



Board of Commissioners
Regular Meeting Agenda
Thursday, November 7, 2024, 5:30 PM
City Hall, Lakeland, Tennessee 38002

- I. CALL TO ORDER BY MAYOR:
- II. INVOCATION:
- III. PLEDGE:
- IV. ROLL CALL BY RECORDER:
- V. PUBLIC HEARING:
- VI. TREASURER'S REPORT:
 1. October 2024 Treasurer's Report
- VII. REPORTS FROM COMMITTEES, MEMBERS OF THE BOARD OF COMMISSIONERS & OTHER OFFICERS:
 1. City Manager's Report
 - a. November 2024 City Manager's Report
 2. Commissioners' Report
 - a. Board of Appeals/Storm Water Board of Appeals - *Commissioner Wright*
 - b. Industrial Development Board - *Mayor Roman*
- VIII. PUBLIC COMMENTS:
- IX. SEWERAGE COMMISSION BUSINESS:
- X. CONSENT AGENDA:
- XI. REGULAR AGENDA:
 1. **Approval of previous meeting minutes** - October 17, 2024
 2. **Ordinance - First Reading** - amending ordinance 13-184 and

the City of Lakeland Financial Policies Manual to conform to Title 5, Chapter 4 of the Lakeland municipal code.

3. **Resolution** - authorizing the Mayor to sign a proclamation honoring Commissioner Wesley Wright for his service to the City of Lakeland, Tennessee. *Sponsored by Mayor Roman*
4. **Resolution** - approving the purchase of one Caterpillar 255 compact track loader from Thompson Machinery through OMNIA Partners contract #212816-01.
5. **Resolution** - approving the purchase and installation of a metal garage storage building from ProBuilt of Memphis.
6. **Resolution** - approving a residential subdivision contract with Evergreen Planned Development (PD), LLC for a 32 lot subdivision to be known as Evergreen Planned Development Phase 2.
7. **Resolution** - approving a development contract with Valleybrook Development, LLC & Seedtick, LLC, as a Joint Venture, to improve and develop the site into a road extension to be known as Seed Tick Road Extension.
8. **Resolution** - approving a professional service agreement with 4FDesign, P.C. for the design of the Lakeland Community Center.
9. **Resolution** - approving a professional service agreement with Kimley-Horn and Associates, Inc. for the design of Seed Tick Road and Memphis-Arlington Road intersection improvements.
10. **Resolution** - accepting Lot 8 in the Lakeland Town Square development (formerly known as Lakeland Commons) and authorizing the City Manager and the City Attorney to execute necessary documents.
11. **Resolution** - authorizing reappointment to the Board of Appeals/Stormwater Board of Appeals of the City of Lakeland, Tennessee. *Sponsored by Commissioner Wright*
12. **Resolution** - authorizing reappointment to the Municipal Parks and Recreation / Natural Resources Advisory Board of the City of Lakeland, Tennessee. *Sponsored by Vice Mayor Dial*
13. **Resolution** - authorizing the City Manager and the City Attorney to execute a memorandum of understanding with the Lakeland School System for use of a video board located at Lakeland Preparatory School. *Sponsored by Mayor Roman*

14. **Discussion and Possible Action** - regarding a Highway 70 Corridor Study focusing on safety improvements. *Sponsored by Mayor Roman*

XII. ANNOUNCEMENTS:

XIII. ADJOURNMENT:



Board of Commissioners
Regular Meeting Minutes
Thursday, October 17, 2024, 5:30 PM
City Hall, Lakeland, Tennessee 38002

I. CALL TO ORDER BY MAYOR:

The meeting was called to order by Mayor Josh Roman 5:30 p.m. on Thursday, October 17, 2024.

II. INVOCATION:

The invocation was offered by Mayor Roman.

III. PLEDGE:

The Pledge to the Flag was led by Mayor Roman.

IV. ROLL CALL BY RECORDER:

Commissioner Jim Atkinson	Present
Vice-Mayor Michele Dial	Present
Commissioner Connie McCarter	Present - late arrival; 5:37pm
Mayor Josh Roman	Present
Commissioner Wesley Wright	Present

Staff personnel in attendance were City Engineer Emily Harrell, City Attorney Will Patterson, Parks and Recreation Director Andrew Fisher, Public Works Director Matt Brown, ITS Director Josh Thompson, Staff Engineer Paul Posey and City Recorder Cheyenne Carter.

V. PUBLIC HEARING:

None.

VI. TREASURER'S REPORT:

1. Fiscal Year End as of June 30, 2024 (unaudited)
This report was offered by Finance Director Sue Matthews.
2. Fiscal Year to date through September 30, 2024
This report was offered by Finance Director Sue Matthews.

VII. REPORTS FROM COMMITTEES, MEMBERS OF THE BOARD OF COMMISSIONERS & OTHER OFFICERS:

1. Sheriff's Report
This item was not presented.
2. City Manager's Report
 - a. BOC Priorities Linkage
City Engineer Emily Harrell offered this portion of the report in the absence of City Manager Michael Walker.
 - b. Update on City Hall Park t-ball field
Parks and Recreation Andrew Fisher offered this portion of the report.
 - c. Update on Heron's Ridge patching
Public Works Director Matt Brown offered this portion of the report.
3. Commissioners' Report
 - a. Community Advisory Board - *Vice Mayor Dial*
This report was offered by Vice Mayor Dial.
 - b. Municipal Planning/Design Review Commission - *Commissioner Atkinson*
This report was offered by Commissioner Atkinson.

VIII. PUBLIC COMMENTS:
None.

IX. SEWERAGE COMMISSION BUSINESS:
None.

X. CONSENT AGENDA:
None.

XI. REGULAR AGENDA:

1. **Approval of previous meeting minutes** - October 3, 2024 (Beer Board)

Mayor Roman moved to bring this item to the floor, seconded by Commissioner Wright.

Discussion ensued.

