 250 500 1,000
Feet



HISTORIC
FRANKLIN
TENNESSEE

THOMPSON BURTON PLLC

A T T O R N E Y S A T L A W
A PROFESSIONAL LIMITED LIABILITY COMPANY

One Franklin Park
6100 Tower Circle, Suite 200
Franklin, Tennessee 37067
www.thompsonburton.com

Jon Michael
jon.michael@thompsonburton.com

615-465-6000

April 24, 2025

Ms. Amy Diaz-Barriga
Assistant Director of Planning and Development
Department of Planning and Sustainability
City of Franklin, Tennessee
109 3rd Avenue South
Franklin, TN 37064

VIA EMAIL

Re: East Works District PUD – COF Project 7239

Dear Ms. Diaz-Barriga:

We represent the developers of this project, MarketStreet Enterprises. The Board of Mayor and Aldermen approved a Development Plan for the East Works District PUD Subdivision by Resolution 2020-61, thus establishing the project's vested rights under the Tennessee Vested Rights Act of 2014. BOMA then approved an extension of the vested rights for two years on June 13, 2023, by Resolution 2023-23. The current Site Plan for Phase 1 of the project was approved by the Board of Mayor and Aldermen and ultimately stamped on September 6, 2023. Last week, project representatives obtained digital approvals on both the Grading/Utility Permit Application as well as the LTMP-A Documents for this same Phase 1. The development team is now coordinating the final signature and notarization for recordation of those documents.

While much effort is going towards the advancement of the project, City staff has notified us that the vesting period of our approved plans will expire on July 14, 2025. As our clients continue with project preparation, we respectfully request an extension of the Vested Rights for the project.

Reasons for the Extension Request

Several unforeseen obstacles have prolonged this project beyond what was anticipated at the outset in 2020. In particular, we draw your attention to the following:

1. Total project cost inflation, particularly with construction costs, balanced against relatively flat local multifamily rental rate increases.

Our attempts in recent years to gain traction in predevelopment activities and project capitalization were disrupted by a historically abnormal construction cost inflation rate from 2021-2024, coupled with local multifamily rental rates that only modestly increased over the same time. While the inflation rate has recently leveled off, the cost escalation for construction materials in recent years has paused or terminated

plans for several significant development projects in the region. Additionally, more recently imposed international trade tariffs are already upsetting international markets and creating uncertainty in the cost of construction materials. East Works District remains an economically viable real estate opportunity, but we are still navigating uncertainty in construction costs and rental rates in order to restore a balance that produces return metrics attractive to capital sources.

2. Rising interest rates, particularly those established by the Federal Reserve Bank.

The interest rates established by the Federal Reserve Bank, which were increased to calm the effects of the aforementioned inflation, have proven equally detrimental to the progress of the East Works District predevelopment and project capitalization efforts. In recent years, many traditional debt sources temporarily paused or greatly reduced allocations for all commercial real estate development. As such, reduced capital availability temporarily paused our ability to proceed with East Works District. Similar to the project cost and rental rate imbalance, we are just now starting to see debt sources re-enter the commercial real estate lending market in a meaningful way and benchmark US Treasury yields starting to normalize.

3. Neighboring property owners failed to respond to repeated communication efforts or were reluctant to grant access easements required by the City of Franklin.

Since 2023, the development team and its legal representatives have pursued each of the enumerated access easements identified by City Staff as necessary for a Grading Permit application. As the Board members know, the private property owners with whom we have dealt are not legally required to grant private easements, even though such easements are currently a condition of approval for our Development Plan. As such, progress has been intermittent over the past 18 months. Even now, the development team continues in its effort to secure one more private easement required for this project. This unique circumstance is outside of the developers' sole control.

Conclusion

We are optimistic that the approval of this extension will keep East Works District on track toward fulfillment of the developers' vision and advancement of the city's development goals for the Carothers Parkway corridor. City Staff has helpfully advised us of the need to limit the length of this requested extension. Therefore, we ask for only an 18-month extension. With that time, we believe the project can navigate the current macro-economic conditions and complete the required negotiations regarding access easements.

For these reasons, we humbly request your approval of this extension of the project's vested rights.

Respectfully,

A handwritten signature in blue ink, appearing to read "Jon Michael", with a horizontal line underneath.

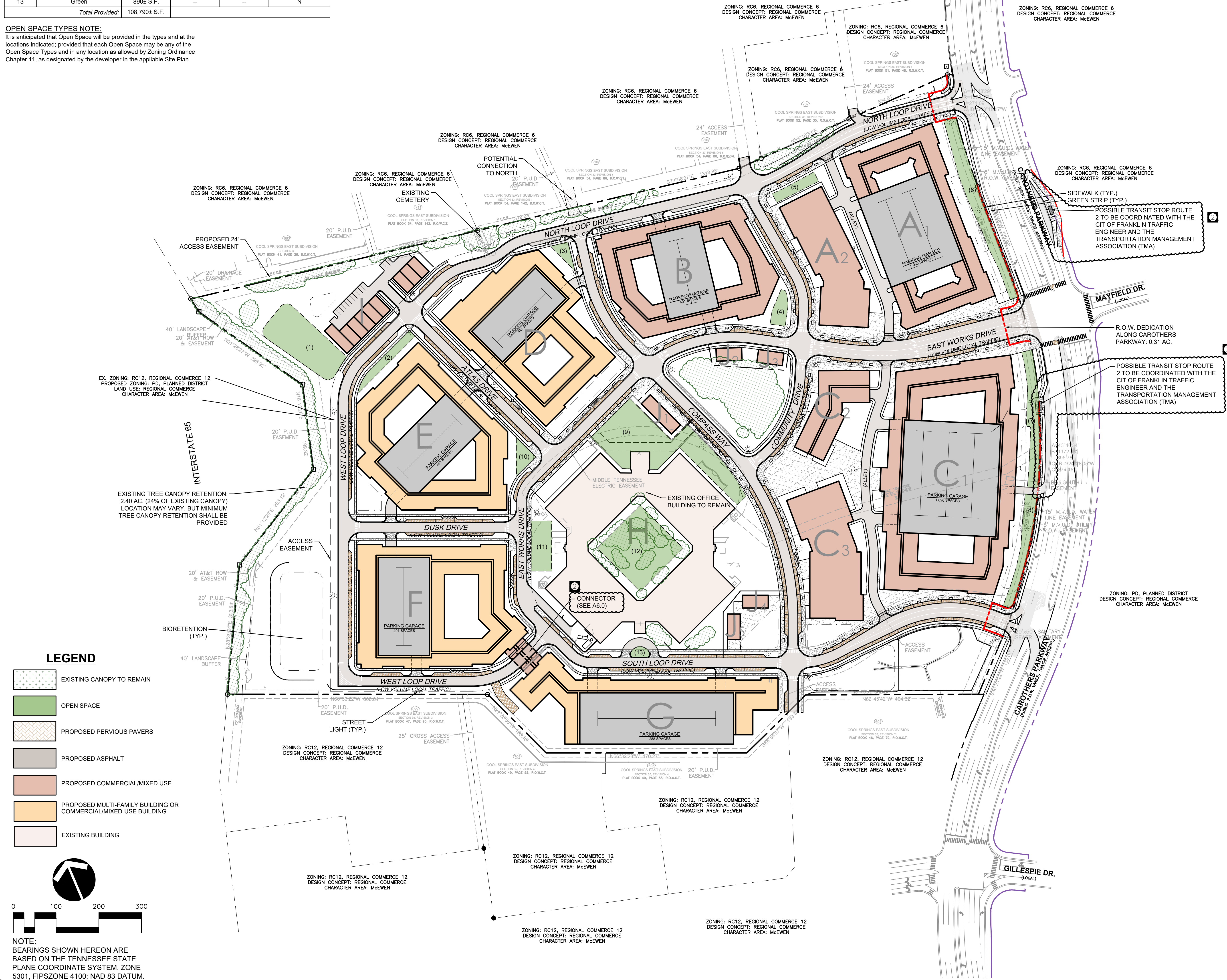
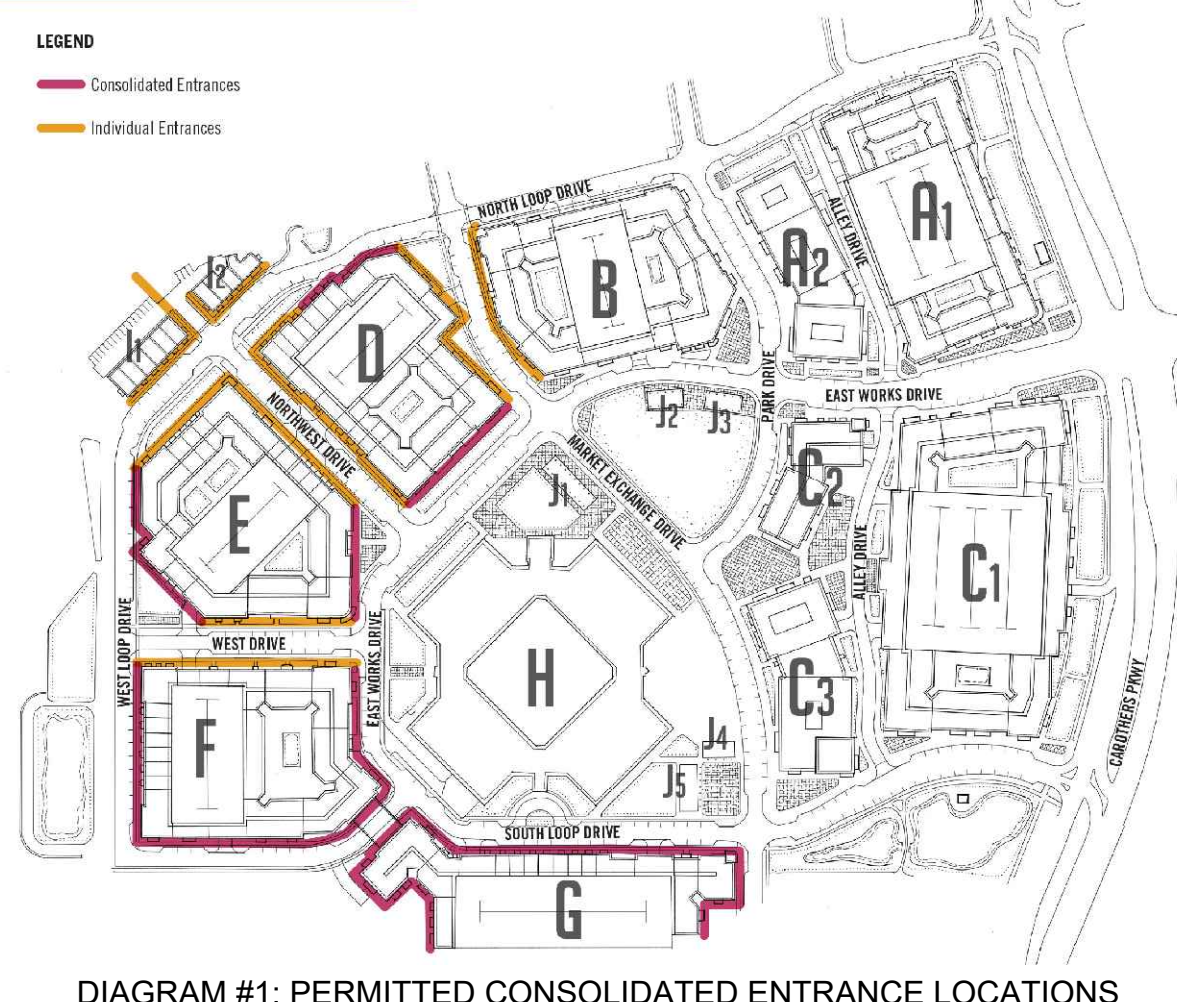
Jon Michael

cc: Mayor Ken Moore
Board of Mayor and Aldermen
Jimmy Wiseman
Bill Squires

OPEN SPACE REQUIREMENT					
SITE INFORMATION					
Acreage / Square Footage of Site: 49.929 Ac. / 2,174,907± S.F.					
Minimum Open Space Acreage Required: 108.745± S.F. (5% or 2.5 Ac.)					
If Residential, Natural Area Required: N/A					
OPEN SPACE PROVIDED					
Key	Open Space Type	Area of Open Space	Hardscape Area (S.F.)	Hardscape Area (%)	Stormwater Feature Included? (Y/N)
1	Neighborhood Amenity	16,830± S.F.	--	--	N
2	Pocket Park	3,320± S.F.	--	--	N
3	Pocket Park	1,460± S.F.	--	--	N
4	Outdoor Dining Area/Plaza	2,440± S.F.	--	--	N
5	Plaza	2,560± S.F.	--	--	N
6	Greenway	12,100± S.F.	--	--	N
7	Greenway	7,950± S.F.	--	--	N
8	Greenway	6,010± S.F.	--	--	N
9	Outdoor Dining Area/Plaza	19,915± S.F.	--	--	N
10	Outdoor Dining Area/Plaza	27,640± S.F.	--	--	N
11	Outdoor Dining Area/Plaza	2,075± S.F.	--	--	N
12	Plaza	5,600± S.F.	--	--	N
13	Green	890± S.F.	--	--	N
Total Provided:		108,790± S.F.			

OPEN SPACE TYPES NOTE:
It is anticipated that Open Space will be provided in the types and at the locations indicated; provided that each Open Space may be any of the Open Space Types and in any location as allowed by Zoning Ordinance Chapter 11, as designated by the developer in the applicable Site Plan.

TAKE-DOWN SCHEDULE FOR MULTI-SECTION DEVELOPMENT							
Development	Nonresidential Use	Square Footage	Single-Family Units	Multi-Family Units	Townhouse	Hotel Keys	Garage
Overall Entitlements	Restaurant, Retail, Hotel, Office	1,525,084± S.F.	N/A	1,615 Units	9 Units	605 Keys	4,864 Spaces
Pad A	Restaurant, Retail, Hotel	514,140± S.F.	N/A	0 Units	0 Units	381 Keys	986 Spaces
Pad B	Restaurant, Retail, Office	16,300± S.F.	N/A	243 Units	0 Units	0 Keys	491 Spaces
Pad C	Restaurant, Retail, Hotel, Office	464,644± S.F.	N/A	284 Units	0 Units	224 Keys	1,626 Spaces
Pad D	N/A	0± S.F.	N/A	292 Units	0 Units	0 Keys	491 Spaces
Pad E	N/A	0± S.F.	N/A	291 Units	0 Units	0 Keys	491 Spaces
Pad F	N/A	0± S.F.	N/A	337 Units	0 Units	0 Keys	491 Spaces
Pad G	N/A	0± S.F.	N/A	168 Units	0 Units	0 Keys	288 Spaces
Pad H	Existing Office	530,000± S.F.	N/A	0 Units	0 Units	0 Keys	0 Spaces
Pad I	N/A	0± S.F.	N/A	0 Units	9 Units	0 Keys	0 Spaces
Pad J	N/A	0± S.F.	N/A	0 Units	0 Units	0 Keys	0 Spaces



SITE DATA	
SITE INFORMATION	
Project Name:	East Works District
Project #:	---
Address:	9009 Carothers Parkway Franklin, Williamson County
Map / Parcel:	053 / 142.00
Acreage / Square Footage of Site:	49.929 Ac. / 2,174,907± S.F.
Vesting Date:	N/A
REGULATIONS	
Base Zoning:	RC12 (Regional Commerce 12)
Proposed Zoning:	PD (Planned District)
Overlay Zoning:	N/A
Proposed Principle Use:	All principle uses permitted or permitted with additional use regulations for Planned Districts under Section 5.1 of the Zoning Ordinance
Proposed Accessory Use:	All accessory uses permitted or permitted with additional use regulations for Planned Districts under Section 5.2 of the Zoning Ordinance
Building Types Applied:	Commercial / Mixed-Use Building, Multifamily Building, & Townhouse
Frontage Types Applied:	Urban Landscape Frontage (Carothers Pkwy) Urban Frontage (All Other Streets)
Lot Width (Residential):	Townhouse (Min. 18')
Lot Size (Residential):	N/A
Setbacks	
Front Yard (Carothers Parkway):	40' (Prior to any R.O.W. Dedications/50' Stubs)
Front Yard (Internal):	10' Min (From Face of Curb) & 30' Max (Unless otherwise shown on plan)***
Side Yard (External):	5' Min
Side Yard (Internal):	0' Min (Subject to buildings maintaining a minimum spacing of 10' feet)
Rear Yard (I-65):	25' Min
Rear Yard (Internal):	10' Min
Dwelling Unit Count, By Type:	
Multi-Family:	1,615 Units
Townhouse:	9 Units
Commercial S.F., By Use:	
Offices:	1,048,000 S.F. (Total) 530,000 S.F. (Existing) 518,000 S.F. (New)
Restaurants:	34,550 S.F.
Retail:	27,750 S.F.
Hotel Keys:	414,784 S.F. (605 Keys)
Building Height:	
Multi-Family (D,E,F,G):	4 - 6 Floors; Type 3A
Townhouse (I):	3 - 4 Floors; Type 3A
Commercial/Mixed-Use Building (A, A ₂ , B, C, C ₂ ,C ₃):	N/A- Mixed Use
Commercial/Mixed-Use Building (J):	1 - 2 Floors; Type 1A or 1B
Min. Landscape Surface Area:	20%
Open Space S.F. Required:	108,745± S.F. (5% or 2.5 Ac.)
Natural Area S.F. Required:	N/A- Mixed Use
Tree Canopy Retention Acreage:	2.39± Ac. (24% of Existing Canopy Retention Req.)
Parking Required, By Use:	See Parking Supply Analysis conducted by Nelson\Nygaard on March 27, 2020
Parking Provided, By Use:	See Parking Supply Analysis conducted by Nelson\Nygaard on March 27, 2020
Historic Resource Treatment (Y/N):	No

BUILDING TYPES NOTE

Buildings A1, A2, B, C1, C2, C3, and J1, J2, J3, J4 and J5 are the Commercial / Mixed Use Building Type. It is presently anticipated that each of Buildings D, E, F, and G will be either the Multifamily Building Type or the Commercial / Mixed Use Building Type, as designated by the developer in the applicable Site Plan. Building Construction Type designations are for information only. Appropriate Building Construction Types will be determined at Site Plan and will meet all applicable requirements at such time.