When the question was called the meeting minutes passed as presented, roll call vote, 4 in favor 0 against 1 abstain (4-0-1).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Commissioner Wright

Nay: None

Abstain: Mayor Josh Roman

2. **Approval of previous meeting minutes** - October 3, 2024 (BOC Regular Meeting)

Commissioner Wright moved to bring this item to the floor, seconded by Vice-Mayor Dial.

Discussion ensued.

When the question was called the meeting minutes passed as presented, roll call vote, 4 in favor 0 against 1 abstain (4-0-1).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Commissioner Wright

Nay: None

Abstain: Mayor Josh Roman

3. **Resolution** - amending the calendar year 2024 meeting calendar.

Commissioner Atkinson moved to bring this item to the floor, seconded by Commissioner Wright.

Mayor Roman presented this item.

Discussion ensued.

When the question was called the resolution passed as presented, roll call vote, 5 in favor 0 against 0 abstain (5-0-0).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Mayor Roman, Commissioner Wright

Nay: None

Abstain: None

4. **Resolution** - authorizing the purchase of an access control server from Central Technologies, Inc.

Commissioner Wright moved to bring this item to the floor, seconded by Vice-Mayor Dial.

ITS Director Josh Thompson presented this item.

Discussion ensued.

When the question was called the resolution passed as presented,

roll call vote, 5 in favor 0 against 0 abstain (5-0-0).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Mayor Roman, Commissioner Wright

Nay: None

Abstain: None

5. **Resolution** - approving a professional service agreement with Kimley-Horn and Associates, Inc. for the design of Seed Tick Road Roundabout project.

Commissioner Wright moved to bring this item to the floor, seconded by Commissioner Atkinson.

City Engineer Emily Harrell presented this item.

Discussion ensued.

For the record: Mayor Roman motioned to defer this item to the November 7 Board of Commissioners meeting seconded by Vice Mayor Dial.

When the question was called the motion to defer passed, voice vote, 5 in favor 0 against 0 abstain (5-0-0).

6. **Resolution** – authorizing Shelby Electric Co., Inc. to install back up power (UPS) for the traffic signal located at Canada Road and Interstate 40 (I-40) interchange.

Commissioner Wright moved to bring this item to the floor, seconded by Vice-Mayor Dial.

Staff Engineer Paul Posey presented this item.

Discussion ensued.

When the question was called the resolution passed as presented, roll call vote, 5 in favor 0 against 0 abstain (5-0-0).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Mayor Roman, Commissioner Wright

Nay: None

Abstain: None

7. **Resolution** - authorizing additional funds for the crosswalk markings installed by Traf-Mark Industries, LLC.

Commissioner Wright moved to bring this item to the floor, seconded by Vice-Mayor Dial.

City Engineer Emily Harrell presented this item.

Discussion ensued.

For the record: Mayor Roman motioned to amend the resolution to change the additional funds from \$3,753.77 to \$2,500 seconded by Commissioner Wright.

When the question was called the motion to amend passed, roll call vote, 4 in favor 1 against 0 abstain (4-1-0).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Mayor Roman, Commissioner Wright

Nay: Commissioner McCarter

Abstain: None

Discussion ensued.

When the question was called the resolution failed as amended, roll call vote, 1 in favor 4 against 0 abstain (1-4-0).

Yea: Mayor Roman

Nay: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Commissioner Wright

Abstain: None

8. **Resolution** - authorizing BAR Environmental Supply, Inc. to replace two Wilo submersible pumps and a 10" valve at the Scotts Creek Wastewater Treatment Plant.

Commissioner Wright moved to bring this item to the floor, seconded by Commissioner Atkinson.

City Engineer Emily Harrell presented this item.

Discussion ensued.

When the question was called the resolution passed as presented, roll call vote, 5 in favor 0 against 0 abstain (5-0-0).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Mayor Roman, Commissioner Wright

Nay: None

Abstain: None

9. **Resolution** - authorizing Xylem, Inc. to provide bypass pumping at the Scotts Creek Wastewater Treatment Plant.

Commissioner Wright moved to bring this item to the floor, seconded by Commissioner Atkinson.

City Engineer Emily Harrell presented this item.

Discussion ensued.

When the question was called the resolution passed as presented, roll call vote, 5 in favor 0 against 0 abstain (5-0-0).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Mayor Roman, Commissioner Wright

Nay: None

Abstain: None

10. **Resolution** - an initial resolution authorizing the issuance of not to exceed twenty-two million dollars (\$22,000,000) general obligation bonds of the City of Lakeland, Tennessee, pursuant to the Local Government Public Obligations Act of 1986, being Title 9, Chapter 21, of the Tennessee Code Annotated, for the purpose of financing the Lakeland Community Center project. *Sponsored by Mayor Roman*

Commissioner Wright moved to bring this item to the floor, seconded by Mayor Roman.

City Attorney Will Patterson presented this item.

Discussion ensued.

When the question was called the resolution passed as presented, roll call vote, 4 in favor 1 against 0 abstain (4-1-0).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Mayor Roman, Commissioner Wright

Nay: Commissioner McCarter

Abstain: None

11. **Resolution** - authorizing and providing for the incurrence of indebtedness for the purpose of providing a portion of the cost of acquiring, constructing, enlarging, improving, and/or extending its

Lakeland Community Center facility to serve an area lawfully within its jurisdiction to serve (USDA Form RD 1942-47). *Sponsored by Mayor Roman*

Commissioner Wright moved to bring this item to the floor, seconded by Mayor Roman.

City Attorney Will Patterson presented this item.

Discussion ensued.

When the question was called the resolution passed as presented, roll call vote, 4 in favor 1 against 0 abstain (4-1-0).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Mayor Roman, Commissioner Wright

Nay: Commissioner McCarter

Abstain: None

12. **Discussion and Possible Action** - regarding civic lots in Lakeland Town Square. *Sponsored by Mayor Roman*

Commissioner Wright moved to bring this item to the floor, seconded by Vice-Mayor Dial.

Mayor Roman presented this item.

Discussion ensued.

For the record: No motions were presented for action.

13. **Discussion and Possible Action** - regarding street lighting for public safety. *Sponsored by Mayor Roman*

Commissioner Wright moved to bring this item to the floor, seconded by Mayor Roman.

Mayor Roman presented this item.

Discussion ensued.

For the record: No motions were presented for action.

14. **Discussion and Possible Action** - regarding regulation of food trucks in Lakeland, Tennessee. *Sponsored by Commissioner Wright*

Commissioner Wright moved to bring this item to the floor, seconded by Mayor Roman.

City Attorney Will Patterson presented this item.

Discussion ensued.

For the record: No motions were presented for action.

15. **Discussion and Possible Action** - regarding authorization of food trucks for the Lakeland Arts Council event at Lakeland Town Square on October 26, 2024. *Sponsored by Commissioner Wright*

Mayor Roman moved to bring this item to the floor, seconded by Commissioner Wright.

City Attorney Will Patterson presented this item.

Discussion ensued.

For the record: No motions were presented for action.

XII. ANNOUNCEMENTS:
None.

XIII. ADJOURNMENT:
There being no other business on which to act, the meeting was adjourned without objection at 6:51pm on Thursday, October 17, 2024.

These minutes were approved on November 7, 2024.

Josh Roman
Mayor

ATTEST:

Cheyenne Carter
City Recorder

Meeting Cycle: Thursday, November 7, 2024

Subject: **Ordinance - First Reading** - amending ordinance 13-184 and the City of Lakeland Financial Policies Manual to conform to Title 5, Chapter 4 of the Lakeland municipal code.

Staff Contact: Michael Walker, City Manager

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve ordinance O-9-2024.

BUDGET IMPACT

There is no budgetary impact related to this ordinance.

DISCUSSION

On January 4, 2024, the BOC adopted ordinance O-19-2023, increasing the threshold for requiring sealed bids from \$10,000 to \$25,000, to conform to Tennessee Code Annotated changes and to align with Uniform Guidance for federal award programs.

In conjunction with this change, the dollar amount for purchases requiring BOC approval was not updated. This ordinance serves to update the threshold for which items require approval by the Board of Commissioners from \$10,000 to \$25,000, aligned with ordinance O-19-2023, while still requiring that purchases over \$10,000 be reported to the BOC by the City Manager at the next regularly scheduled meeting.

For context, a listing of BOC resolutions passed in 2024 that exceeded \$10,000, but were less than \$25,000, is below:

1. 2/1/24 - R-14-2024, Bolton Sign Co removal of Relax Inn Interstate sign - \$24,500
2. 2/15/24 - R-22-2024, MLGW work order for field lighting/athletic complex - \$21,568
3. 3/7/24 - R-30-2024, underbrush clearing quote approval - \$16,825
4. 4/4/24 - R-48-2024, funding agreement for Chamber - \$24,000 (this is an example of an item that, while technically under the limit, would be brought before the full BOC for approval due to the underlying agreement and BOC oversight)
5. 5/2/24 - R-60-2024, weed control award to Herbi-Systems - \$22,419
6. 6/18/24 - R-77-2024, motor and impeller purchase, \$11,000
7. 6/18/24 - R-78-2024, booster pump purchase, \$16,000

8. 7/18/24 - R-89-2024, geotechnical surveys, \$20,200
9. 7/18/24 - R-93-2024, microsoft renewal, \$17,098
10. 7/18/24 - R-96-2024, Cityworks hosting, \$18,600
11. 8/15/24 - R-103-2024, crosswalk markings, \$10,574
12. 8/15/24 - R-109-2024, CivicPlus renewal, \$18,031
13. 9/19/24 - R-134-2024, backup power at traffic light, \$16,000
14. 10/3/24 - R-150-2024, environmental services for Oliver creek project, \$15,000
15. 10/17/24 - R-158-2024, access control server purchase, \$12,488
16. 10/17/24 - R-151-2024, backup power at traffic light, \$16,000 (this is an example of a purchase that would cause the total spend on the same item, although two separate purchases, that exceed \$25k in a fiscal year, and would be brought for BOC approval)
17. 10/17/24 - R-154-2024, Scotts Creek bypass pumping, \$20,000

ORDINANCE O-9-2024

AMENDING ORDINANCE 13-184 AND THE CITY OF LAKELAND
FINANCIAL POLICIES MANUAL TO CONFORM TO TITLE 5, CHAPTER 4 OF
THE LAKELAND MUNICIPAL CODE

- WHEREAS,** the City of Lakeland, Tennessee, (the City) established a municipal purchasing policy with Ordinance 13-184, adopted January 3, 2013; and,
- WHEREAS,** the City codified this purchasing policy, as well as other financial policies, with the adoption of the City's Financial Policies Manual on April 9, 2020, with Resolution 20/04-01; and,
- WHEREAS,** Tennessee Code Annotated (T.C.A.) § 6-19-104 requires public advertisement and competitive sealed bids for purchases over twenty-five thousand dollars (\$25,000); and,
- WHEREAS,** the City of Lakeland, Tennessee, Board of Commissioners (the Board) adopted Ordinance O-19-2023 on January 4, 2024, amending § 5-402, **Purchasing limits requiring sealed bids**, of the Lakeland Municipal Code; and,
- WHEREAS,** Ordinance O-19-2023 superseded Ordinance 13-184 only for competitive sealed bid requirements and not for internal procurement processing of the City; and,
- WHEREAS,** the Board desires to update and align internal procurement policies to T.C.A. § 6-19-104 and Lakeland Municipal Code § 5-402:

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Lakeland, Tennessee, as follows:

- Section 1. § 2. of Ordinance 13-184 is hereby repealed in its entirety, as replaced by the following. Likewise, § 4.1.2. of the City of Lakeland Financial Policies Manual shall be amended to read as follows, for the applicable sections (replacing §'s 4.1.2.1. through 4.1.2.3. and related subsections):
- a. Purchases less than \$5,000 – competitive bids or quotations for the purchase of items which cost less than \$5,000 are desirable but not mandatory. All purchases must be authorized by a purchase order approved by the City Manager, unless otherwise specifically exempt.