STATEMENT OF IMPACTS

Police, Fire & Recreation Facilities: - The site is located 5.5 miles from the new downtown Franklin police headquarters and approximately 2 miles from Fire Station 6 located at 1061 Cool Springs Boulevard. Currently, the site has a large open space for passive play. The site is 2.1 miles from Liberty Park and associated dog park; 5.4 miles to Pinkerton Park.

COMPLIANCE WITH ENVISION FRANKLIN

Consistent with the Major Objectives and Guiding Principles of Envision Franklin, East Works District is intended to be an exceptional place for residents, employees and visitors through its thoughtful and unprecedented site design, building forms, architecture, pedestrian environment, and activated streets. A first-of-its-kind redevelopment unlike anything Franklin has seen before, East Works District will attract a variety of businesses and commercial tenants by providing a unique and high-quality mixed-use environment for residents, employees, patrons and visitors to enjoy.

The location of East Woods District along Carothers Parkway and the I-65 corridor is ideally suited for higher intensity development, taller buildings, and a mix of uses. The Envision Franklin "Design Concepts Map" identifies this area as "Regional Commerce." The proposed development is in keeping with the description of this area as "high intensity activity centers that attract large numbers of people and employers from both within and outside the City." With prominent visibility from both I-65 and Carothers Parkway, East Woods District will set the standard for corridor redevelopment, integrated design and innovative architecture (*Envision Franklin Guiding Principle: Exceptional Design*).

The existing Carothers Building site is currently underutilized and dominated by surface parking. The proposed East Works District development will convert an under-utilized single-use commercial parcel into a dynamic mixed-use environment that maximizes the land use potential of the site through the development of multi-story mixed-use buildings with carefully integrated parking and activated, pedestrian-oriented streets. The development will include a mix of uses, including retail, parking structures, shallow building setbacks, generous sidewalks, main entrances oriented to the street, pedestrian-scale signage and lighting, and street-level shopfront windows. East Works District will include a variety of public spaces, each easily accessible from an interconnected network of sidewalks and paths. The plan will help the City achieve its goal of "inviting neighborhoods with memorable character through a balanced mix of dwellings, parks and open spaces, civic buildings, shops and workplaces" (*Envision Franklin Guiding Principle: Vibrant Neighborhoods*). East Works District will also help the City achieve its goal of "creating a rich, diverse, and vibrant community with landscaping [that works] together to enhance the public realm and create exceptional places for people" (*Envision Franklin Guiding Principle: Exceptional Design*).

The City of Franklin seeks “responsible and purposeful growth that enhances quality of life [and] provides a dynamic mix of land uses” (*Envision Franklin Guiding Principle: Managed Growth*). East Woods District is situated in an existing commercial and mixed-use corridor with existing infrastructure and services. The plan reflects a compact land-use pattern that supports the City’s goals of efficient resource utilization and transportation alternatives. The new development will be complementary to its surroundings and will “enhance the quality of life and the economic health of the community” (*Envision Franklin Guiding Principle: Context-Responsive Infill*).

Envision Franklin also aim to “attract new businesses, and to stimulate a climate for entrepreneurial ventures and investment” (*Envision Franklin Guiding Principle: Economic Vitality*). East Works District will feature new medium- to high-density residential housing and attached single-family housing in the form of urban rowhouses. Incorporating additional residential uses west of Carothers Parkway will enhance the economic vitality of both this project and the adjacent Meridian Cook Springs). The single- and multi-family neighborhoods in the surrounding Carothers Parkway area, as well as the numerous existing office buildings and hotels, will benefit from a variety of new restaurants, shops, and employment opportunities within East Works District.

East Works District will provide both on- and off-street parking, in numbers that capitalize on the efficiency of shared parking. Additionally, the project will be the first in the region to contemplate a future that includes advances in motorized transportation including self-parking, autonomous vehicles. The project will have a "well-designed, effective, convenient, and active transportation network" that is "achieved through a complete system of streets, bicycle and pedestrian routes" (*Envision Franklin Guiding Principle: Connected Community*).

OVERALL DEVELOPMENT PLAN		C2.0	
JOB NO. 12067	WK. ORDER 0362	DESIGNED: B. WRIGHT DRAWN: S. BERNICK SCALE: 1" = 100' DATE: APRIL 13, 2020 05/07/20 Rev. 05/07/20 Rev. 05/07/20 Rev.	
EAST WORKS DISTRICT FOR MarketStreet™ ENTERPRISES CITY OF FRANKLIN, WILLIAMSON COUNTY, TENNESSEE		RAGAN SMITH LAND PLANNERS • CIVIL ENGINEERS LANDSCAPE ARCHITECTS • ARCHITECTS 1000 MARKET STREET NASHVILLE, TENNESSEE 37203 (615) 259-0000 www.ragan-smith.com T.P.U.D.C. THE PLANNING UNIVERSITY OF DISTRICT COUNCILS 1000 MARKET STREET NASHVILLE, TENNESSEE 37203 (615) 259-0000 www.tpudc.com	



File #: 20-0660

DATE: April 28, 2020

TO: Board of Mayor and Aldermen

FROM: Emily Hunter, Planning Director
Amy Diaz-Barriga, Planning Supervisor
Joseph Bryan, Principal Planner

SUBJECT:

Consideration Of Resolution 2020-61, A Resolution Approving A Development Plan For The East Works District PUD Subdivision With 7 Modifications Of Development Standards, Relative To Multifamily Building Entrances And Signage Standards, For The Property Located North Of Meridian Boulevard And West Of Carothers Parkway, Located At 9009 Carothers Parkway.

PURPOSE:

Project Information

COF Project Number: 7239

Applicant: Scotty Bernick, Ragan Smith

Owner: LCFRE Nashville Carothers LP

BACKGROUND/STAFF COMMENTS:

The applicant has submitted a development plan for the construction of the East Works District PUD Subdivision, a multi-phase, mixed-use development located at 9009 Carothers Parkway. The applicant is proposing approximately 1,600 dwelling units consisting of multifamily and attached residential units, approximately 1,000,000 square feet of existing and proposed commercial space, and 605 hotel keys for site that is comprised of 49.96 acres. The parcel is located within the Regional Commercial Design Concept as outlined in the Envision Franklin Land Use Plan.

For the Regional Commerce Design Concept, Envision Franklin states, "Higher-intensity uses should be located closer to major thoroughfares," the proposed location between Carothers Parkway and Interstate-65 is appropriate for vehicular access to the site. The applicants are keenly aware of the potential for transit capabilities and a formal transit stop will be incorporated into the development at the site plan level.

Envision Franklin states, "Buildings should be arranged on sites so that they help to frame and define the streets, giving deliberate form to streets and sidewalk areas. Building setbacks should be minimal to create an active street environment that encourages pedestrian activity. Where internal drives are used to organize buildings and pedestrian movement, setbacks to internal drives should be minimized wherever possible."

The plan as proposed meets many of the recommendations and guiding principles of Envision

Franklin. It eliminates existing surface area parking lots by constructing new buildings with internal parking garages. The layout of the site allows for full frontage activation for most of the buildings. The proposed setbacks and street network promotes ground level activity and walkability for the entirety of the site.

"New multifamily residential is encouraged within Regional Commerce to create lively, walkable neighborhoods near restaurants, shops, grocery stores, and workplaces. First floors are encouraged to have active commercial spaces, including retail, restaurants, leasing offices, and other amenities, which should be individually accessible from the street. In locations where commercial use on the first floor is not viable, multifamily units should provide individual ground floor entrances, stoops or front porches, and pedestrian connections to the street or to a drive resembling a street. Multifamily buildings are encouraged to have urban form and be part of a connected and master-planned site."

Multifamily buildings are a major component of the East Works District PUD with approximately 1,600 dwelling units. The plan proposes a cohesive development of urban living with a variety of ground floor retail and eatery options and office space that could serve as potential work spaces for residents. The plan does incorporate some individual ground floor entrances for ground floor dwelling units as required by the Zoning Ordinance, however they have submitted a Modification of Standards request for consolidated entrances at some locations.

A parking study has been submitted with the development plan that analyzes needed parking for peak hours. The applicant has incorporated shared parking that will be phased throughout the construction of the site. The parking study calls for an approximate 40% reduction in what is required by the Zoning Ordinance.

For new development in Regional Commerce, Envision Franklin recommends, "Formal, usable open spaces, such as plazas, courtyards, and outdoor seating areas, that serve as gathering areas. These open spaces should be highly accessible and in a prominent location that encourages continued active use." The plan proposes keeping a green space with mature shade trees near the existing office building. This area serves as a communal gathering space further emphasizing the pedestrian-oriented design and in addition to the smaller pockets of green space to the interior and around the perimeter of the property.

MODIFICATION OF STANDARDS:

There are seven Modification of Standards requests with this plan.

MOS #1: Requesting to allow consolidated entrances for ground floor multifamily residential units.

The applicant is requesting to allow consolidated entrances for ground floor multifamily dwelling units, citing topographical constraints, context, and market demand. Section 6.7 of the Zoning Ordinance states, "Facades along a street or internal drive shall have individual entrances to... all ground floor dwelling units." The goal of individual ground floor entrances is have activated streets. Limiting them to the degree as this MOS states does meet the standards and does not achieve the pedestrian-oriented principle of Regional Commerce as outlined in the Envision Franklin Land Use Plan.

Staff recommends **disapproval** of MOS #1.

MOS #2: Requesting the use of irregular shapes for hanging wall signs.

The applicant is requesting to allow irregular shapes to represent items that identify the subject business for hanging and wall signs. Section 15.1.3 of the Zoning Ordinance states, "Signs shall not be irregularly shaped." Staff believes that allowing irregularly shaped hanging and wall signs would go directly against the intent of the recently updated sign regulations of the Zoning Ordinance. Additionally, it could set a precedent for other requests outside of the East Works District development.

Staff recommends **disapproval** of MOS #2.

If it is the desire of BOMA to approve this MOS request, Staff advises that the MOS be limited to hanging signs only.

MOS #3: Request to allow additional band signs, in addition to wall signs.

The applicant is requesting to allow additional band signs, one band sign per tenant, in addition to any allowed wall signage. Section 15.4 of the Zoning Ordinance limits the number of wall signs to one per main entrance per storefront on the ground floor, if no other wall sign is present on the building. Due to the urban context of this development, Staff can support the request of additional band signs of one per ground floor tenant in addition to allowed wall signs.

Staff recommends **approval** of MOS #3.

MOS #4: Request for internally illuminated canopy lighting.

The applicant is requesting to use internally illumination for canopy signage. Section 15.5 of the Zoning Ordinance allows for external illumination of canopy signage only. Staff believes that allowing internal illumination would go directly against the intent of the recently updated sign regulations of the Zoning Ordinance. Additionally, it could set a precedent for other requests outside of the East Works District development.

Staff recommends **disapproval** of MOS #4.

MOS #5: Request to increase maximum size of hanging sign to 6 square feet per side and allow internal illumination.

Section 15.10 of the Zoning Ordinance limits the size of hanging signs to three square feet per side and allows for external illumination only. The proposed sign size of 6 sq. ft. per side (12 sq. ft. total) seems too large and does not meet the intent of the signage regulations of Zoning Ordinance. Internally illuminated signage is not supported in any capacity within the Zoning Ordinance.

Staff recommends **disapproval** of MOS #5.

As a consideration, Staff could support increasing the size to 4.5 sq. ft. per side (9 sq. ft. total) as that is the current maximum for hanging signs in the local historic districts as recommended by the

MOS #6: Request to allow one vertical blade sign per frontage in addition to allowed hanging signs for ground floor tenants.

Section 15.14 of the Zoning Ordinance limits the number of vertical blade signs to 1 per building if no other hanging signs exist. With the size and scale of the proposed development, one vertical blade sign per frontage in addition to the allowed hanging signs for other tenants would be appropriate. As a condition of approval, the applicant shall provide more specific language to the MOS about allowed locations for vertical blade signs only at intersection corners and building massing changes.

Staff recommends **approval, with conditions** of MOS #6.

MOS #7: Request to allow two wall signs per building in addition to allowed band signs.

The applicant is requesting to allow two wall signs, located at the roofline of the building, in addition to the allowed band signs with only one wall sign allowed per frontage. Section 15.15 of the Zoning Ordinance limits wall sign per building facade only if no band sign exists on the building. Two wall signs located at the roofline of a mixed-use/commercial building, limit one per frontage, in addition to the wall signs could be supported given the size and scale of the proposed development. As a condition of approval, the applicant shall include in the final language that this MOS is limited to buildings of 6 stories or higher.

Staff recommends **approval, with conditions** of MOS #7.

PROJECT CONSIDERATIONS:

For building height for the subject property, Appendix G of Envision Franklin places the portion of this parcel that fronts Carothers Parkway into a recommended maximum height of 6 stories. When the Zoning Map was updated in 2019, however, it placed the entirety of this parcel into Regional Commerce base district, which allows up to 12 stories by right. Additionally, Appendix G shows the parcels to the South of the subject property within the 12 story max along Carothers Parkway. For these reasons, staff can support the proposed height range of 6 to 12 stories for the buildings that front Carothers despite the recommendations of Envision Franklin. If possible, taller buildings should be designed internal to the site.

For signage MOS requests, the visuals included with the MOS packet show examples that are representative of each specific request being made. Take into consideration that if multiple MOS requests are granted, especially with signage shape and illumination, the final approved sign may appear different than those that have been presented in the packet.

PROCEDURAL REQUIREMENTS:

1. If the plan receives BOMA approval, the applicant shall upload the corrected plan to the online plan review website (<https://franklin.contractorsplanroom.com/secure/>). All revisions to the approved plans shall be “clouded.” With the resubmittal, each condition of approval/open issue in the online plan review system shall contain a full response from the applicant as to the satisfaction or completion of that condition.

2. The city's project identification number shall be included on all correspondence with any city department relative to this project.

FINANCIAL IMPACT:

Unknown.

RECOMMENDATION:

Staff recommends approval with conditions of Resolution 2020-61 to the Board of Mayor and Aldermen.

See attached sheets for Conditions of Approval.



File #: 21-0627

DATE: May 23, 2025
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Paul Holzen, Director of Engineering
Adam Moser, Traffic Engineer

SUBJECT:

*Consideration Of Resolution 2025-32, A Resolution To Recommend Approval Of The Safe Streets And Roads For All (SS4A) Transportation Safety Action Plan Including A Commitment To Reduce Serious Injury And Fatality Crashes By 20% By the Year 2040

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Resolution 2025-32, A Resolution To Recommend Approval Of The Safe Streets And Roads For All (SS4A) Transportation Safety Action Plan Including A Commitment To Reduce Serious Injury And Fatality Crashes By 20% By the Year 2040.