ORDINANCE O-9-2024

AMENDING ORDINANCE 13-184 AND THE CITY OF LAKELAND FINANCIAL POLICIES MANUAL TO CONFORM TO TITLE 5, CHAPTER 4 OF THE LAKELAND MUNICIPAL CODE

- b. Purchases of \$5,000 and above, but less than \$25,000 – purchases, leases, and lease purchases of \$5,000 and above, and less than \$25,000 singly or in the aggregate during any fiscal year and, except as otherwise provided, shall require three (3) competitive bids or quotations, either verbal or written, whenever possible prior to each purchase.
 - i. Purchases of \$10,000 and above, but less than \$25,000, shall be reported to the Board of Commissioners each month by the City Manager or designee.
- c. Purchases of \$25,000 and above require:
 - i. A description of all projects or purchases, except as otherwise provided in this chapter, which require the expenditure of City funds of \$25,000 or more shall be prepared and submitted to the City Manager for authorization to call for bids or proposals.
 - ii. The award of purchases, leases, or lease purchases of \$25,000 or more shall be authorized by the Board of Commissioners to the lowest and best responsible bidder.
 - iii. The City Manager may approve the procurement of goods or services authorized in the annual operating budget, or subsequent budget amendment, and purchases that are routine to City operations provided that the purchase, lease, or lease-purchase does not impose any substantial long-term consequences upon the City.
 - iv. The transaction involving purchases, leases, or lease-purchases of \$25,000 or more shall be evidenced by written contract or agreement.

Section 2. Further amendments to the City of Lakeland's financial policies, to the extent they do not conflict with Lakeland Municipal Code and/or Tennessee Code Annotated, may be authorized via Resolution of the Board of Commissioners of the City of Lakeland, Tennessee.

Section 3. All ordinances in conflict with the provisions of this ordinance are hereby repealed. Further, the provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, such

ORDINANCE O-9-2024

AMENDING ORDINANCE 13-184 AND THE CITY OF LAKELAND
FINANCIAL POLICIES MANUAL TO CONFORM TO TITLE 5, CHAPTER 4 OF
THE LAKELAND MUNICIPAL CODE

invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application.

Section 4. This ordinance shall take effect the latter of fifteen (15) days after first reading or immediately upon final passage, the public welfare requiring it.

First Reading: November 7, 2024
Public Hearing: December 5, 2024
Final Reading: December 5, 2024

ATTEST:

Josh Roman
Mayor

Cheyenne Carter
City Recorder

ORDINANCE 13-184
AN ORDINANCE OF THE CITY OF LAKELAND TO ESTABLISH A MUNICIPAL
PURCHASING POLICY FOR THE CITY OF LAKELAND
AND AMEND PURCHASING LIMITS

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NOW THEREFORE, BE IT ORDAINED BY THE LAKELAND BOARD OF COMMISSIONERS, as follows:

Section 1. In accordance with T.C.A. § 6-19-104 the purchase of all material, supplies, equipment and services purchased under the authority of this ordinance shall, unless otherwise provided by law, be purchased in accordance with the following regulations set forth in the Lakeland Purchasing Policy, and that include the purchasing limits set forth herein.

Section 2. Purchasing Limits Amended. The purchasing limits set forth in the Lakeland Municipal Code §§ 5-402 – 403 shall be amended to the following:

- (a) Purchases less than \$2,500. Competitive bids or quotations for the purchase of items which cost less than twenty-five hundred dollars (\$2,500) are desirable but not mandatory. All purchases must be authorized by Purchase Order approved by the City Manager unless otherwise specifically exempt.
- (b) Purchases of \$2,500 and above, but less than \$10,000. Purchases, leases, and lease purchases of twenty-five hundred dollars (\$2,500) and above, and less than ten thousand dollars (\$10,000) singly or in the aggregate during any fiscal year and, except as otherwise provided, shall require three (3) competitive bids or quotations, either verbal or written, whenever possible prior to each purchase.
- (c) Purchases of \$10,000 and above. A description of all projects or purchases, except as otherwise provided, which require the expenditure of City funds of ten thousand dollars (\$10,000) or more shall be prepared and submitted to the City Manager for authorization to call for bids or proposals. After the determination that adequate funds are budgeted and available for a purchase, the City Manager or designee may approve a Purchase Order and may authorize to advertise for bids or proposals and to accept only sealed bids.

Section 3. Exceptions. Exceptions to the City's purchasing limits set forth in the Lakeland Municipal Code § 5-404 shall be amended to the following:

- a) Sole source of supply or proprietary products as determined after complete search by the City Manager or designee, after which the City Manager shall provide notification to the Board.

ORDINANCE 13-184
AN ORDINANCE OF THE CITY OF LAKE LAND TO ESTABLISH A MUNICIPAL
PURCHASING POLICY FOR THE CITY OF LAKE LAND
AND AMEND PURCHASING LIMITS

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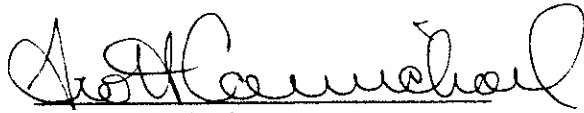
- b) Emergency expenditures with subsequent approval of the City Manager or designee in accordance with the provisions herein.
- c) Purchases from instrumentalities created by two or more cooperating governments.
- d) Purchases from non-profit corporations whose purpose or one of whose purposes is to provide goods or services specifically to municipalities.
- e) Purchases, leases, or lease-purchases of real property.
- f) Purchases, leases, or lease-purchases from any federal, state, or local governmental unit or agency, of second-hand articles or equipment or other materials, supplies, commodities, and equipment.
- g) Purchases through other units of governments as authorized by T.C.A. 6-56-301 et seq.
- h) Purchases directed through or in conjunction with the State Department of General Services.
- i) Purchases from Tennessee State industries.
- j) Professional service contracts as provided in T.C.A. 29-20-407.
- k) Tort Liability Insurance as provided in T.C.A. 12-4-407.
- l) Purchases of perishable commodities.
- m) Professional services as provided in Consultant Selection Policy for Projects funded in Whole or in Part with Funds Provided by the Federal Highway Administration or the Tennessee Department of Transportation (Local Government Guidelines Form 1-2)

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed and this ordinance shall be effective upon date of adoption.