BACKGROUND/STAFF COMMENTS:

The City of Franklin has prioritized transportation safety through strategic planning and investment in infrastructure improvements. In May 2024, Franklin entered into an agreement with the United States Department of Transportation (USDOT) to secure a Safe Streets and Roads for All (SS4A) Planning grant, providing the necessary resources to develop a comprehensive Transportation Safety Action Plan.

This plan outlines a proactive approach to reducing serious injury and fatal crashes by 20% by the year 2040, reflecting Franklin's commitment to safer roadways, improved pedestrian and cyclist accommodations, and enhanced traffic operations. The Safety Action Plan was presented to BOMA on March 25, 2025, and identified priority transportation projects, including those within the High Injury Network (HIN), to address critical safety concerns.

Formal adoption of this resolution will reinforce Franklin's leadership in transportation safety, providing the foundation for grant applications to further fund safety enhancements. City staff is working to submit a grant application on June 26th and approval of this resolution is required.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve Resolution 2025-32.

RESOLUTION 2025-32

A RESOLUTION TO RECOMMEND APPROVAL OF THE SAFE STREETS AND ROADS FOR ALL (SS4A) TRANSPORTATION SAFETY ACTION PLAN INCLUDING A COMMITMENT TO REDUCE SERIOUS INJURY AND FATALITY CRASHES BY 20% BY THE YEAR 2040.

WHEREAS, the City of Franklin entered into an agreement in May 2024 with the USDOT for a Safe Streets and Roads For All (SS4A) Planning grant to develop a transportation Safety Action Plan; and

WHEREAS, the Board of Mayor and Aldermen (BOMA) recognizes the importance of transportation safety for citizens traversing City of Franklin roadways, multi-use paths, and sidewalks; and

WHEREAS, the Safety Action Plan was completed and presented to the BOMA on March 25, 2025, to serve as a guide for improving safety on priority transportation projects on the High Injury Network (HIN); and

WHEREAS, the Safety Action Plan recommended a commitment by the BOMA to work to reduce serious injury and fatality crashes by 20% by the year 2040; and

WHEREAS, the Board of Mayor and Aldermen believes it is in the best interest of the City of Franklin to adopt the City of Franklin Safety Action Plan and to commit to reduction of serious injury and fatality crashes by 20% by the year 2040 .

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

The SS4A transportation Safety Action Plan with its recommendations and findings is adopted into City of Franklin record as a guiding document and resource for future transportation projects.

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

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: _____
Angie Skarp
City Recorder

By: _____
Dr. Ken Moore
Mayor

Approved as to Form:

By: _____
William E. Squires
Assistant City Attorney



File #: 21-0622

DATE: May 21, 2025
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Paul Holzen, Director of Engineering
Jonathan Marston, Asst. Director of Engineering
David Hodnett, Staff Engineer

SUBJECT:

Consideration Of Change Order 1 (Final Change Order) To COF Contract No. 2023-0335, With Jones Brothers Contractors, LLC For The Jordan Road Improvements Project In A Cost Decrease Of \$65,866

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning COF Contract No. 2023-0335 Change Order 1.

BACKGROUND/STAFF COMMENTS:

Change Order No. 1 finalizes contract quantities for the Jordan Road Improvements Project. The Owner's Contingency fund was utilized to accommodate critical modifications, including lowering a 60" sewer casing pipe to facilitate future main installation, installing metal guardrail posts to enhance roadway safety, and regrading the Aspen Grove intersection to improve drainage and limit vehicle access to the multi-use path. These adjustments totaled \$84,134.00 and were covered by the available \$150,000.00 contingency allocation.

Additionally, the contractor achieved Substantial Completion on December 9, 2024—100 days ahead of schedule—qualifying for the contract's early completion incentive of \$100,000.00.

FINANCIAL IMPACT:

The financial impact includes a project decrease of \$65,866 and payment of \$100,000 early completion incentive.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve Change Order 1 to COF Contract No. 2023-0335.

CHANGE ORDER NO.: 1

Owner:	City of Franklin, TN
Engineer:	City of Franklin, TN (COF) serving as "Engineer"
Contractor:	Jones Brothers Contractors, LLC
Project Name:	Jordan Road Improvements
Owner's Contract No.:	COF Contract No. 2023-0335 (COF Project No. 2020-012)
Date Issued:	May 10, 2025
Effective Date of Change Order:	May 10, 2025

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

Description: **This Change Order No. 1 is to final the contract quantities and pay the Early Completion Bonus.**

Item COF1 Owner's Contingency: (1) Lower 60" sewer casing pipe to an elevation that would work with future sewer main installation. \$42,578.00 (2) Provided the addition of Item 705-01.04 Metal Beam Guard Fence to pay for the installation and bolting of the metal guardrail posts to the concrete deck. \$11,846.25 (3) Revised concrete sidewalk and curb on west side of Aspen Grove intersection. To facilitate better drainage and prevent vehicles from entering the multi-use path at the intersection of Jordan Road and Aspen grove, the sidewalk and a barrier curb was added and the intersection re-graded for better drainage. \$29,709.75 Total of these additional costs is \$84,134.00 and was paid from the Owner's Contingency \$150,000.00

Item COF-2 Early Completion Bonus: The Notice to Proceed with construction was issued on March 18, 2024 and the total contract days for the project is 365 calendar days. The contractor received a Substantial Completion on December 9, 2024. In Section 4.04, Liquidated Damages and Bonus, C, the contract awards them an early completion of 100 days * \$1000/day = \$100,000.00. This Bonus Payment will be added to the contract by this Change Order No. 1.

MODIFIED - EJCDC® C-941, Change Order.

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Law Dept approved 05.30.25

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Change in Contract Price		Change in Contract Times [State Contract Times as number of days]	
Original Contract Price:		Original Contract Times:	
\$ <u>2,399,843.00</u>		Substantial Completion:	<u>March 18, 2025</u>
		Ready for final payment:	<u>May 18, 2025</u>
[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]:	
\$ <u>2,399,843.00</u>		Substantial Completion:	<u>March 18, 2025</u>
		Ready for final payment:	<u>May 18, 2025</u>
Contract Price prior to this Change Order:		Contract Times prior to this Change Order:	
\$ <u>2,399,843.00</u>		Substantial Completion:	<u>March 18, 2025</u>
		Ready for final payment:	<u>May 18, 2025</u>
[Increase] [Decrease] this Change Order:		[Increase] [Decrease] this Change Order:	
\$ <u>100,000.00</u>		Substantial Completion:	<u>March 18, 2025</u>
		Ready for final payment:	<u>May 18, 2025</u>
Contract Price incorporating this Change Order:		Contract Times with all approved Change Orders:	
\$ <u>2,499,843.00</u>		Substantial Completion:	<u>March 18, 2025</u>
		Ready for final payment:	<u>May 18, 2025</u>

Recommended by Engineer	Recommended by Department Director
By: <u>David L. Hodnett</u>	By: <u>Paul Holzen</u>
Signature: _____	Signature: _____
Title: <u>Staff Engineer 2 (Project Manager)</u>	Title: <u>Director of Engineering</u>
Date: <u>February 28, 2025</u>	Date: <u>February 28, 2025</u>

Contractor Approval	Authorized by Owner
By: _____	By: <u>Dr. Ken Moore</u>
Signature: _____	Signature: _____
Title: _____	Title: <u>Mayor</u>
Date: _____	Date: _____



File #: 21-0623

DATE: May 21, 2025
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Paul Holzen, Director of Engineering
Jonathan Marston, Asst. Director of Engineering
David Hodnett, Staff Engineer

SUBJECT:

*Consideration Of Change Order 2 (Final Change Order) To COF Contract No. 2023-0024, With Bell & Associates Construction, LLC For Bundled Bridges Project In The Amount Of \$194,267.06

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Change Order 2 to COF Contract No. 2023-0024.

BACKGROUND/STAFF COMMENTS:

The Bundled Bridges Construction & Rehabilitation Project, initiated in September 2023, encompasses multiple infrastructure improvements, including the Pratt Lane Bridge Replacement, Spencer Creek Culvert Replacement, Bakers Bridge Repair, Mallory Station Bridge Repair, and Peytonsville Road Culvert Replacement.

Change Order No. 1 addressed an emergency repair on Bakers Bridge following the discovery of a void beneath a portion of the bridge approach slab. This issue necessitated an immediate halt to construction and a structural engineering review to assess potential impacts on the Mechanical Stabilized Earth (MSE) wall. The change order, totaling \$51,792.18, also included a 66-calendar-day extension, primarily accounting for delays while awaiting direction on corrective actions. Initially authorized as an emergency response by the City Administrator, this change order received formal approval from BOMA on August 20, 2024.

Change Order No. 2 finalizes contract quantities for the project. The change order addresses project delays and adjustments, including drainage and fencing corrections along Pratt Lane, as well as an emergency culvert replacement at Old Peytonsville Road following a structural failure. This unforeseen repair, authorized by the City Administrator as an emergency action, incurred an additional cost of \$56,735.82. The total change order is in the amount of \$194,267.06.

Additionally, the contractor achieved Substantial Completion 100 days ahead of schedule, qualifying for an early completion incentive of \$100,000.00 as outlined in the contract terms.

FINANCIAL IMPACT:

The financial impact includes a project increase of \$194,267.06 and payment of a \$100,000 early completion incentive. The total project cost, including the incentive, was \$3,813,455.34.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve Change Order 2 to COF Contract No. 2023-0024.

CHANGE ORDER NO.: 2

Owner:	City of Franklin, TN
Engineer:	City of Franklin, TN (COF) serving as "Engineer"
Contractor:	Bell & Associates Construction, LLC
Project Name:	Bundled Bridges Construction & Rehabilitation Bakers Bridge
Owner's Contract No.:	COF Contract No. 2023-0024
Date Issued:	May 10, 2025
Effective Date of Change Order:	May 10, 2025

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

Description: **Change Order No. 2 incorporates the following changes:**

1. Pratt Lane 12" Water Main Relocation: Per the plans, we were to encase the waterline with concrete for a length of 60' at the stream crossing. While installing the waterline, we were directed by the Water Department that 20' of concrete encasement would suffice. After we installed the 20' encasement the Water Management Department advised that this was incorrect and needed to be taken out and the waterline encased to the 60' as shown on the plans. We were ready to tie in the new waterline to the existing on October 24, 2023; but we were advised by the City Water Management Department that they were ceasing all non-essential water loss due to the low levels of the Harpeth River. There the water main could not be tested for bacteria as required after flushing and before being placed into service. For the waterline, we were delayed 30 days due to factors beyond our control.

2. Pratt Lane Drainage : Throughout the duration of the project, there were some significant changes to the overall drainage for the site. The first change was the addition of a structure and approximately 262 LF of 18" RCP. The second change was the drainage ditch along the East side of Pratt Lane. Per the plans, the ditch was supposed to direct storm water to the cross drain and outfall on the West side. The ditch was redesigned to outfall into the creek and use the cross drain as supplemental drainage. The third change was the initial outfall ditch on the West side. Since site conditions differed from the plans, we were directed to construct an outfall ditch that went straight out from the outfall of the cross drain to drain the water away from the site. After we performed this work, we were then directed to construct another drainage ditch parallel to Pratt Ln on the West side to direct storm water to the creek and fill in the initial drainage ditch. The fourth change was the side drain located on the East side at the Crutcher Property. Initially, the plans called for a single run of 18" RCP with 2 headwalls. The final redesign of the side drain included 2 runs of 24" RCP which we then had to order. With the change of the side drain, we also had to cast-in-place 2 double 24" headwalls. The grading and re-grading of the drainage ditches and side drain hindered us from moving forward with the installation of the sidewalks as they needed to be completed so that the sidewalk grading could occur. For the drainage, we were delayed 35 days.

3. Pratt Lane Fencing: Per the plans, we were to reconstruct the WWF fence along the ROW on the East side of Pratt Lane. The original plans called for metal T-posts. The property owner approached the City and stated that the fence needed to be reinstalled with wood posts. Ultimately, the decision was made to change from metal T-posts to wood posts which had to be ordered by our fencing subcontractor. For the fencing, we were delayed 14 days due to the changes.

4. Old Peytons ville Road Emergency Culvert Repair: The Street Department noted a 30"x 50" corrugated metal pipe had begun to collapse on Old Peytons ville Road. Bell Construction was asked to

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Law Dept approved (2) 06.03.25

prepare an estimate for repairing this failure, and to mobilize to repair as soon as possible. Total Cost \$56,735.82.

5. COF Contract 2023-0024 had provisions in Article 4--Contract Times, Section 4.04, Liquidated Damages and Bonus. Bell Construction finished the project 100 days ahead of the Substantial Completion date, therefore they are eligible to receive 100 days * \$1000.00/day ahead of scheduled contract completion = \$100,000.00 early completion bonus.

Attachments: **Attachment A from Bell Construction**

Change in Contract Price		Change in Contract Times [State Contract Times as number of days]	
Original Contract Price:		Original Contract Times:	
\$ 3,467,396.10		Substantial Completion: July 22, 2024	
		Ready for final payment: October 22, 2024	
[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]:	
\$ 51,792.18		Substantial Completion: March 17, 2025	
		Ready for final payment: June 17, 2025	
Contract Price prior to this Change Order:		Contract Times prior to this Change Order:	
\$ 3,519,188.28		Substantial Completion: March 17, 2025	
		Ready for final payment: July 17, 2025	
[Increase] [Decrease] this Change Order:		[Increase] [Decrease] this Change Order:	
\$ 194,267.06		Substantial Completion: June 4, 2025	
		Ready for final payment: September 4, 2025	
Contract Price incorporating this Change Order:		Contract Times with all approved Change Orders:	
\$ 3,813,455.34		Substantial Completion: June 4, 2025	
		Ready for final payment: September 4, 2025	

Recommended by Engineer		Recommended by Department Director	
By:	<u>David L. Hodnett</u>	By:	<u>Paul Holzen</u>
Signature:	_____	Signature:	_____
Title:	<u>Staff Engineer 2 (Project Manager)</u>	Title:	<u>Director of Engineering</u>
Date:	<u>May 10, 2025</u>	Date:	<u>May 10, 2025</u>

Contractor Approval		Authorized by Owner	
By:	_____	By:	<u>Dr. Ken Moore</u>
Signature:	_____	Signature:	_____
Title:	_____	Title:	<u>Mayor</u>

Date:

Date:



October 28, 2024

City of Franklin Engineering Dept.
David Hodnett, P.E.
109 3rd Avenue South, Suite 133
Franklin, TN 37064

Re: Pratt Lane – Project Delays

Contract: 2023-0024
Project No.: 2020-013
County: Williamson

Mr. Hodnett:

Bell & Associates Construction, LLC is submitting this letter for the delays that were incurred due to actions outside of our control on the Pratt Lane location of the Bundle Bridge project. BELL is requesting a 79-day time extension for these delays. The items that caused BELL to be delayed are listed below.

1. **12" Water Line Relocation** : Per the plans, we were to encase the waterline with concrete for a length of 60' at the stream crossing. While installing the waterline, we were directed by the Water Department that 20' of concrete encasement would suffice. After we installed the 20' encasement we were advised that this was incorrect and needed to be taken out and the waterline encased to the 60' as shown on the plans. We were ready to tie in the new waterline to the existing on October 24, 2023; but we were advised by the City that they were ceasing all non-essential water loss due to the low levels of the Harpeth River. For the waterline, we were delayed 30 days due to factors beyond our control.
2. **Drainage** : Throughout the duration of the project, there were some significant changes to the overall drainage for the site. The first change was the addition of a structure and approximately 262 LF of 18" RCP. The second change was the drainage ditch along the East side of Pratt Lane. Per the plans, the ditch was supposed to direct storm water to the cross drain and outfall on the West side. The ditch was redesigned to outfall into the creek and use the cross drain as supplemental drainage. The third change was the initial outfall ditch on the West side. Since site conditions differed from the plans, we were directed to construct an outfall ditch that went straight out from the outfall of the cross drain to drain the water away from the site. After we performed this work, we were then directed to construct another drainage ditch parallel to Pratt Ln on the West side to direct storm water to the creek and fill in the initial drainage ditch. The fourth change was the side drain located on the East side at the Crutcher Property. Initially, the plans called for a single run of 18" RCP with 2 headwalls. The final redesign of the side drain included 2 runs of 24" RCP which we then had to order. With the change of the side drain, we also had to cast-in-place 2 double 24" headwalls. The grading and re-grading of the drainage ditches and side drain hindered us from moving forward with the installation of the sidewalks as they needed to be completed so that the sidewalk grading could occur. For the drainage, we were delayed 35 days.

3. Fencing : Per the plans, we were to reconstruct the WWF fence along the ROW on the East side of Pratt Lane. The original plans called for metal T-posts. The property owner approached the City and stated that the fence needed to be reinstalled with wood posts. Ultimately, the decision was made to change from metal T-posts to wood posts which had to be ordered by our fencing subcontractor. For the fencing, we were delayed 14 days due to the changes.

Thank you and please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

BELL & ASSOCIATES CONSTRUCTION, LLC

A handwritten signature in black ink, appearing to read "Mack Richardson", written in a cursive style.

Mack Richardson
Project Engineer



October 28, 2024

City of Franklin Engineering Dept.
David Hodnett, P.E.
109 3rd Avenue South, Suite 133
Franklin, TN 37064

Re: Pratt Lane – Project Delays

Contract: 2023-0024
Project No.: 2020-013
County: Williamson

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Thank you and please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

BELL & ASSOCIATES CONSTRUCTION, LLC

A handwritten signature in black ink, appearing to read "Mack Richardson", written in a cursive style.

Mack Richardson
Project Engineer



City of Franklin

109 3rd Ave S.
Franklin, TN 37064
(615) 791-3217

File #: 21-0600

DATE: May 15, 2025
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Michelle Hatcher, Director of Water Management
Brian Goodwin, Asst. Director of Water Management

SUBJECT:

*Consideration Of COF Contract No. 2025-0174, With Garney Construction For Emergency Hobas Pipe Repair Behind The Ewingville Neighborhood In An Estimated Amount Of \$7,750,424

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning a contract with Garney Construction for the emergency hobas pipe repair behind the Ewingville Drive subdivision.

BACKGROUND/STAFF COMMENTS:

The City of Franklin received a call from a resident on Monday morning, April 28th, regarding a sinkhole that had formed over the alignment of the City's sewer. The Water Department immediately dispatched crews and confirmed that the sinkhole is likely attributed to a failure of the Hobas pipe in this area. The expected failed interceptor in this area is 48-inches in diameter and there is a 15-foot easement on each side of the pipe to allow the City to provide maintenance in these areas.

The Water Department immediately worked with a bypass pumping contractor to begin setting up bypass pumping services to pump all the flow through this interceptor, and currently the line is plugged and waiting for visual inspections once the wet weather stops. The ground around the river is saturated and the groundwater table is so high, making both inspection and excavation difficult right now without additional pumping. The pipe has been ordered and will be delivered the week of June 9, 2025, in preparation for the excavation.

Conditions in this area indicate the sewer line in this area is approximately 30-feet deep and is one of the deepest in the system, while being very near the river in some places and close to tree lines as it gets close to properties. Additional temporary construction easement discussions are beginning which will be needed for the construction.

FINANCIAL IMPACT:

The cost of this emergency repair is estimated to be \$7,750,424.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve COF Contract No. 2025-0174.

SECTION C-520**CONSTRUCTION AGREEMENT BETWEEN
OWNER AND CONTRACTOR (STIPULATED PRICE)**

This Agreement is by and between the City of Franklin, Tennessee ("Owner") and Garney Construction ("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:

- Repair of 48" fiber reinforced pipe located from 119 Ewingville Drive to 127 Ewingville Drive and 410 Murfreesboro Road

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: repair of 48" fiber reinforced pipe located in Franklin, Tennessee.

ARTICLE 3—ENGINEER

3.01 The Franklin Water Management Department, a department of the Owner, is to resume all duties and responsibilities, and has the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4—CONTRACT TIMES (NOT USED)**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. One hundred percent (100%) of Work completed; and
 - b. One hundred percent (100%) of cost of materials and equipment purchased, but not incorporated in the Work.
- 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.

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. Supplementary Conditions, if any.
 - 3. General Conditions.

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).
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4. Specifications as listed in the table of contents of the project manual (copy of list attached).
 5. 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. City of Franklin Water and Sanitary Sewer Specifications.
 6. Drawings listed on the attached sheet index.
 7. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid
 - b. Contractor/Firm/Business Safety Information
 - c. Acknowledgement of Receipt of City of Franklin Contractor/Firm/Business Safety Program
 - d. Conflict of Interest Statement
 - e. Drug-Free Workplace Affidavit
 - f. Contractor's Attestation Regarding Illegal Immigrants or Aliens
 - g. Iran Divestment Act Certification
 - h. Non-Boycott of Israel
 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.

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.

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).

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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:

Eric S. Stuckey

(typed or printed)

Title:

City Administrator

(typed or printed)

Attest:

(individual's signature)

Title:

(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:

**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 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 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 governed by the Supplementary Conditions.
- 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

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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.

K. Prohibition of Firearms and Weapons

1. Contractor, its employees, subcontractors, suppliers, and any other persons under the Contractor's control shall not bring, carry, or possess any firearm, weapon, explosive device, or any other dangerous instrument onto the Project Site, in vehicles used in connection with the Project, or in any Owner- or Engineer-provided facilities, except as otherwise required by law.
2. This prohibition is subject to applicable Tennessee law, including but not limited to Tenn. Code Ann. § 39-17-1359, which permits property owners or entities in control of property to prohibit weapons on premises by posting proper signage. The Owner shall post appropriate signage in accordance with Tennessee law to enforce this prohibition.
3. Enforcement and Remedies. Violation of this provision shall be considered a material breach of contract and may result in disciplinary action, including but not limited to removal from the Project Site, termination of the Contract, or other remedies available to the Owner under the Contract and applicable law.

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

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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.
- 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, 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

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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.



Date 5/30/25

Attention: Michelle Hatcher

(Rev. #00)

Sent Via: michelle.Hatcher@franklintn.gov

Reference: Franklin 48-inch Trunk Sewer Emergency Repair

Subject: Bid Proposal

Garney Construction is pleased to submit our pricing for the emergency repair of the existing 48-inch trunk sewer piping as described in the attached drawings, sheets 14 - 16. Pricing is based on discussions during our meeting on May 28th and drawings 14-16 contract drawing of Southeast Interceptor Sewer and City of Franklin details and specifications. Also included is the proposed repair cost for the Chestnut Bend manhole utilizing bypass pumping and internal repairs.

Lump Sum \$7,750,424.00

Scope of Work Includes:

BID ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION
1	Mobilization / Demobilization	1.0	LS	\$141,160.00	\$ 141,160.00
2	Bypassing Piping- Maintenance only	1.0	LS	\$663,730.00	\$ 663,730.00
3	Install New Manhole- 72" Diameter	6.0	EA	\$102,200.00	\$ 613,200.00
4	Install New Sewer Pipe- 48" Ductile Iron (P-401)	1,350.0	LF	\$3,927.50	\$ 5,302,125.00
5	Expose Manhole & Tie-in	1.0	LS	\$46,370.00	\$ 46,370.00
6	Manhole and Pipe Testing	1.0	LS	\$37,809.00	\$ 37,809.00
7	Clean-up & Restore Site	1.0	LS	\$151,263.00	\$ 151,263.00
8	Remove and Reinstall Reclaimed Water	1,360.0	LF	\$269.00	\$ 365,840.00
9	Pavement Repair- Trench Patch / Mill & Overlay	400.0	SY	\$26.00	\$ 10,400.00
10	Pre-Job work Allowance	1.0	LS	\$100,000.00	\$ 100,000.00
11	CIPP	773.0	LF	\$ -	\$ -
12	Manhole Coating/Rehab	175.0	VF	\$ -	\$ -
13	Silt Fencing	1,360.0	LF	\$10.40	\$ 14,144.00
14	Clearing of Site	1.0	LS	\$18,750.00	\$ 18,750.00
15	Check dams	2.0	EA	\$40,520.00	\$ 81,040.00
16	Repair of Chestnut Manhole Internal	1.0	LS	\$204,593.00	\$ 204,593.00

Specific Project Inclusion:

1. Stone backfill of pipe zone only. Assumed use of native material for backfill above pipe zone.
2. Bypass pumping maintenance and fueling is included. Monthly rental cost or relocation costs are not included.
3. Replacement of existing manholes 11159, 10940, 10941, 11304, 16713, and 11305. Manholes will be evaluated and if deemed acceptable they will be reused and epoxy lined in lieu of replacement.
4. CIPP pricing to be submitted for evaluation once pre-CCTV can occur.
5. Evaluation of additional manholes at Chestnut Bend to occur prior to the internal repairs scope beginning to determine if bypass system should be extended further towards to plant to epoxy line additional manholes.

General Exclusions:

1. Permits and Fee's.
2. Performance Bond.
3. Testing and inspection except as specifically included for newly installed pipe and manholes (internal joint testing of pipe, vacuum testing of new manholes, and hydrostatic testing of reclaim water line).
4. Liquidated damages.
5. SWPPP Plans, QSP/QSD services, BMP installation/maintenance/removal, inspection, sampling, monitoring, reporting and post construction BMP's. Installation, maintenance, removal, and inspection of silt fence are included.
6. Insurance other than workers compensation, general commercial liability, and auto liability.
7. Proposal does not include cost to provide Builders Risk Insurance. If required, this will be furnished at additional cost.
8. Proposal does not include sampling, monitoring, testing, handling, or disposal of hazardous and/or contaminated soil, ground water, trash, or debris. Should these conditions be encountered, they represent a Differing Site Condition to be addressed by a mutually agreeable adjustment to the contract.
9. Cathodic protection design and installation.
10. Relocation, protection and removal of existing utilities, sub-surface obstructions or debris (removal and reinstallation of existing 12-inch reclaim water line is included). It is assumed that all proposed improvements are free of conflicts.
11. Air, settlement, vibration, sound, or other monitoring and mitigation.
12. Biologist services, wildlife surveys, demarcations and/or relocations. Rodent and pest control(s).
13. Archeologist cost and related delays.
14. Traffic and pedestrian control measures, plans and fees.
15. As-built requirements beyond "Red" lines of contract documents.

Clarifications:

1. Garney Construction is a non-union contractor.
2. Day time work (M-F 7 am to 6 pm), no night work included.
3. Proposal includes one (1 ea.) mobilization, unless stated otherwise above. Costs of additional move-ins may include additional equipment mobilizations and losses of production charges due to interruptions in operations.
4. Project schedule to be mutually agreeable and will allow Garney to perform its work in an efficient sequence and manner.
5. All other work not specifically included shall be considered excluded from this proposal.
6. Unobstructive access to all areas of work.

7. All soil or soil rock mixtures to be exported from the site shall be free of deleterious materials and are assumed to not contain detectable concentrations of organic chemical contaminants or concentrations of organic chemical contaminants in excess background levels typical for native soil in the area. In addition, the soil material is assumed to be suitable for unrestrictive re-use on residential or commercial sites.
8. Native excavated material is assumed to be acceptable, without treatment for trench zone backfill.

We look forward to the opportunity to work with your company on this project. Should you have questions or need further information, please contact me at (615) 406 2551.

Garney Companies, Inc.

Tony Naredo
Senior Project Manager

cc: ZB, JS, File

(See attachments)



File #: 21-0637

DATE: May 29, 2025
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Kristine Brock, Asst. City Administrator/CFO
Michelle Hatcher, Director of Water Management

SUBJECT:

*Consideration Of Resolution 2025-50, A Resolution Declaring The Intent Of The City Of Franklin, Tennessee, To Reimburse Itself In A Not To Exceed Amount Of \$15,000,000 For Certain Project Expenditures With The Proceeds Of Water And Sewer System Revenue Bonds, Notes, Or Other Debt Obligations To Be Issued By The City

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Resolution 2025-50 declaring the intent of the City to reimburse itself in a not to exceed amount of \$15,000,000 for certain project expenditures with the proceeds of Water & Sewer System Revenue Bonds, Notes or other debt obligations to be issued by the City.

BACKGROUND/STAFF COMMENTS:

In late April 2025, city staff was notified of a sinkhole near the Harpeth River behind Ewingville Drive. Following investigation, the sinkhole was located in the alignment of a 48-inch interceptor that is part of the City's wastewater collection system. While a bypass pumping process was installed as a temporary solution, the long-term repair requires replacement of the pipe.

FINANCIAL IMPACT:

The estimated cost for this emergency capital project is \$7.7 million, with budgeted funds within the Water & Sewer Utility Fund of \$1.7 million. Resolution 2025-50 allows the City to reimburse itself for project expenses incurred prior to issuance of a tax-exempt revenue bond.

The resolution amount of \$15 million allows for financing flexibility should another emergency capital project (pipe replacement) occur during FY 2026.

Approval of the intent resolution is not authorization to issue debt. Should staff recommendation be for funding part of the emergency project with debt, the Board of Mayor and Aldermen will consider a subsequent resolution no later than 18 months from project completion.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve Resolution 2025-50.

RESOLUTION 2025-50

A RESOLUTION DECLARING THE INTENT OF THE CITY OF FRANKLIN, TENNESSEE, TO REIMBURSE ITSELF IN A NOT TO EXCEED AMOUNT OF \$15,000,000 FOR CERTAIN PROJECT EXPENDITURES WITH THE PROCEEDS OF WATER AND SEWER SYSTEM REVENUE BONDS, NOTES OR OTHER DEBT OBLIGATIONS TO BE ISSUED BY THE CITY

WHEREAS, it is the intention of the Board of Mayor and Aldermen of the City of Franklin, Tennessee (the "City"), to provide funds to finance: (i) extensions, upgrades and any improvements to the water and sewer system of the City (the "System"); (ii) acquisition of all property real or personal, appurtenant thereto, or connected with the foregoing; and (iii) payment of architectural, engineering, legal, fiscal and administrative costs incident to the foregoing; and

WHEREAS, it is the intention of the Board of Mayor and Aldermen of the City to pay all or a portion of the costs associated with the aforementioned projects by the sale of water and sewer system revenue bonds or notes, in one or more emissions, or other debt obligations of the City; and

WHEREAS, it is anticipated that it will be necessary to make expenditures in payment of said project costs prior to the issuance of said bonds, notes or other debt obligations; and

WHEREAS, the Board of Mayor and Aldermen of the City wishes to state its intentions with respect to reimbursements for said expenditures, in a not to exceed amount of \$15,000,000, in accordance with the requirements of final regulations applicable thereto promulgated by the United States Department of the Treasury and find passing this resolution to be in the best interest of the City.

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

SECTION 1. It is reasonably expected that the City will reimburse itself for certain expenditures, in a not to exceed amount of \$15,000,000, made by the City in connection with the projects hereinabove described. The City further reasonably expects to reimburse all or a portion of such expenditures from the proceeds of its water and sewer system revenue bonds, notes or other debt obligations. The expenditures made prior to the issuance of said bonds, notes or other debt obligations are expected to be paid from the Water Management Operating Fund of the City, or such other fund as may properly be directed pursuant to applicable law, and reimbursement shall be made to said fund or funds. Debt service on the bonds, notes or other debt obligations is expected to be paid from revenues of the System.

SECTION 2. This resolution shall be placed in the minutes of the Board of Mayor and Aldermen and shall be made available for inspection by the general public at the office of the City Recorder.

SECTION 3. This resolution constitutes a declaration of official intent under Treas. Reg. §1.150-2.

SECTION 4. All other resolutions and orders, or parts thereof in conflict with the provisions of this resolution, are, to the extent of such conflict, hereby repealed, and this resolution shall be in immediate effect from and after its adoption.

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

ATTEST:

By: _____
Angie Skarp
City Recorder

CITY OF FRANKLIN, TENNESSEE:

By: _____
Dr. Ken Moore
Mayor

Approved as to Form:

By: _____
Shauna R. Billingsley
City Attorney



City of Franklin

109 3rd Ave S.
Franklin, TN 37064
(615) 791-3217

File #: 21-0636

DATE: May 28, 2025

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator
Eric Stuckey, City Administrator
Vernon Gerth, Asst. City Administrator Community Development

SUBJECT:

*Consideration Of Contract 2025-0159, With AIG FRANKLIN, LLC (Developer Of The Margin District)
For An Escrow Agreement For Required Project Performance Sureties

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning Contract 2025-0159, an escrow agreement between the developer of The Margin District, AIG FRANKLIN, LLC and the City Of Franklin for required project performance sureties.

BACKGROUND/STAFF COMMENTS:

In the course of working with the Margin District development team, we realized that the city didn't require a surety to cover any problems/failures that may arise during the excavation of the proposed three levels of subsurface parking. This excavation will be approximately 44 feet in depth, across the site to accommodate the off-street parking. Upon sharing this concern with representatives of the Margin District development team (Devin McClendon and John Schroer), they volunteered to place \$8 million in an escrow account. These funds would be available to the City in the event a problem were to occur (i.e. bank collapse), and the developer did not respond appropriately in rectifying the problem.