First Reading: December 03, 2012
Public Hearing: December 18, 2012
Final Reading: January 03, 2013

ORDINANCE 13-184
AN ORDINANCE OF THE CITY OF LAKELAND TO ESTABLISH A MUNICIPAL
PURCHASING POLICY FOR THE CITY OF LAKELAND
AND AMEND PURCHASING LIMITS

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Scott Carmichael, Mayor

ATTEST:



Sontida L. Thomas, CMC
City Recorder

City of Lakeland Purchasing Policy

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The City of Lakeland, Tennessee intends to purchase goods and services of high quality consistent with the expected use at the most reasonable cost.

The purpose of the City of Lakeland Purchasing Policy is to provide guidance for all department and purchasing personnel involved in the procurement process.

This policy applies to all City personnel involved in the procurement process and to all City purchases, including the General Fund and Sewer Fund, and any additional funds subsequently established following passage by ordinance.

Competitive Procurement.

Purchases less than \$2,500. Competitive bids or quotations for the purchase of items which cost less than twenty-five hundred dollars (\$2,500) are desirable but not mandatory. All purchases must be authorized by Purchase Order approved by the City Manager unless otherwise specifically exempt.

Purchases of \$2,500 and above, but less than \$10,000. Purchases, leases, and lease purchases of twenty-five hundred dollars (\$2,500) and above, and less than ten thousand dollars (\$10,000) singly or in the aggregate during any fiscal year and, except as otherwise provided, shall require three (3) competitive bids or quotations, either verbal or written, whenever possible prior to each purchase.

Purchases of \$10,000 and above. A description of all projects or purchases, except as otherwise provided, which require the expenditure of City funds of ten thousand dollars (\$10,000) or more shall be prepared and submitted to the City Manager for authorization to call for bids or proposals.

The award of purchases, leases, or lease-purchases of ten thousand dollars (\$10,000) or more shall be authorized by the Board of Commissioners, hereinafter "the Board" to the lowest and best responsible bidder.

The City Manager may approve the procurement of goods or services authorized in the fiscal year budget, or subsequent budget amendment, and purchases that are routine to City operations

City of Lakeland Purchasing Policy

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provided that the purchase, lease, or lease-purchase does not impose any substantial long-term consequences upon the City.

The transaction involving purchases, leases, or lease-purchases of ten thousand dollars (\$10,000) or greater shall be evidenced by written contract.

Exceptions. Upon the written recommendation of the City Manager that it is clearly to the advantage of the City not to contract with competitive bidding, the Board may authorize noncompetitive contracts by resolution adopted unanimously by members present.

Purchases amounting to ten-thousand dollars (\$10,000) or greater, which do not require public advertising and sealed bids or proposals, may be allowed only under the following circumstances and, except as otherwise provided herein, when such purchases are authorized by the governing body:

- Sole source of supply or proprietary products as determined after complete search by the City Manager or designee, after which the City Manager shall provide notification to the Board.
- Emergency expenditures with subsequent approval of the City Manager or designee in accordance with the provisions herein.
- Purchases from instrumentalities created by two or more cooperating governments.
- Purchases from non-profit corporations whose purpose or one of whose purposes is to provide goods or services specifically to municipalities.
- Purchases, leases, or lease-purchases of real property.
- Purchases, leases, or lease-purchases from any federal, state, or local governmental unit or agency, of second-hand articles or equipment or other materials, supplies, commodities, and equipment.
- Purchases through other units of governments as authorized by T.C.A. 6-56-301 et seq.
- Purchases directed through or in conjunction with the State Department of General

City of Lakeland Purchasing Policy

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Services.

- Purchases from Tennessee State industries.
- Professional service contracts as provided in T.C.A. 29-20-407.
- Tort Liability Insurance as provided in T.C.A. 12-4-407.
- Purchases of perishable commodities.
- Professional services as provided in Consultant Selection Policy for Projects funded in Whole or in Part with Funds Provided by the Federal Highway Administration or the Tennessee Department of Transportation (Local Government Guidelines Form 1-2)

Sealed bids or proposals. Sealed bids are required on purchases of \$10,000.00 or more. Bids must be advertised in a local newspaper of general circulation not less than five days before bid opening date.

All solicitations of offers shall clearly set forth all requirements which vendors must fulfill and all other factors to be used in evaluating bids, proposals, or statements of qualifications.

Contracts shall be awarded only to responsible contractors/firms that possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.

Recording Bids. A summary of bids form should be used to record all bids. The form should be included in the information presented to the Board for consideration of award of the bid. All bids should be opened in public at a specified time. Late bids should not be accepted or opened.

Rejection of bids. The City Manager may reject any and all bids when in the City's best interest. The City shall have the authority to reject any and all bids, parts of all bids, or all bids for any one or more supplies or contractual services included in the proposed contract, when the public interest will be served thereby.

The City shall not accept the bid of a vendor or contractor who is in default on the payment of any taxes, licenses, fees, or other monies of whatever nature that may be due the City by said vendor or contractor.

City of Lakeland Purchasing Policy

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Electronic Bidding, Invitations to Bid, Requests for Proposals and other Solicitations. Any authorized agent purchasing on behalf of the City may satisfy any requirement for mailing by distributing invitations to bid, requests for proposals and other solicitations electronically.