The attached agreement also includes the performance sureties assigned to the Margin District project in addition to the \$8 million. Since the cash will be deposited in an interest-bearing account and assigned to an escrow agent, staff determined that this agreement protects the City for the duration of the excavation and the duration of the Margin District project.

FINANCIAL IMPACT:

Since representatives of The Margin District have decided to deposit cash performance sureties into an escrow account overseen by an escrow agent, these funds are readily available to the City in the event the developer fails to resolve any problems that arise during the grading, excavation, and

development of the property, which includes the construction of required site infrastructure and improvements.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve Contract 2025-0159.

ESCROW AGREEMENT
COF CONTRACT NO. 2025-0159

THIS ESCROW AGREEMENT (this "Agreement") is made and entered into as of the _____ (the "Effective Date"), by and between AIG FRANKLIN, LLC ("Developer"), the CITY OF FRANKLIN, TENNESSEE (the "City") (Developer and City, together, the "Parties" and, each individually, a "Party"), and acknowledged and accepted by Gardner Title, LLC ("Escrow Agent").

WITNESSETH:

WHEREAS, Developer and the City entered into that certain Performance Agreement for the construction of Public Infrastructure (the "Performance Agreement") attached hereto as Exhibit B, which is incorporated herein by reference, pursuant to which Developer and City made certain agreements with respect to, among other things, the construction of and funding for certain public infrastructure known as the Project (as defined in the Performance Agreement) in accordance with the Site Plan (as defined in the Performance Agreement) in order to, among other things, create a mixed-use building including retail, office, parking garage and residential uses (the "Development"), on the parcel of property described on Exhibit A, attached hereto (the "Property");

WHEREAS, in furtherance of the approval of the Development, Developer has agreed to deposit the Surety Amount (as defined in the Performance Agreement), a sum equal to the Project Budget (as defined in the Performance Agreement) in escrow as security for Developer's obligation to complete the construction of the public infrastructure (such deposits, collectively, together with all interest earned thereon, being the "Escrow Funds") which sum is to be held in escrow with Escrow Agent; and

WHEREAS, Escrow Agent is willing to hold, disburse and release the Escrow Funds in escrow on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. Deposit of Escrow Funds; Escrow Account. Developer covenants and agrees to deposit the amount of Escrow Funds required hereunder with the Escrow Agent on or before the Effective Date. Upon receipt of the Escrowed Funds, Escrow Agent shall provide a receipt of the total sum deposited, and such funds, together with any interest earned thereon, shall constitute the Escrow Funds to be held in escrow in accordance with the terms and conditions of this Agreement. Escrow Agent shall hold the Escrow Funds in an interest-bearing escrow account, in investments acceptable to the Parties and Escrow Agent.
2. Disbursements and Releases of Escrow Funds.
 - a. *Release upon Qualifying Default.* If (i) Developer shall fail to perform any covenant, agreement, provision or condition under this Agreement or the Performance Agreement, which failure is not cured within thirty (30) days after notice from the City (an "Escrow Default"), provided, however, if such failure by its nature cannot reasonably be cured within such thirty (30) day period then no Escrow Default shall be deemed to exist as long as Developer

commences curing the failure within such thirty (30) day period and thereafter continuously and diligently prosecutes cure to completion (it being agreed and understood that any such notice and opportunity to cure given hereunder, under the Performance Agreement (a “Qualifying Default”), then upon such Qualifying Default City shall have the immediate right, but not the obligation, as a remedy for such default thereunder and/or breach thereof, to complete the Project and Developer’s obligations hereunder (the “Self-Help”) and then City shall have the right to provide to Escrow Agent and Developer written notice of such Qualifying Default (the “Qualifying Default Notice”) and instruct Escrow Agent to release to City the Escrow Funds. City shall use any funds obtained as a result of a Qualifying Default in connection with the construction, installation and completion of Work in accordance with the Project Documents.

- b. *Escrow Funds Remaining After Completion of Project.* Upon Substantial Completion (as defined in the Performance Agreement) of the Improvements pursuant to the Project Documents, the City and Developer shall issue Joint Instructions (as defined below) to the Escrow Agent to release the Escrowed Funds to Developer. Upon the release of Developer from its obligations under the Performance Agreement pursuant to the terms and conditions thereof, the Escrowed Funds shall be released to Developer upon receipt of Joint Instructions (as defined below) between Developer and the City.
 - c. *Joint Instructions; Final Decision.* In all other cases, upon Escrow Agent’s receipt of either (i) joint written instructions, which may incorporate a termination or cancellation of this Agreement (“Joint Instructions”), from Developer and City or (ii) a Final Decision (as hereinafter defined), Escrow Agent shall disburse to Developer and/or City such amount of the Escrow Funds in accordance with such Joint Instructions or Final Decision. For purposes of this Agreement, “Final Decision” means a written final order of a court of competent jurisdiction delivered by a Party to Escrow Agent and the other Parties and accompanied by a written opinion from legal counsel for such Party to the effect that such order is final and not subject to further proceedings or appeal and a written instruction from such Party to the Escrow Agent to effectuate such order.
3. Escrow Agent Protections. Escrow Agent hereby consents and agrees to all of the provisions hereof, and agrees to accept, as Escrow Agent hereunder, all cash and documents deposited hereunder, and agrees to hold and dispose of said cash and documents deposited hereunder in accordance with the terms and provisions hereof. In the event of a dispute between any of the parties hereto as to their respective rights and interests hereunder, Escrow Agent shall be entitled to hold any and all cash then in its possession hereunder until such dispute shall have been resolved by the parties in dispute and the Escrow Agent shall have been notified by Joint Instructions signed by all of the parties in dispute, or until such dispute shall have been finally adjudicated by a Final Decision. Escrow Agent shall not incur any liability in acting upon any document or instrument believed thereby to be genuine. Escrow Agent shall have no obligation or liability hereunder except as a depository to retain the cash that may be deposited with it hereunder and to dispose of the same in accordance with the terms hereof and shall not be liable to any other party for any loss, liability or expense arising out of any dispute under this Agreement, including such party’s cost and expense in defending itself against any claim arising hereunder. Escrow Agent shall be entitled to rely and act upon any Joint Instructions, any Final Decision, and any written instrument received by it from either party, and if a

corporation, purporting to be executed by an officer thereof, and if a partnership, purporting to be executed by a general partner thereof and shall not be required to inquire into the authority of such officer or partner or the correctness of the facts stated in said instrument. By acceptance of this Escrow Agreement, Escrow Agent agrees to use its best judgment and good faith in the performance of any of its obligations and duties under this Escrow Agreement and shall incur no liability to any person for its acts or omissions hereunder, except for those acts or omissions which may result from its gross negligence or willful misconduct. Upon disposition by the Escrow Agent, in accordance with the terms hereof, of the cash deposited with the Escrow Agent hereunder, the Escrow Agent shall be fully and finally released and discharged from any and all duties, obligations, and liabilities hereunder. Escrow Agent shall be reimbursed for any reasonable expenses incurred by it hereunder, including the reasonable fees of any attorneys that it may wish to consult in connection with the performance of its duties hereunder. Such compensation and expenses shall be paid and reimbursed to the Escrow Agent one hundred percent (100%) by Developer.

4. Notices. All notices and other communications permitted or required hereunder shall be in writing and may be served and given by personal delivery service or by reputable overnight courier addressed as follows:

Developer:
AIG Franklin, LLC
c/o Mr. Devin McClendon
7105 Town Center Dr., 3rd Floor
Brentwood, TN 37027

City:

Escrow Agent:
Gardner Title, LLC
Matthew G. Noggle, Esq.
4235 Hillsboro Pike, Suite 300
Nashville, TN 37215

Each party may, by notice as aforesaid, designate such other person or persons and/or such other address or addresses for the receipt of notices. All notices or certificates relating to this Agreement in respect to which Escrow Agent is not the addressee or sender shall be sent to Escrow Agent in the manner hereinabove set forth.

5. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties and Escrow Agent and their respective successors and permitted assigns and may not be modified or amended orally, but only in writing signed by the Parties and Escrow Agent.

None of City, Developer or Escrow Agent may assign its rights or obligations under this Agreement, except with the prior written consent of the other parties.

6. Jurisdiction. The undersigned hereby submit to personal jurisdiction in the State of Tennessee for all matters, if any, which shall arise with respect to this Agreement, and waive any and all rights under the law of any other state or country to object to jurisdiction within the State of Tennessee or to institute a claim of *forum non conveniens* with respect to any court in the State of Tennessee for the purposes of litigation with respect to this Agreement.
7. Severability. Each part of this Agreement is intended to be severable. If any term, covenant, condition or provision of this Agreement is held to be unlawful, invalid or unenforceable by a court of competent jurisdiction, to the extent permitted by law, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect and shall be binding upon the parties.
8. Exhibits. All exhibits hereto and documents referenced herein are incorporated herein by reference.
9. Counterparts; Electronic Copies. This Agreement may be executed in any number of counterparts, each counterpart for all purposes being deemed an original, and all such counterparts shall together constitute only one and the same agreement. An electronic copy of a signature delivered by email shall have the same force and effect as an “original” signature.
10. Escrow Funds Constituting Interest Earned Thereon. Notwithstanding anything herein to the contrary, any portion of the Escrow Funds constituting interest earned thereon shall be disbursed to the Developer in accordance with such Joint Instructions or Final Decision.
11. Conflicts with Project Documents. In the event of a conflict between the provisions hereof and the provisions of the Project Documents as to rights or obligations of Developer and City, the provisions of this Agreement shall govern.
12. Defaults; Remedies. If any Party shall breach, or otherwise default in its performance of, this Agreement, then the other shall have all remedies available to it at law or in equity, including the right to collect its costs and expenses, including without limitation reasonable attorney’s fees, incurred in the enforcement hereof.
13. Interpretation. For purposes of this agreement, TIME SHALL BE CONSIDERED OF THE ESSENCE, subject delay caused by Force Majeure as provided in the Performance Agreement. The titles, captions and section headings in this Agreement are for convenience only and shall not define, limit or expand the scope of any provision hereof. The particular language of this Agreement, and any question regarding its meaning shall not be resolved by any rule providing for interpretation against the party who caused the uncertainty to exist or against the draftsman. In the event any words or phrases in this Agreement are stricken out or otherwise eliminated, whether or not any other words or phrases are added in their place, this Agreement shall be construed as though such words or phrases were never included herein and no inference shall be drawn therefrom. Unless the context indicates otherwise, (i) the terms “hereof”, “hereunder” and “herein” refer to this Agreement as a whole, (ii) the singular includes the plural and the masculine gender includes the feminine and neuter, and (iii) all references to

articles, sections and subsections refer to the articles, sections and subsections of this Agreement.

14. Counterparts. This Agreement may be executed in separate counterparts. It shall be fully executed when each Party whose signature is required has signed at least one (1) counterpart even though no one (1) counterpart contains the signatures of all of the Parties to this Agreement.
15. Delivery. The Parties agree that executed copies of this Agreement may be delivered by email (in PDF format), and the same shall have the same validity as if they were delivered in person.
16. Non-Waiver. No waiver of any provision of this Agreement shall be deemed to have been made unless it is expressed in writing and signed by the party charged with making the waiver. No delay or omission in the exercise of any right or remedy accruing upon a breach of this Agreement shall impair such right or remedy or be construed as a waiver of such breach. The waiver of any breach of this Agreement shall not be deemed to be a waiver of any other breach hereof.
17. Business Days. If any date specified in this Agreement for the performance of an obligation, the delivery of an item, the giving of a notice or the expiration of a time period falls on a day other than a business day, meaning dates on which the City is open for its business, then this Agreement shall be automatically revised so that such date falls on the next occurring business day.
18. Governing Law; Venue. This Agreement shall be governed by and construed under the laws of the State of Tennessee. Proper venue for any action arising under or relating to the matters and transactions contemplated therein shall be in the federal and state courts having jurisdiction over Williamson County, Tennessee. The Parties consent to such courts having personal jurisdiction.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the Effective Date.

DEVELOPER:

AIG FRANKLIN, LLC

By: Stephen J. Rowe

Name: Stephen J. Rowe

Title: Authorized Person

CITY:

CITY OF FRANKLIN

By: _____

Name: _____

Title: _____

Acknowledged and Accepted:

ESCROW AGENT:

Gardner Title & Escrow

By: _____
Matthew G. Noggle, Esq., Owner

[Signature Page to Escrow Agreement]

EXHIBIT A

DESCRIPTION OF PROPERTY

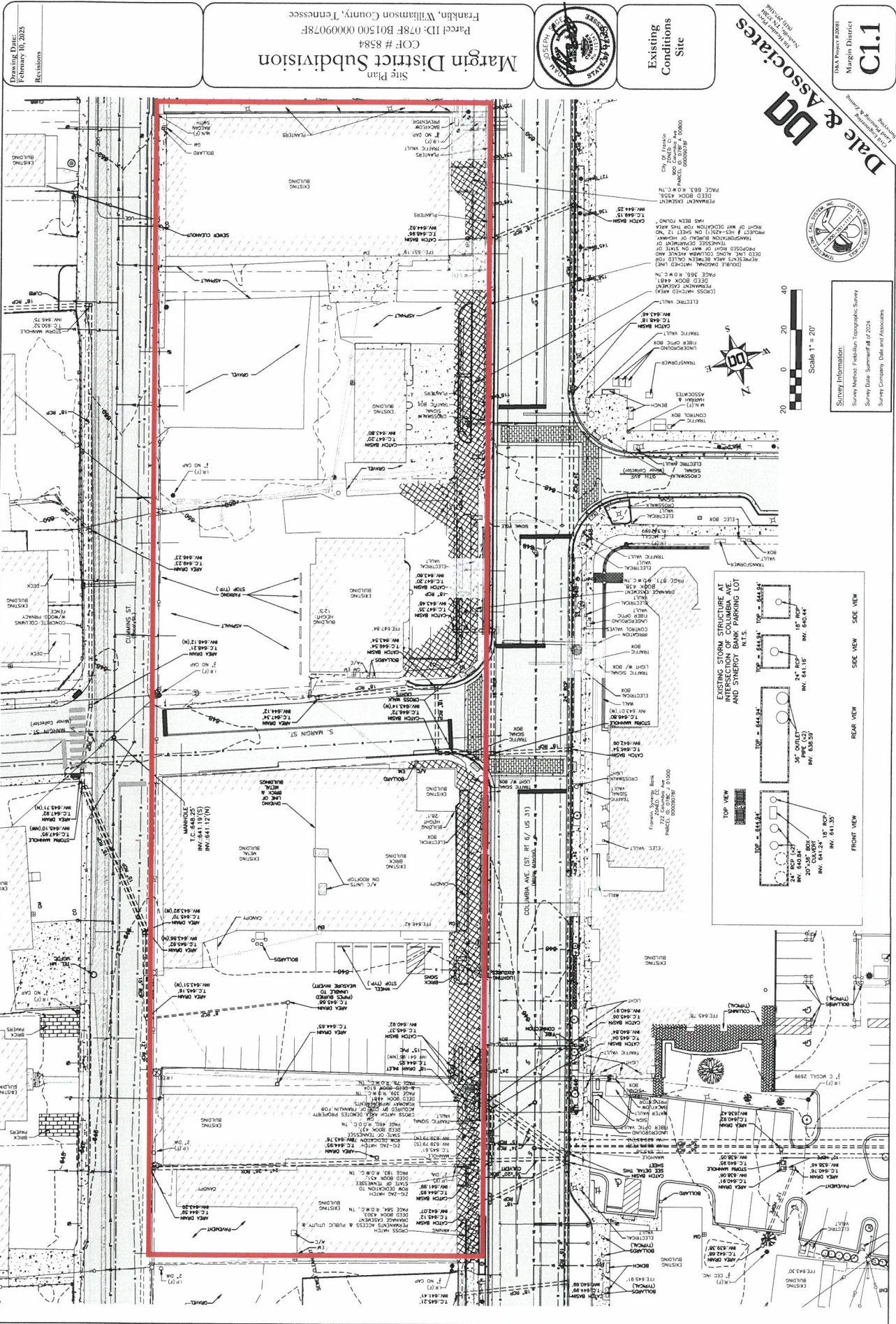


EXHIBIT B
PERFORMANCE AGREEMENT

PERFORMANCE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: That **AIG FRANKLIN, LLC**, an Alabama limited liability company (hereinafter “Principal”), is indebted and firmly bound unto the CITY OF FRANKLIN, TENNESSEE for the use and benefit of the Franklin Municipal Planning Commission of Franklin, Tennessee, and for the use and benefit of all future lot owners within that certain site known as Margin District Subdivision, Project 8584 (the “**Project**”) in the sum of **Thirteen Million Seven Hundred Eleven Thousand and No/100 Dollars (\$13,711,000.00)** good and lawful money of the United States of America (“**Surety Amount**”), for securing the performance of certain improvements and works, as hereinafter set forth, and for the payment of which sum well and truly to be made the undersigned does hereby bind itself, its heirs, executors, administrators, successors and assigns, firmly by these presents, and in support thereof represents, acknowledges and agrees as follows:

Recitals

1. That **AIG FRANKLIN, LLC**, an Alabama limited liability company, having a mailing address of 7105 Town Center Way, 3rd Floor, Brentwood, TN 37027.