The authorized agent may receive bids, proposals, and other offers electronically. Small businesses and minority-owned businesses shall not be required to receive or respond to invitations to bid, requests for proposals, or other solicitations electronically as provided in T.C.A. 12-3-704.

Competitive Sealed Proposals. The City may use competitive sealed proposals to purchase goods and services rather than competitive sealed bids when the City Manager or designee, acting under the restrictions and requirements of T.C.A. 12-3-10, determines that the use of competitive sealed bidding is either not practicable or not advantageous to the City as provided by the City's Purchasing Policy.

The following conditions for use apply to purchases where competitive sealed proposals may be used in place of competitive bidding.

- a) Competitive sealed proposals may be used only when qualifications, experience, or competence are more important than price in making the purchase; and
- b) When there is more than one solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution; or
- c) When there is no readily identifiable solution to a purchasing issue and the competitive sealed proposals will assist in identifying one or more solutions.

Adequate public notice of the request for competitive sealed proposals shall be given in the same manner provided by applicable law for competitive sealed bids.

The award shall be made to the responsible proposer whose proposal the Board determines is the most advantageous to the City, taking into consideration price and the evaluation factors set out in the request for competitive sealed proposals. No other factor may be used in the evaluation.

Purchase Orders. A pre-numbered Purchase Order form must be submitted prior to the purchase of any item, except as designated by the City Manager or designee, or otherwise provided within the City of Lakeland Purchasing Policy.

City of Lakeland Purchasing Policy

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Purchase authorization by email or telephone. E-mail and phone authorizations may be made in cases where, due to being out of the office, timely authorization is not possible. The City Manager shall appoint the authorizing person.

Sole-source and proprietary purchasing. Sole-source or proprietary purchasing shall only be used when a vendor providing a good or service is the only source wherein no other acceptable substitutes or alternatives are available.

Emergencies. Emergency purchases are essential purchases to be made only when normal functions and operations of the City would be hampered by purchasing in the regular manner, or where property, equipment, or life are endangered through unexpected circumstances and materials, services, etc., and are needed immediately.

Competitive procurement according to the guidelines in the City's Purchasing Policy should be used when possible in emergencies.

Direct Payments. Purchases made for recurring services, most notably telephone, internet, and utility services, do not require the use of a purchase order when authorized by the City Manager or designee in advance.

Blanket Purchase Orders. Blanket purchase orders may be used in circumstances wherein purchases from vendors are made for small or routine purchases, authorized at the first of each month, provided that the amount is less than \$250 per item.

Delegated Purchasing Authority. Purchases up to \$500 may be authorized by a designated Supervisor. The City Manager may designate the persons who can authorize up to \$500 in purchases.

Gasoline. The City Manager or designee may authorize the purchase of gasoline for City vehicles at gas stations within the Lakeland City Limits without a Purchase Order.

Use of City's Credit Card and Petty Cash Fund. Purchases of items that cost less than \$40 from businesses that do not issue invoices or have charge accounts may be made by either credit card or withdrawals from the petty cash fund.

The agent designated by the City Manager is solely responsible for any withdrawals from the

City of Lakeland Purchasing Policy

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petty cash fund.

Purchases made by credit card must comply with the City's policy governing the use of credit cards.

The City Manager or designee may authorize the use of debit or purchasing cards, and designate City personnel authorized to make purchases using said debit or purchasing cards in accordance with the same provisions in the City's policy governing the use of credit cards.

Invoices. All invoices for services or products must be signed as received by the person receiving the equipment or service before the City releases funds to a vendor.

All vendor checks for City purchases shall be mailed to the vendor address on file.

Exceptions under special circumstances must be approved by the City Manager or designee.

Ethics. City employees involved in the procurement process, as in any other area of City operations, shall behave according to the highest ethical and professional standards in their affairs, conducting such business with the utmost concern for and consideration of the public's trust in the City. In accordance with maintaining the public's trust, any ethical impropriety or the perception thereof should be avoided in all business involving the City of Lakeland.

As an employee of the City of Lakeland, all City employees shall notify their supervisor as well as the City Manager if the employee has any knowledge of another employee of the City violating any provision of the City's Purchasing Policy or any other unethical or unprofessional behavior immediately upon receiving such information.

Conflict of Interest. No purchase shall be made from, nor any contract for purchase of services made with any person, firm, or corporation in which any officer or employee of the City has a direct financial interest except when such person, firm, or corporation is the sole source for such goods or services in Shelby County, Tennessee. In such instances, all purchases shall be subject to prior approval by the City Manager, any direct financial interest having been disclosed to the City Manager prior to authorization for the purchase.

Any indirect financial relationship with any person, firm, or corporation in which the City purchases goods or services shall be disclosed to the City Manager or designee.

City of Lakeland Purchasing Policy

No officer or employee of the City shall accept directly or indirectly any fee, rebate, money, or other thing of value from any person, firm, or corporation employed by or doing business with the City, except on behalf of and for the use of the City, or in accordance with the exception herein above set forth.

Responsibility for Purchasing and Record-keeping. The City Manager or designee shall be responsible for acting in accordance with the City of Lakeland Purchasing Policy, the procedures therein required, and the general law provisions of the Municipal Purchasing Law of 1983, as amended, including keeping and filing required records and reports, as if they were set out herein and made a part the City's Purchasing Policy.

ORDINANCE O-19-2023

AMENDING TITLE 5, CHAPTER 4 OF THE LAKELAND MUNICIPAL CODE TO
CONFORM WITH TENN. CODE ANN. § 6-19-104

WHEREAS, Public Chapter 54 recently amended the City's charter (T.C.A. § 6 -19-104) by increasing the dollar amount for public advertisement and competitive sealed bids from \$10,000.00 to \$25,000.00; and

WHEREAS, Public Chapter 54, effective March 21, 2023, amends the City's charter (T.C.A. § 6 -19-104) by increasing the dollar amount for public advertisement and competitive sealed bids from \$10,000.00 to \$25,000.00; and

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Lakeland, Tennessee, as follows:

Section 1. Section 5-402 of the Lakeland Municipal Code shall be deleted and replaced with the following language:

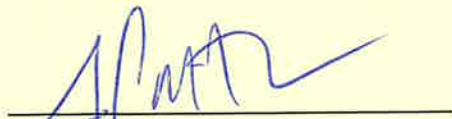
Purchasing limits requiring sealed bids. Except as otherwise provided in Section 5-403 or Tennessee law, all purchases for the City of Lakeland, Tennessee of Twenty-Five Thousand Dollars (\$25,000.00) or more shall require formal sealed bids.