2. The Principal has submitted a site plan for the **Margin District Subdivision, Project 8584**, a site located in the _____ Civil District of Williamson County, Tennessee, and situated within the corporate limits of the City of Franklin, Tennessee, said Site Plan prepared by Dale & Associates, dated _____ (“**Site Plan**”).

3. The approval of the Franklin Municipal Planning Commission is a condition precedent to the right of the Principal to receive necessary construction permits.

4. The Franklin Municipal Planning Commission will not approve the Site Plan of the subdivision for issuance of necessary permits until all grading, ditching, storm streets/alleys, sanitary sewers, water lines and street improvements, street lights, landscaping and other improvements are completed and installed in accordance with the regulations and specifications of the City of Franklin and the conditions established by the Franklin Municipal Planning Commission, or until a satisfactory Performance Agreement with sufficient surety is furnished.

5. It is the desire of the Principal to have necessary building permits issued so as to provide for the orderly development and transfer of property, and to have said permits issued prior to the actual completion of construction and installation of the improvements and works.

6. It is estimated that the cost of completing all improvements is as follows:

Water	\$363,000
Sidewalk	\$232,000
Streets Private	\$237,000
Traffic Signals	\$500,000
Green Infrastructure	\$1,440,000
Landscaping	\$43,000
Access (offsite work)	\$10,000
Green Infrastructure (offsite work)	\$21,000
Sewer	\$389,000
Streets City	\$1,280,000
Access	\$40,000
Drainage	\$779,000
Streets	\$12,000
Streets City (Fowlkes)	\$125,000
Drainage (offsite work)	\$240,000
Excavation	\$8,113,000
Total	\$13,711,000

The amounts shown in this paragraph 6 shall be referred to as the “**Project Budget**”

7. Pursuant to the procedures followed by the Franklin Municipal Planning Commission, it is permissible for the Principal, in lieu of the completion of said improvements and works prior to issuance of necessary permits, to execute an agreement with good and sufficient bond or other surety satisfactory to the Franklin Municipal Planning Commission and the City of Franklin in an amount equal to the estimated cost of completion of the construction and installation of the required improvements and works, providing and insuring that said improvements and works will be constructed.

8. To secure installation of the aforesaid improvements and works, and to induce the Franklin Municipal Planning Commission and the City of Franklin to allow issuance of necessary building permits prior to completion of the required improvements and works, Principal provides this Performance Agreement and the Surety Amount.

9. The Franklin Municipal Planning Commission and the City of Franklin are willing to authorize the issuance of necessary permits upon the execution of this agreement by the Principal and the providing of the surety, understanding that this agreement is subject to the condition that the Principal will satisfactorily complete the construction of all required improvements and works, as herein set forth, and obtain their inspection approval and acceptance by the Franklin Municipal Planning Commission and the City of Franklin as required by the City of Franklin, but no less often than annually.

10. Principal agrees to have a registered professional engineer and/or registered landscape architect, depending on the type of improvements, involved in the construction phase of the project for the purpose of monitoring construction in order to determine conformity with approved plans and specifications of City of Franklin. All costs for the aforementioned professional services shall be borne by Principal.

NOW THEREFORE,

1. In the event said Principal shall fully comply with all the terms hereof, and shall construct, install and complete the required improvements and works, as hereinafter enumerated, and as are shown on the approved Site Plan that was reviewed and approved by the Franklin Municipal Planning Commission, and which Site Plan was reviewed and approved by the Superintendents of Streets, Water/Wastewater, and Engineer of the City of Franklin, and as also stated herein, which installation and completion shall be in accordance with the regulations of the City of Franklin, Tennessee, and also in accordance with the regulations and requirements of the Franklin Municipal Planning Commission, and in accordance with all conditions established by the Franklin Municipal Planning Commission as set forth in the minutes of its meetings, and do all of said work in a proper and workmanlike manner to the satisfaction of the City of Franklin, Tennessee, then this obligation shall be void and the Surety Amount released. In addition to the full release of the obligations and Surety Amount, the obligations and the Surety Amount can be partially reduced upon approval the City of Franklin.

2. In the event that any of the required improvements and works are not completed in accordance with each of the aforesaid rules, regulations and requirements, after the giving of written notice, and lapse of applicable cure period, then the City of Franklin, by and through its Franklin Municipal Planning Commission reserves the following non-exclusive remedies against the Principal and/or the Surety, jointly or individually:

- a. Determine Principal to be in Default and proceed to collect the funds which are held as security to this Performance Agreement; and
- b. Proceed to complete Principal's obligations with the understanding that Principal shall be responsible for any difference between the cost of completing Principal's obligations and any proceeds derived from this Performance Agreement (the "deficiency"); and
- c. Proceed to collect the deficiency; and
- d. Specific performance, requiring the Principal to complete Principal's obligations hereunder; and
- e. Attorney's fees in pursuing such remedies; and
- f. Any other remedy at law or in equity.

3. The parties to this Performance Agreement further agree to the following miscellaneous terms:

a. Assignment – Consent Required. The provisions of this Performance Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Neither this Performance Agreement nor any of the rights and obligations of Principal hereunder shall be assigned or transferred, in whole or in part, without the prior written consent of the Franklin Municipal Planning Commission. Any such assignment or transfer shall not release Principal from its obligations hereunder.

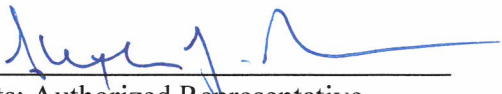
b. Replacement. Should the Franklin Municipal Planning Commission, by and through staff of the City of Franklin, accept, after appropriate review, if any be required, by the City of Franklin City Attorney or their designee, another performance agreement and security for the Site Plan, then the Principal shall be released from its obligations hereunder.

Signature on the following page

Witness my hand this the _____ day of _____, 20____.

Principal

AIG FRANKLIN, LLC


Its: Authorized Representative

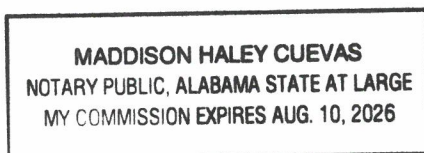
STATE OF Alabama)

COUNTY OF Shelby)

Personally appeared before me, Maddison Cuevas, a Notary Public of said County and State, Stephen Rowe, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged (her)himself to be the authorized representative of AIG Franklin, LLC, an Alabama limited liability company and that (s)he is authorized so to execute the foregoing instrument for the purposes contained therein.

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





NOTARY PUBLIC

My Commission Expires: 8/10/2026

EXHIBIT C

ESCROW ACCOUNT RELEASE AUTHORIZATION

To: Gardner Title & Escrow ("Escrow Agent")
Matthew G. Noggle, Esq.
4235 Hillsboro Pike, Suite 300
Nashville, TN 37215
(615) 810-0171
matt@gardnertitle.com

By this Escrow Account Release Authorization, dated _____, CITY OF FRANKLIN, TENNESSEE (the "City") and AIG Franklin, LLC ("Developer") hereby authorizes Gardner Title & Escrow ("Escrow Agent") to release funds as specified below from the Escrow Account No. _____. Amount of funds to be released by Escrow Agent is \$_____ and shall be disbursed according to the following joint instructions:

CITY:

CITY OF FRANKLIN, TENNESSEE

By: _____

Name: _____

Its: _____

DEVELOPER:

AIG FRANKLIN, LLC

By: _____

Name: _____

Its: _____



March 31, 2025

HISTORIC
FRANKLIN
TENNESSEE

Devin McClendon
AIG Franklin, LLC
7105 Town Center Way, 3rd Floor
Brentwood, TN 37027

Re: MARGIN DISTRICT SUBDIVISION, SITE PLAN, PROJECT 8584

Dear Devin McClendon,

The above referenced site plan was approved by the City of Franklin on March 27, 2025. One of the conditions placed on the approval is that a performance agreement and surety be established in the amount of \$5,711,000.00, details below. **Please let me know what bank will issue the letter of credit, and what the name of the company is to be placed on the performance agreement, along with what type of company it is.**

Example: a Tennessee LLC, a Georgia Corporation, etc.

Water	\$363,000	Sewer	\$389,000
Sidewalk	\$232,000	Streets City	\$1,280,000
Streets Private	\$237,000	Access	\$40,000
Traffic Signals	\$500,000	Drainage	\$779,000
Green infrastructure	\$1,440,000	Streets	\$12,000
Landscaping	\$43,000	Streets City (Fowlkes)	\$125,000
Access (offsite work)	\$10,000	Drainage (offsite work)	\$240,000
Green infrastructure (offsite work)	\$21,000		
Total	\$5,711,000		

Please forward an irrevocable standby letter of credit with an automatic renewal feature, and minimum 90 days banker's notice of nonrenewal (recipient delivery signature required) containing the following information:

- Beneficiary: City of Franklin, Tennessee, and/or
The Franklin Municipal Planning Commission
109 Third Avenue South
Franklin, TN 37064
- Amount: \$5,711,000.00
(A cashier's check made payable to the City of Franklin in the above amount may be substituted for the letter of credit.)
- No Expiration date:** All letters of credit are required to be automatically renewable. The zoning ordinance allows for fax presentation, with certain requirements met by issuing bank. Original letters of credit shall be sent by the bank directly to the City of Franklin Planning Department.
- The following statement shall be shown on the letter of credit:** "This letter of credit may be called upon certification by an official of the City of Franklin that AIG Franklin, LLC (*or applicant's name, if different*) has failed to complete and/or maintain the public improvements for Margin District Subdivision, Site Plan, Project 8584, as outlined in the executed performance agreement dated _____.
(*Insert the date that the performance agreement is signed and notarized.*)
- The location of a banking institution within the county limits of Williamson and/or Davidson County, Tennessee, where documents may be presented.**

Sincerely,

Melodie Brady

Melodie Brady
Surety Coordinator

CC: dmccclendon@nainashville.com; montgomery@daleandassociates.net



File #: 21-0402

DATE: April 2, 2025
TO: Board of Mayor and Aldermen
FROM: Eric Stuckey, City Administrator
Tom Marsh, Building and Neighborhood Services Director
Kathleen Sauseda, Housing Development Coordinator

SUBJECT:

Consideration Of COF Contract No. 2025-0115, With Franklin Housing Authority To Reimburse Up To Two Hundred Fifty Thousand Dollars (\$250,000) For Construction Costs Associated With The Shawnee Development That Consists Of 36 Dwelling Units

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning COF Contract No. 2025-0115 to reimburse the Franklin Housing Authority for site improvement costs related to the Shawnee Development.

BACKGROUND/STAFF COMMENTS:

The Franklin Housing Authority (FHA) has been providing safe, decent, affordable housing within the City of Franklin since 1953. FHA continues to assist residents toward a path of self-sufficiency with programs that support residents working toward homeownership, those that desire to improve their job prospects and those graduating and pursuing a higher level of education. Having a place to call home is the backbone to success.

This contract will reimburse FHA up to \$250,000 for costs associated with construction of the Shawnee Development, which consists of 36 new affordable rental dwelling units.

FINANCIAL IMPACT:

The funding to support this reimbursement will come from the City's Community Development Block Grant (CDBG) available funds.

RECOMMENDATION:

Staff recommends that the Board of Mayor and Aldermen approve Contract No 2025-0115.

**CDBG CONTRACT FOR PUBLIC FACILITIES PROJECTS
COF CONTRACT NO. 2025-0115**

This Contract made and entered into this day ____ of ____, 2025 by and between the City of Franklin, (hereinafter "CITY") and Franklin Housing Authority (hereinafter the "ORGANIZATION").

WITNESSETH:

WHEREAS, the CITY has identified housing developments as an important issue in the community, and to achieve the goal of creating affordable housing within the City of Franklin will make available a portion of the Community Development Block Grant ("CDBG") funds toward this objective when funding is available; and

WHEREAS, the ORGANIZATION is meeting the need for affordable housing for low to moderate income citizens; and

NOW, THEREFORE, in consideration of the mutual promises as contained herein, the parties hereto have agreed and hereby enter into this agreement according to the provisions as set forth herein.

SECTION 1 - SCOPE OF SERVICES

- A. The ORGANIZATION shall be required to successfully meet the following deadlines:
- i. The ORGANIZATION has completely and successfully obtained all required permits and as commenced the development as provided in the Scope of Services (attached as Exhibit A and incorporated as if stated fully herein)
 - ii. The ORGANIZATION is proceeding with construction on the Shawnee Development (Cherokee Place 2 Planned Unit Development) that consists of 36 single dwelling units.
 - iii. The ORGANIZATION shall expend all CDBG funds and complete the construction project(s), by December 31, 2026.

SECTION 2 - RESPONSIBILITIES OF PARTIES

- A. Perform the duties described herein and in Exhibit A and will submit regular reports (not less often than quarterly) as directed by the CITY detailing the progress of their project.
- B. At the request of the CITY, the ORGANIZATION will periodically send a representative to neighborhood or other public meetings to discuss and promote their project.
- C. The CITY will provide funding for the program from the Community Development Block Grant program as set forth in Section 3 of this contract.

SECTION 3 - COMPENSATION

The ORGANIZATION will receive a total of **Two-Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00)** for the services outlined above and contained in Exhibit A from the Community Development Block Grant program for eligible expenses.

SECTION 4 - TIME OF PERFORMANCE

- A. Services shall begin in the upon receipt of the signed contract and the services shall be completed by December 31, 2026.
- B. This Contract may be terminated upon thirty (30) days written notice by either party.

SECTION 5-PAYMENT TERMS AND CONDITIONS

- A. The CITY shall reimburse the ORGANIZATION for services rendered based on submittal of

valid invoices for project costs with a description and documentation of work performed. The CITY has the option of inspecting the completed work prior to making any payments. Satisfaction with the completed services shall be at the City's sole reasonable discretion.

- B. Invoices may be submitted monthly.
- C. Final payment will be subject to receipt of a final report that is satisfactory to the CITY.

SECTIONS 6 - NOTICES

All notices under this Contract shall be in writing and sent by certified mail to the address listed below for each party:

CITY:

Kathleen L Sauseda
City of Franklin
109 3rd Avenue
Franklin, TN 37064

ORGANIZATION:

Franklin Housing Authority
Attn: Derwin Jackson
200 Spring Street
Franklin, TN 37064

SECTION 7 - STANDARD TERMS AND CONDITIONS

A. COMPLIANCE WITH FEDERAL LAWS/REGULATIONS

The ORGANIZATION shall comply with all applicable Federal and State laws and regulations in the performance of this Contract.

B. ANTIDISCRIMINATION/AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

No person on the grounds of handicap, age, race, color, religion, sex, national origin, disability, or marital/familial status or any other classification protected by Federal and/or State of Tennessee constitutional and/or statutory law-shall be excluded from participation in, or be denied benefits or, or be otherwise subjected to discrimination in the performance of this Contract.

C. AUDIT REQUIREMENTS

- i. This Contract, as well as any sub-agreement made with other participating agencies, is subject to all of the administrative requirements in OMB Circulars A-110 and A-122.
- ii. The CITY hereby notifies the ORGANIZATION that a single audit is required for non-profit agencies receiving \$300,000 or more in federal funds in any single fiscal year. This requirement is in accordance with OMB Circulars A-110 and A-133. If required, a copy of the single audit report will be kept on file and made available to the CITY staff during sub-recipient monitoring visits and appropriate officials as requested.

D. CONFLICT OF INTEREST

The ORGANIZATION agrees to abide by the following requirements with respect to conflicts of interest, and covenants that it presently has no interest, direct or indirect, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The ORGANIZATION further covenants that in the performance of this Contract no person having such an interest, direct or indirect, shall be employed or retained by the ORGANIZATION hereunder. These conflict-of-interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the ORGANIZATION or of any designated public agencies or sub-recipients that are receiving funds under this program.