Section 2. All ordinances in conflict with the provisions of this ordinance are hereby repealed. Further, the provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application.

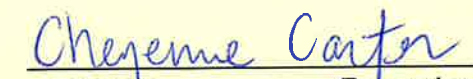
Section 3. This ordinance shall take effect the latter of fifteen (15) days after first reading or immediately upon final passage, the public welfare requiring it.

First Reading: December 21, 2023
Public Hearing: January 4, 2024
Final Reading: January 4, 2024

ATTEST:



Josh Roman, Mayor



Cheyenne Carter, City Recorder

4.1.2. Competitive procurement

- 4.1.2.1. Purchases less than \$2,500 – competitive bids or quotations for the purchase of items which cost less than \$2,500 are desirable but not mandatory. All purchases must be authorized by a purchase order approved by the City Manager, unless otherwise specifically exempt.
- 4.1.2.2. Purchases of \$2,500 and above, but less than \$10,000 – purchases, leases, and lease purchases of \$2,500 and above, and less than \$10,000 singly or in the aggregate during any fiscal year and, except as otherwise provided, shall require three (3) competitive bids or quotations, either verbal or written, whenever possible prior to each purchase.
- 4.1.2.3. Purchases of \$10,000 and above require Board of Commissioners approval. Purchases of \$25,000 and above require:
 - 4.1.2.3.1. A description of all projects or purchases, except as otherwise provided in this chapter, which require the expenditure of City funds of \$25,000 or more shall be prepared and submitted to the City Manager for authorization to call for bids or proposals.
 - 4.1.2.3.2. The award of purchases, leases, or lease purchases of \$25,000 or more shall be authorized by the Board of Commissioners to the lowest and best responsible bidder.
 - 4.1.2.3.3. The City Manager may approve the procurement of goods or services authorized in the annual operating budget, or subsequent budget amendment, and purchases that are routine to City operations provided that the purchase, lease, or lease-purchase does not impose any substantial long-term consequences upon the City
 - 4.1.2.3.4. The transaction involving purchases, leases, or lease-purchases of \$25,000 or greater shall be evidenced by written contract.
- 4.1.2.4. Exceptions
 - 4.1.2.4.1. Upon the written recommendation of the City Manager that it is clearly to the advantage of the City not to contract with competitive bidding, the Board may authorize noncompetitive contracts by resolution adopted unanimously by members present.
 - 4.1.2.4.2. Purchases amounting to \$10,000 or greater, which do not require public advertising and sealed bids or proposals, may be allowed only under the following circumstances and, except as otherwise provided herein, when such purchases are authorized by the governing body:
 - 4.1.2.4.2.1. Sole source of supply or proprietary products as determined after complete search by the City Manager or designee, after which the City Manager shall provide notification to the Board.
 - 4.1.2.4.2.2. Emergency expenditures with subsequent approval of the City Manager or designee in accordance with the provisions herein.
 - 4.1.2.4.2.3. Purchases from instrumentalities created by two or more cooperating governments.
 - 4.1.2.4.2.4. Purchases from non-profit corporations whose purpose or one of whose purposes is to provide goods or services specifically to municipalities.
 - 4.1.2.4.2.5. Purchases, leases, or lease-purchases of real property.
 - 4.1.2.4.2.6. Purchases, leases, or lease-purchases from any federal, state, or local governmental unit or agency, of second-hand articles or equipment or other materials, supplies, commodities, and equipment.
 - 4.1.2.4.2.7. Purchases through other units of governments as authorized by T.C.A. 6-56-301 et seq.
 - 4.1.2.4.2.8. Purchases directed through or in conjunction with the State Department of General Services.
 - 4.1.2.4.2.9. Purchases from Tennessee State industries.

RESOLUTION R-161-2024

AUTHORIZING THE MAYOR TO SIGN A PROCLAMATION
HONORING COMMISSIONER WESLEY WRIGHT FOR HIS SERVICE TO
IN THE CITY OF LAKELAND, TENNESSEE

WHEREAS, the Mayor and the Board of Commissioners desire to honor the dedication and service to the City of Lakeland, Tennessee by Commissioner Wesley Wright:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the Mayor is hereby authorized and directed to sign a Proclamation honoring Commissioner Wesley Wright for his service to the City of Lakeland, Tennessee.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee this 7th day of November 2024, the public welfare requiring it.

ATTEST:

Josh Roman
Mayor

Cheyenne Carter
City Recorder



Proclamation

WHEREAS, Commissioner Wesley Wright has dedicated his time, energy, and talents to serve the citizens of Lakeland, Tennessee, as a distinguished member of the Board of Commissioners; and,

WHEREAS, during his tenure, Commissioner Wright has demonstrated unwavering commitment to the growth, development, and well-being of the City of Lakeland, always prioritizing the needs of the community and working diligently to improve the quality of life for all residents; and,

WHEREAS, Commissioner Wright has played a key role in numerous initiatives that have contributed to the advancement of the city's infrastructure, public safety, and economic development, while fostering a spirit of collaboration and transparency in government; and,

WHEREAS, his leadership and vision have been instrumental in promoting sustainable growth, advocating for responsible fiscal management, and supporting projects that reflect the values and aspirations of the citizens of Lakeland; and,

WHEREAS, Commissioner Wright's dedication to public service, his integrity, and his passion for the future of Lakeland have earned him the respect and admiration of his fellow commissioners, city staff, and the community as a whole; and,

WHEREAS, as he concludes his service on the Board of Commissioners, it is fitting that we recognize his many contributions to the City of Lakeland and express our gratitude for his outstanding service;

NOW, THEREFORE, I, Josh Roman, Mayor of the City of Lakeland, Tennessee, do hereby honor Commissioner Wesley Wright for his dedication to the City of Lakeland, Tennessee.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Lakeland to be affixed this 7th day of November, 2024.