E. PROCUREMENT STANDARDS AND METHODS

The ORGANIZATION shall comply with the CITY's current policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds herein.

The ORGANIZATION shall procure all materials, property, or services in accordance with the requirements of Attachment O of OMB Circular A-110, Procurement Standards.

F. VENUE

In the event of a dispute or litigation arising out of said Contract, it is understood and agreed and that this Contract was executed and performed in Williamson County, Tennessee, and as such, it is agreed by both parties that venue of said litigation, including an action for Declaratory Judgment, will be in Williamson County, Tennessee.

G. ASSIGNMENT

Neither the CITY nor the ORGANIZATION may assign its rights or delegate its responsibilities under this contract.

H. ENTIRE CONTRACT AND MODIFICATION

This Contract between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Contract. The terms and conditions of this Contract may not be changed except by an amendment expressly referencing this Contract by section number and signed by an authorized representative of each party.

If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

I. SEVERABILITY

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

J. TIME OF THE ESSENCE

The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Contract.

K. NO TAXES, NO INTEREST PAYMENTS

As a tax-exempt entity, the CITY shall not be responsible for sales or use taxes incurred for products or services. The CITY shall supply the ORGANIZATION with its Sales and Use Tax Exemption Certificate upon the ORGANIZATION's request. The ORGANIZATION shall bear the burden of providing its suppliers with a copy of the CITY's tax exemption certificate and shall assume all liability for such taxes, if any, that should be removed. The

CITY does not agree to pay any interest for late payments, having agreed to pay in a timely manner.

I. WAIVER

Neither party's failure or delay to exercise any of its rights or powers under the Contract will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right of power shall not be construed as either (s) a future or continuing waiver of that same right of power, or (b) the waiver of any other right of power.

M. BREACH

Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract without notice, with all of the remedies it would have in the event of termination and may also have such other remedies as it may be entitled to in law or in equity.

K. NONDISCRIMINATION

The Organization hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Organization on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Organization shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

L. IRAN DIVESTMENT ACT

By 1) entering into this Agreement and/or by 2) submission of a bid or proposal to the City of Franklin, the Consultant and each person signing on behalf of any Consultant, certifies, and in the case of a joint bid or proposal 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 Consultant further certifies that it shall not utilize any subcontractor/subconsultant identified on the list created pursuant to T.C.A. § 12-12-106.

M. NON-BOYCOTT OF ISRAEL

Except for any contract with a total potential value of less than \$250,000, each consultant, except those with fewer than ten employees, and each person signing on behalf of any such consultant, by entering into this agreement certifies, under penalty of perjury, that, to the best of its knowledge and belief, such consultant is not currently engaged in, and will not, for the duration of any such contract, engage in, a boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

N. LOBBYING

The Organization certifies, to the best of its knowledge and belief, that:

- i. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than federally appropriated funds have been paid or will be paid to any

person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Organization shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- iii. The Organization shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

O. PUBLIC ACCOUNTABILITY

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

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

The sign shall be of the form prescribed by the Comptroller of the Treasury. The GNRC shall request copies of the sign from the Comptroller of the Treasury and provide signs to Organizations.

P. RECORDS

The Organization shall maintain documentation for all charges under this Agreement. The books, records, and documents of the Organization, for work performed or money received under this Contract, shall be maintained for a period of seven (7) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the City. The financial statements shall be prepared in accordance with generally accepted accounting principles.

Q. ARBITRATION/MEDIATION.

No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.

R. CONFIDENTIALITY AND PROPRIETARY RIGHTS

Organization waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. Proprietary rights do not extend to the data created by the City's users of the System; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation and City shall retain exclusive rights, title, and ownership of all data and images created therefrom at the moment of creation and utilization, through and including image creation. City may be required to disclose documents under state or federal law. City shall notify Organization if a request for

documents has been made and shall give Organization a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, Organization agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Organization 's representation that materials supplied by Organization (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Organization and Organization assumes control over that claim.

S. WARRANTIES/LIMITATION OF LIABILITY/WAIVER

The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Organization to limit its liability shall be void and unenforceable.

(signature page to follow)

Witness our hands, this _____ day of _____, 2025.

CITY OF FRANKLIN, TENNESSEE

Dr. Ken Moore, Mayor

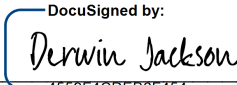
ATTEST

Angie Skarp, City Recorder

Approved as to form:

J. Blake Harper, Staff Attorney

ORGANIZATION:
FRANKLIN HOUSING AUTHORITY

By:  _____
Derwin Jackson 4559F4CDEB6F454...

Title: _____
Executive Director



March 19, 2025

Kathleen Sauseda
City of Franklin
305 4th Avenue
Franklin, TN 37064

RE: Shawnee Development Current CDBG Funding Request

Dear Ms. Sauseda,

The Franklin Housing Authority is requesting \$250,000 in CDBG funds from the City of Franklin's current year CDBG funds for site improvements at the Shawnee Development. Enclosed is a copy of the project's latest Contractor Application and Certification for Payment documenting over \$372,000 worth of site grading completed as of February 25, 2025.

We appreciate your consideration in this matter.

Sincerely,



Derwin Jackson
President/CEO

APPLICATION AND CERTIFICATION FOR PAYMENT

DOCUMENT G702

PAGE ONE OF THREE PAGES

TO OWNER: Shawnee Place, L.P.
200 Spring Street
Franklin, TN 37064

FROM CONTRACTOR:
BACAR CONSTRUCTORS INC
1898 NOLENSVILLE ROAD
NASHVILLE, TN 37210

PROJECT: Shawnee Cherokee 2
1101 Shawnee Dr.
Franklin, TN 37064

ARCHITECT: Nickle Architects, PLLC
1612 17th Avenue South
Nashville TN 37212

APPLICATION NO: 4

PERIOD TO: 2/25/2025

PROJECT NO: 24-01143

Distribution to:
☒ OWNER
☐ ARCHITECT
☐ CONTRACTOR

CONTRACT DATE: 6/27/2024

CONTRACTOR APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM

\$ 13,777,131.00

2. Net change by Change Orders

\$ (5,765.00)

3. CONTRACT SUM TO DATE (Line 1 ± 2)

\$ 13,771,366.00

4. TOTAL COMPLETED & STORED TO DATE. \$

\$ 1,193,980.51

(Column G on G703)

5. RETAINAGE:

a. 5 % of Completed Work

\$ 24,567.96

(less GC, Lumber and insurances)

b. 0 % of Stored Material

\$ -

(Column F on G703)

Total Ret j

Total in Column I of G703) \$ 24,567.96

6. TOTAL EARNED LESS RETAINAGE . . \$.

\$ 1,169,412.55

(Line 4 Less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate). . . .

\$ 925,708.02

8. CURRENT PAYMENT DUE

\$ 243,704.53

9. BALANCE TO FINISH, INCLUDING RETAINAGE. \$

\$ 12,601,953.45

(Line 3 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		\$265,628.00
Total approved this Month	\$ 259,863.00	\$ -
TOTALS	\$ 259,863.00	\$ 265,628.00
NET CHANGES by Change Order	\$	(5,765.00)

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By:

Date: 2-26-2025

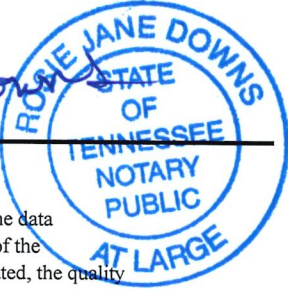
State of: Tennessee

County of: Davidson

Subscribed and sworn to before me this 25th day of February, 2025

Notary Public: Rosie Jane Downs

My Commission Expires: 07/21/2026



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 243,704.53

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By:

Date: 26 February 2025

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CONTINUATION SHEET*AIA DOCUMENT G703*

PAGE 2 OF 2 PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing

APPLICATION NO: 4

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

PERIOD TO: 02/25/25

Use Column I on Contracts where variable retainage for line items may apply.

PROJECT: 24-01143

A ITEM NO. 001	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C)		
1	GENERAL CONDITIONS	721,169.00	49,760.66	11,538.71		61,299.37	8.50%	659,869.64	n/a
2	CONTRACTOR'S OVERHEAD	258,116.00	17,810.00	4,129.86		21,939.86	8.50%	236,176.14	1,096.99
3	FEE	526,557.00	36,332.43	8,424.92		44,757.35	8.50%	481,799.66	2,237.87
4	AS-BUILTS	10,375.00	-			-	0.00%	10,375.00	-
5	SITE GRADING	875,220.00	168,160.00	203,912.00		372,072.00	42.51%	503,148.00	18,603.60
6	STORM DRAIN	621,950.00				-	0.00%	621,950.00	-
7	TERMITE TREATMENT	5,200.00				-	0.00%	5,200.00	-
8	SITE CONCRETE	409,786.00				-	0.00%	409,786.00	-
9	PERMEABLE PAVERS - TRAIL	34,563.00				-	0.00%	34,563.00	-
10	ASPHALT PAVING & CURB	520,971.00				-	0.00%	520,971.00	-
11	RETAINING WALLS	274,505.00				-	0.00%	274,505.00	-
12	WATER & SEWER - SITE	332,290.00				-	0.00%	332,290.00	-
13	WATER & SEWER - ROADWAY	247,320.00				-	0.00%	247,320.00	-
14	FENCING	150,158.00		10,080.00		10,080.00	6.71%	140,078.00	504.00
15	MONUMENT SIGN & MISC	63,841.00				-	0.00%	63,841.00	-
16	SITE FURNISHINGS	134,609.00				-	0.00%	134,609.00	-
17	LANDSCAPING	406,400.00				-	0.00%	406,400.00	-
18	SOG CONCRETE	560,446.00				-	0.00%	560,446.00	-
19	CONCRETE RESTORATION	52,918.00				-	0.00%	52,918.00	-
20	MASONRY	375,322.00				-	0.00%	375,322.00	-
21	METALS	135,685.00				-	0.00%	135,685.00	-
22	FRAMING	681,310.00				-	0.00%	681,310.00	-
23	LUMBER & ACCESSORIES	686,748.00			457,859.96	457,859.96	66.67%	228,888.04	n/a
24	TRUSSES	247,259.00				-	0.00%	247,259.00	n/a
25	TRIM MATERIAL & CARPENTRY	189,495.00				-	0.00%	189,495.00	-
26	INSULATION	105,126.00				-	0.00%	105,126.00	-
27	ROOFING	95,944.00				-	0.00%	95,944.00	-
28	SIDING	344,805.00				-	0.00%	344,805.00	-
29	GUTTERS & DOWNSPOUTS	51,915.00				-	0.00%	51,915.00	-
30	CAULKING	33,750.00				-	0.00%	33,750.00	-

31	DOORS	134,062.00				-	0.00%	134,062.00	-
32	WINDOWS	169,510.00				-	0.00%	169,510.00	-
33	STOREFRONT	35,000.00				-	0.00%	35,000.00	-
34	HARDWARE	15,565.00				-	0.00%	15,565.00	-
35	DRYWALL	556,720.00				-	0.00%	556,720.00	-
36	PAINT	172,000.00				-	0.00%	172,000.00	-
37	CARPET	3,468.00				-	0.00%	3,468.00	-
38	VINYL FLOORING	174,087.00					0.00%	174,087.00	-
39	SPECIALTIES	88,472.00				-	0.00%	88,472.00	-
40	APPLIANCES/EQUIPMENT	92,898.00				-	0.00%	92,898.00	-
41	CABINETS & COUNTERTOPS	152,700.00				-	0.00%	152,700.00	-
42	BLINDS	43,900.00				-	0.00%	43,900.00	-
43	PLUMBING	437,150.00				-	0.00%	437,150.00	-
44	FIRE PROTECTION	175,027.00				-	0.00%	175,027.00	-
45	HVAC	498,120.00				-	0.00%	498,120.00	-
46	BUILDING ELECTRICAL	554,100.00	38,000.00			38,000.00	6.86%	516,100.00	1,900.00
47	SITE ELECTRICAL	812,137.00	-			-	0.00%	812,137.00	-
48	PLANS	5,000.00	5,000.00			5,000.00	100.00%	-	250.00
49	BUILDER'S RISK	96,803.00	96,803.00			96,803.00	100.00%	-	n/a
50	BOND	86,659.00	86,659.00			86,659.00	100.00%	-	n/a
51	CONTINGENCY	320,000.00	-			-	0.00%	320,000.00	-
52	Change Order 1	(265,628.00)	(18,328.33)	(4,250.05)		(22,578.38)	8.50%	(243,049.62)	(1,128.92)
53	Change Order 2	259,863.00		22,088.36		22,088.36	8.50%	237,774.65	1,104.42
GRAND TOTALS		13,771,366.00	480,196.76	255,923.79	457,859.96	1,193,980.51	8.67%	\$ 12,577,385.50	\$ 24,567.96

WAIVER AND RELEASE

Job # 24-01143

Part 1: Unconditional Waiver and Release for All Amounts Previously Paid

The undersigned has been paid and has received total payments in the sum of **\$925,708.02** for all labor, services, equipment, or material furnished to the jobsite or to **Shawnee Place, LP** the Project commonly known as **SHAWNEE CHEROKEE 2** located at **1101 Shawnee Dr., Franklin, TN 37064**, statutory bond right, any private bond right and any rights under any similar ordinance, rule, statute or bond related to claim for rights to payment for persons in the undersigned's position, and any other claim for payment that the undersigned has on the above-referenced project to the following extent: This release covers payments for all labor, services, equipment or materials furnished to the job through **2/25/2025** only and does not cover any labor, services, equipment or materials furnished after that date, retention, or pending modifications or changes. The undersigned represents and warrants that he has paid in full all his laborers, subcontractors, material-men and suppliers for all work, materials, equipment or services provided for or to the above-referenced project up to the date covered by this Part 1.

Part 2: Conditional Waiver and Release for Requested Payment

Upon receipt of a check from **Shawnee Place, LP** in the sum of **\$243,704.53** payable to **Bacar Constructors, Inc.** and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document shall become effective to release any right to a mechanic's lien, any state or federal statutory bond right, any private bond right and any rights under any similar ordinance, rule, statute or bond related to claims for rights to payment for persons in the undersigned's position, and any other claim for payment that the undersigned has on the Project commonly known as **SHAWNEE CHEROKEE 2** located at **1101 Shawnee Dr., Franklin, TN 37064** in the county of **Williamson** to the following extent: This release covers a progress payment for labor, services, equipment or material furnished to the jobsite or to **Shawnee Place, LP** through **2/25/2025** only and does not cover any labor, services, equipment or materials, furnished after that date, retention, or pending modifications or changes. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

The undersigned represents and warrants that he/she either has already paid or will use the monies he/she receives from this payment to promptly pay in full all his laborers, subcontractors, material-men and suppliers for all work, materials, equipment or services provided for or to the above-referenced project up to the date of this waiver.

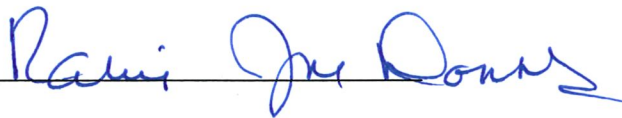
Date: 2/25/2025

Bacar Constructors, Inc.



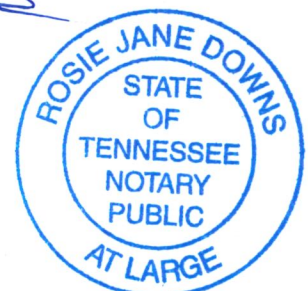
By: Scott Slippy – Project Manager

Witness my hand and official seal.



My Commission Expires: 07-21-2026

Rosie Jane Downs, Notary Public



Cherokee 2/Shawnee Site Photos
Site Photos
J+A 1716-27

February 17, 2025

Image 4058



Building pad cut to subgrade

Image 4059



East side of Cherokee site cut to subgrade, street sweeper on site

Cherokee 2/Shawnee Site Photos
Site Photos
J+A 1716-27

February 17, 2025

Image 4060



Soil stockpile on south end of Cherokee site

Image 4061



Sediment in Cherokee Roadway entrance, north side of roadway

Cherokee 2/Shawnee Site Photos
Site Photos
J+A 1716-27

February 17, 2025

Image 4062



Sediment at curb line on east side of Shawnee Drive at construction entrance

Image 4063



View of Shawnee site cut to subgrade

Cherokee 2/Shawnee Site Photos
Site Photos
J+A 1716-27

February 17, 2025

Image 4064



View of end of construction entrance and soil stockpile on Shawnee site

Image 4065



View of Shawnee site and need for silt fence at back of sidewalk at existing driveway entrance

Cherokee 2/Shawnee Site Photos
Site Photos
J+A 1716-27

February 17, 2025

Image 4066



View of Shawnee site and need for silt fence at back of sidewalk at existing driveway entrance

Image 4067



View of Shawnee site cut to subgrade, compaction equipment on site

Cherokee 2/Shawnee Site Photos
Site Photos
J+A 1716-27

February 17, 2025

Image 4068



View of Shawnee site cut to subgrade, standing water

Image 4069



View of driveway at second construction entrance on Shawnee site

Cherokee 2/Shawnee Site Photos
Site Photos
J+A 1716-27

February 17, 2025

Image 4070



View of Shawnee site and need for silt fence at back of sidewalk at existing driveway entrance

Image 4071



View of sediment trap on north end of Shawnee site

Cherokee 2/Shawnee Site Photos
Site Photos
J+A 1716-27

February 17, 2025

Image 4072



View of Shawnee site cut to subgrade with standing water

Image 4073



View of north east end of Cherokee site, east of Building L pad

Cherokee 2/Shawnee Site Photos
Site Photos
J+A 1716-27

February 17, 2025

Image 4074



View of Cherokee Building L pad cut to subgrade

Image 4075



View of existing open detention pond on Cherokee site

Cherokee 2/Shawnee Site Photos
Site Photos
J+A 1716-27

February 17, 2025

Image 4076



View of building pad T1 at Chickasaw Street on Cherokee site



File #: 21-0368

DATE: April 9, 2025

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator
Eric Stuckey, City Administrator
Kristine Brock, Asst. City Administrator/CFO
Shauna Billingsley, City Attorney
Vernon Gerth, Asst. City Administrator Community Development

SUBJECT:

Real Estate Infrastructure Development Districts In Tennessee - Policy Discussion Regarding Of Eligible Improvements, Nexus, And Community Benefit Project Criteria
WS 4/8/25

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Board of Mayor and Aldermen (BOMA) concerning an update on real estate infrastructure districts established in Tennessee.

BACKGROUND/STAFF COMMENTS:

The Residential Infrastructure Development Act (RIDA) of 2024 became effective May 1, 2024, and a similar but new act, the Real Estate Infrastructure Development Act, was approved during the recent 2025 legislative session. The law allows TN cities and counties to create special assessment districts to fund infrastructure that has a unique nexus to the proposed development. This April presentation summarizes the first two districts created in Tennessee and the policies adopted by each local government. An additional presentation will be provided that highlights the new legislation passed related to Real Estate Infrastructure Development Districts. During the presentation, guidance is requested from the Board on the Community Benefit Project Criteria section of this policy that allows the BOMA to consider and prioritize petitions that will provide public benefits to a degree that are superior to the level of community benefits typically associated with development projects not involving Infrastructure Development District(IDD) financing.

FINANCIAL IMPACT:

Real Estate Infrastructure Development Districts create a financial obligation for the owners of an assessed home and commercial property. There may also be costs incurred by the local government and the entity issuing long-term debt for administrative services discussed in the presentation.

RECOMMENDATION:

This presentation is for information purposes and, based on the guidance, additional presentations are forthcoming.

Real Estate Infrastructure Development Act of 2025

Agenda

- TCA 7-84-801 et seq.
- Nexus
- Community Benefit Project Criteria

HB636/SB26

Public Chapter 357



State of Tennessee

PUBLIC CHAPTER NO. 357

SENATE BILL NO. 26

By Pody, Johnson, Yarbro

Substituted for: House Bill No. 636

By Burkhardt, McCalmon, Moon, Butler, Carringer, Reeves, Hardaway, Hemmer

AN ACT to amend Tennessee Code Annotated, Title 7; Title 9; Title 12; Title 13; Title 66; Title 67 and Title 68, relative to infrastructure development districts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 84, is amended by adding the following as a new part:

7-84-801. Short title.

This part is known and may be cited as the "Real Estate Infrastructure Development Act of 2025."

7-84-802. Part definitions.

As used in this part, unless the context otherwise requires:

- (1) "Assessed value" means value as assessed for municipal property tax purposes;
- (2) "Developer" means one (1) or more persons or entities identified as the developer in the establishment resolution and as being responsible for the development of a district, together with the successors and assignees of the person or entity;
- (3) "Establishment resolution" means the resolution of the governing body, adopted pursuant to this part, establishing a district;
- (4) "Governing body" means the council, commission, board, or other body exercising general legislative power in a host municipality;
- (5) "Host municipality" means:

(A) For a district the boundaries of which are not located entirely within a single incorporated town or city that:

Real Estate Infrastructure Development Act of 2025

- Only statute that the City can use based on the definition of “host municipality”
- Initiated by the filing of a petition by an owner and developer
- Must hold public hearing between 30 and 45 days following the filing of the petition
- At the end of the public hearing the Host Municipality must either adopt, adopt as amended, or reject the organization of the proposed infrastructure development district by resolution
- Specific language is required in the resolution
- Among other options, the Host Municipality has authority to delegate to the IDB the authority to issue revenue bonds by agreement

Nexus

What it is:

- “Nexus and rough proportionality”
- Must be related to the project
- No case law yet on this new law but best to be conservative until bright line rules are established



Community Benefit Project Criteria

Subject to the requirements of this policy, the Board of Mayor and Aldermen shall consider supporting the establishment of an Infrastructure Development District provided the development includes public benefits that are superior to the level of community benefits typically generated by other development projects that would not involve the financing of an Infrastructure Development District.

Community Benefit Project Criteria - Examples

Extraordinary Benefits and Quality Development. The development delivers exceptional public benefits that directly support and advance the vision and goals of Franklin's Comprehensive and Master Plans. These benefits may include financial contributions and infrastructure enhancements, distinctive architectural and place-making designs, preservation of historical assets, multi-modal transportation improvements, and enhanced parks, trails, open space, and recreational amenities;

Housing Diversity. When residential housing is proposed, the development will include a mix of housing types to serve residents across a variety income levels, including providing a percentage of the housing units that are deed-restricted for families whose income falls within the affordable and/or workforce income range and published annually by the Department of Housing and Urban Development;

Redevelopment. The development shall include a portion of the community characterized by aging infrastructure and underutilized properties and generally considered to be an opportunity for revitalization and redevelopment;

Enhance Public Service and Safety. The development optimizes public services and service delivery through its design. Examples include the dedication of land for schools, fire stations, parks, greenways, and other features that support the city's essential services and, exceed those required of other projects;

Thank you

Eric Stuckey, City Administrator

Vernon Gerth, Assistant City Administrator

Kristine Brock, Assistant City Administrator

Shauna Billingsley, City Attorney

Residential Infrastructure Districts in Tennessee

APRIL 8, 2025

Agenda

- Background of the Residential Assessment District Act of 2024
- Tennessee Districts Created To Date
 - City of Bristol
 - Knox County
 - Comparison of Financial Impact to Homeowners
 - Highlights of adopted RIDA Policies
- Policy Considerations for City of Franklin
- Other Considerations

Background

- The Residential Infrastructure Development Act (“RIDA”) of 2024 became effective May 1, 2024.
- Allows TN cities and counties to create special assessment districts to fund infrastructure that has a unique nexus to the proposed development.
- Districts must be at least 5 acres and have capital costs of at least \$5 million.
- Assessments can be annually levied for up to 30 years to reimburse developers for infrastructure costs or to pay principal and interest on bonds.
- Bonds may be issued through city or county or an Industrial Development Board.
- A fee of up to 5% of all special assessments collected may be retained to pay admin costs that are incurred.

Brief Comparison of First Two RIDA Jurisdictions to City of Franklin

	<u>City of Bristol</u>	<u>Knox County</u>	<u>City of Franklin</u>
Census Bureau MSA	Kingsport-Bristol	Knoxville	Nashville-Murfreesboro
7/1/23 Pop Estimate	27,854	500,669	88,558
Pop Change 2019-2023 (%)	2.7%	4.5%	6.0%
Moody's General Obligation Bond Rating	Aa2	Aa1	Aaa
Unemployment Rate January 2025	3.9%	3.3%	2.9%
Median Home Listing Price, February 2025	\$289,900	\$421,100	\$1,187,210
Land area in square miles, 2020	32.66	508.33	42.75
Population per square mile, 2020	831.1	942.2	1,952.0

City of Bristol, Tennessee

- “The Hideaway at Fox Meadows Residential Infrastructure Development District” approved by resolution on July 9, 2024
- Approximately 154 single family homes
- Annual assessments are capped at \$1,000/yr for a term not to exceed 12 years
- Estimated project cost funded by the assessment of \$1,050,000 for sanitary sewer infrastructure (Project has other capital costs of \$6,991,250 within the district)
- Homes vary between single and two story floorplans ranging from approx. 1,400 to 3,400 square feet.
- Sale prices for homes range from \$290s to \$380s

City of Bristol, Tennessee

City agrees to:

- “Authorize the issuance of bonds or other debt to be issued directly by the City or one or more industrial development boards or public building authorities designated by the City for such purpose”
- Levy and collect an annual assessment on each residential property for a period of no more than 12 years
- Directly administer billing and collection of the assessment in addition to ad valorem taxes;
- “Take any and all steps that it may elect to provide for the enforcement and collection of assessments”

Knox County, Tennessee

- “2814 Tipton Station Road Residential Infrastructure Development District”
Approved January 2025
- Residential development located at 2814 Tipton Station Road. 2024 zoning change from heavy industrial to residential.
- Site was formerly used to manufacture explosives, plastics and other industrial chemicals from 1950s to 1970s.
- Approx 342 homes with 4 homes per acre.
- Annual assessments are capped at \$1,000/yr “subject to annual adjustments based upon increases in the consumer price index” for a term of 25 years.
- Estimated project cost funded by the assessment of \$6,500,000 for “offsite road improvements, extended boulevard and water and sewer upgrades”. (Project has other capital costs of \$75,460,000 within the district.)

Knox County, Tennessee

County agrees to:

- “Authorize the issuance of bonds or other debt to be issued directly by the industrial development board”
- Knox County Engineering & Public Works Department to oversee project
- Levy and collect an annual assessment on each residential property for a period of no more than 30 years
- Directly administer billing and collection of the assessment in addition to ad valorem taxes; Remit funds to IDB for payment of debt service
- “Take any and all steps that it may elect to provide for the enforcement and collection of assessments”

Comparison of Tax Bills for Sample Properties in Two TN Residential Assessment Districts

	City of Bristol	Knox County
Estimated Appraised Value or Residence	\$375,000	\$375,000
Assessed Value for Tax Purposes (25% of Appraised)	\$93,750	\$93,750
Tax Year 2024 Property Tax per \$100 of Assessed Valuation (County)	\$2.4962	\$1.554
Tax Year 2024 Property Tax per \$100 of Assessed Valuation (City)	\$2.25	NA
Annual Property Taxes Due (before Assessment)	\$4,450	\$1,457
Max Allowable Annual Assessment	\$1,000	\$1,000
Total Property Taxes & Assessment	\$5,450	\$2,457
% of Total Attributed to Assessment	18.34%	40.7%

Highlights of RIDA Policy Documents

	<u>City of Bristol</u>	<u>Knox County</u>
Formal Application Process	Petitions submitted to City Manager; Case by Case review	Petitions filed with County Clerk after Concept Plan approved by the Knoxville-Knox County Planning Commission
Minimum Capital Costs in the District	\$5,000,000	\$10,000,000
Minimum Number of Acres	5 acres	10 acres
Maximum Assessment per Parcel	Not specified in policy. First district had a cap of \$1,000.	\$1,000 annually subject to annual adjustments based upon increases in the CPI
Maximum Number of Assessment Years	Not specified in policy. (First district had a max of 12 years.)	30 years (First district was for 25 years)

Highlights of RIDA Policy Documents

	<u>City of Bristol</u>	<u>Knox County</u>
Issuer of RIDA Debt	Either City or Industrial Development Board or Public Building Authority	Industrial Development Board
Provider of Administrative Services for Industrial Development Board	City Economic Development Department	Knox County Chamber
Collector of Property Taxes and annual assessments	City Finance Department	County Trustee
Administrative Fee	Not specified in policy. First district has an admin fee of up to 5%.	5% of all special assessments collected by the County retained by the County to pay admin costs incurred by the Trustee and the IDB.

Additional Features of Policies

City of Bristol

Policy adopted by Resolution on February 4, 2025, only addresses three significant areas:

- Requires the notice of special assessment to be recorded in the Register of Deeds Office (Sullivan County)
- Prohibits including residential assessment district within a Tax Increment Financing (TIF) or Payment in Lieu of Tax (PILOT) district, and
- States that RIDA bonds will likely be issued on a taxable basis.

Knox County

Policy adopted by Resolution in January 2025 is comprehensive (15 pages).

- Includes extensive forms and processes for potential applicants.
- Requires developers to hold at least one community meeting within the community in which the development is located.
- Requires County's Department of Engineering to provide quarterly reports to the County Commission on each approved district while under construction and for developer to provide periodic reports to County Commission until project is finished.
- Developer must pay all expenses incurred by the County and the IDB including attorney's fees and fees of the County's Department of Engineering regardless of whether a petition is approved or any financing closed.

Policy Considerations for City of Franklin

- Should the City receive a public benefit from authorizing RIDAs?, for example:
 - Increase the supply of workforce priced housing
 - Improvement of blighted properties
 - Redevelopment or rehabilitation of properties that will not improve without government intervention
- RIDA Debt will not be rated investment grade (i.e. speculative debt) with higher interest costs than the City's general obligation debt repaid from property taxes.
 - Risks include technical default (collected assessments are less than the debt service coverage requirement), delinquency (assessments are not collected on time) and default (collections are not adequate to pay debt service).
 - Debt Policy for City or IDB would need to be revised to reflect the issuance, administration and monitoring of speculative debt.

Policy Considerations for City of Franklin

- Should the City set its own minimum capital investment value?
- Should the City stipulate the type of improvement funded by a special assessment, such as sewer vs roadway?
- Should the City establish a maximum percentage of total infrastructure investment that may be funded by an assessment district, such as 25%?

Policy Considerations for City of Franklin

- The City of Franklin has not billed and collected its own property taxes for over 12 years. The Williamson County Trustee has provided this effective and efficient service on behalf of the City. Is BOMA willing to fund tax collection services apart from the services provided by the County Trustee?
- A 5% admin fee, the max allowed per state statute, may not cover all of the additional costs for tax billing, collecting, debt administration and legal fees of delinquent tax/special assessment collection. Is BOMA willing to appropriate General Fund revenues to fund administrative costs?
- The City's Industrial Development Board does not have full time staff available to provide administrative oversight for complex debt issuance and management. Additional administrative capacity would be necessary to provide these services.

Two Scenarios for Potential City of Franklin Residential Assessment Districts

	Scenario A	Scenario B
Estimated Appraised Value or Residence	\$1,000,000	\$1,000,000
Assessed Value for Tax Purposes (25% of Appraised)	\$250,000	\$250,000
Tax Year 2024 Property Tax per \$100 of Assessed Valuation (County)	\$1.88	\$1.88
Tax Year 2024 Property Tax per \$100 of Assessed Valuation (City)	\$0.3261	\$0.3261
Annual Property Taxes Due (before Assessment)	\$5,515	\$5,515
Annual Assessment	\$5,000	\$2,500
Total Property Taxes & Assessment	\$10,515	\$8,015
% of Total Attributed to Assessment	47.55%	31.19%

The only change between Scenarios A and B is the amount of the annual special assessment.

In Conclusion

- Staff will continue to monitor the first two RIDAs in Tennessee as they move forward and look for additional RIDAs that may be established in local governments more similar to Franklin.
- Does the Board of Mayor and Aldermen want further information on policy areas presented tonight, such as
 - More research on the relativity between the City's AAA/Aaa General Obligation Bond rating and the authorization of speculative (non-investment grade) long term debt for RIDAs.
 - Estimated costs for administration of a residential assessment district in the City of Franklin (billing, collection, administrative capacity for Industrial Development Board, etc.)?
 - Draft policy language specific for the City of Franklin that may include
 - Prioritization of Public Purposes (i.e. workforce housing, improvement of blighted properties, etc.) for use in consideration of applications.
 - Maximum annual costs to the residential homeowner
 - Minimum total capital investment of the development.