Josh Roman, *Mayor*
City of Lakeland, Tennessee

RESOLUTION R-166-2024

APPROVING THE PURCHASE OF ONE CATERPILLAR 255 COMPACT TRACK
LOADER FROM THOMPSON MACHINERY THROUGH OMNIA PARTNERS
CONTRACT #212816-01

WHEREAS, the City of Lakeland, Tennessee, (the “City”) desires to purchase one (1) Caterpillar 255 compact track loader; and,

WHEREAS, funding for this purchase is appropriated in the Fiscal Year 2025 Annual Budget for the State Street Aid Fund:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the City Manager is hereby authorized to purchase one (1) Caterpillar track loader in the amount of Seventy-Seven Thousand Six Thousand Dollars (\$77,600).

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 7th day of November 2024, the public welfare requiring it.

ATTEST:

Josh Roman
Mayor

Cheyenne Carter
City Recorder

CITY OF LAKELAND
10001 US HWY 70

LAKELAND, TENNESSEE 38002-8068

We are pleased to present the following quotation for one NEW 255, equipped as follows:

255 CAB HIGHFLOW WORK LIGHTS,LED,FRONT/REAR/SIDE COMFORT PKG, ENCLOSED CAB,HVAC SEAT,AIR SUSPENSION,HEAT/VENT PACKAGE, TECHNOLOGY (T4) SERIALIZED TECHNICAL MEDIA KIT FAN, COOLING, DEMAND QUICK COUPLER, HYD, SELF LEVEL IDLER WHEELS, TRIPLE FLANGE INSTRUCTIONS, ANSI, USA PRODUCT LINK, CELLULAR PLE643 FUEL, MANUAL PRIMING TRACK,RUBBER,400MM(15.7IN)BLCK GUARDING / SEALING PKG, (HD1) 255 CTL DCA6A SG-BPH-14-6-9DP (ADAPTER) BUCKET-GP, 74", BOT	WARRANTY	
	Months:	24
	Hours:	2000
	Description:	PREMIER
	Additional:	Thompson Machinery provides complimentary travel time and mileage for warrantable repairs in the field for the first 3 Months of use.
		

Purchase Price: \$77,600.00

Thank you for the opportunity to submit this quotation, which will remain valid for 30 days. Should you have any questions, please feel free to contact me. We look forward to earning your business!

Sincerely,

Beau Land

901-517-6798

Sales Representative
Thompson Machinery



Cat® 255

COMPACT TRACK LOADER

FEATURES:

The Cat® 255 Compact Track Loader, with its vertical lift design, delivers extended reach and lift height for quick and easy truck loading. Its standard torsion suspension undercarriage system provides superior traction, flotation, stability, and speed to work in a wide range of applications and underfoot conditions. The 255 features the following:

- **Redesigned Operator Station** delivers a larger operating environment, and combined with additional seat travel, the 255 provides more space for operators of any size. The optional **one-piece, sealed, and pressurized cab** offers a clean and quiet workspace with excellent air distribution through optimally placed vents throughout the cab.
- **Available ventilated and heated high-back air ride seat** with seat-mounted adjustable joystick controls deliver industry-leading operator comfort.
- **High-performance power train** provides selectable settings for drive power priority and maximum travel speed (overdrive) to customize the machine performance to match the task.
- **Three levels of auxiliary hydraulic performance available** Standard Flow, High Flow, and High Flow XPS. **Standard flow** for attachments that require a base level of auxiliary flow and horsepower, **High Flow** boosts the auxiliary flow for applications that demand additional hydraulic flow for increased attachment performance, and the **High Flow XPS** hydraulic system provides maximum auxiliary hydraulic performance by delivering additional flow and additional pressure for the most demanding attachments and applications.
- **Electronically controlled Cat C2.8T engine** meets U.S. EPA Tier 4 Final and EU Stage V emission standards while delivering maximum horsepower across a wide RPM range and providing high torque for increased working performance, no matter the application.
- **Standard torsion suspension undercarriage and standard two-speed travel**, combined with the optional Speed Sensitive Ride Control system improves operation on rough terrain, enabling better load retention, increased productivity, and greater operator comfort.
- **Maximize machine capability and control with the Advanced Joysticks and Advanced Touchscreen Monitor.** The **20.3 cm (8-inch) Advanced Touchscreen Monitor** offers cutting-edge functionality and control that includes an integrated radio, Bluetooth® connectivity, and multi-camera (side-view) option, and supports 32 different language choices. The **Advanced Joysticks** provide unmatched control of machine functions and adjustments within the display without operators having to remove their hands from the controls. This includes on-joystick navigation of the Advanced Touchscreen Monitor, radio volume up/down/mute, creep activation, creep on/off, creep speed increment/decrement, one-button Smart Attachment control activation, and additional auxiliary control buttons that deliver single-button control of complex attachment functions.
- **Ground-level access** to all daily service and routine maintenance points help reduce machine downtime for greater productivity.
- **Broad range of performance-matched Cat Attachments** make the Cat Compact Track Loaders the most versatile machine on the job site.

Specifications

Engine

Engine Model	Cat® C2.8T (turbo)	
Gross Power SAE J1995	55.4 kW	74.3 hp
Net Power SAE 1349	54.8 kW	73.5 hp
Net Power ISO 9249	54.4 kW	73 hp
Peak Torque at 1,600 rpm SAE J1995	300 N·m	221 lbf·ft
Displacement	2.8 L	171 in³
Stroke	90 mm	3.5 in
Bore	110 mm	4.3 in

Weights*

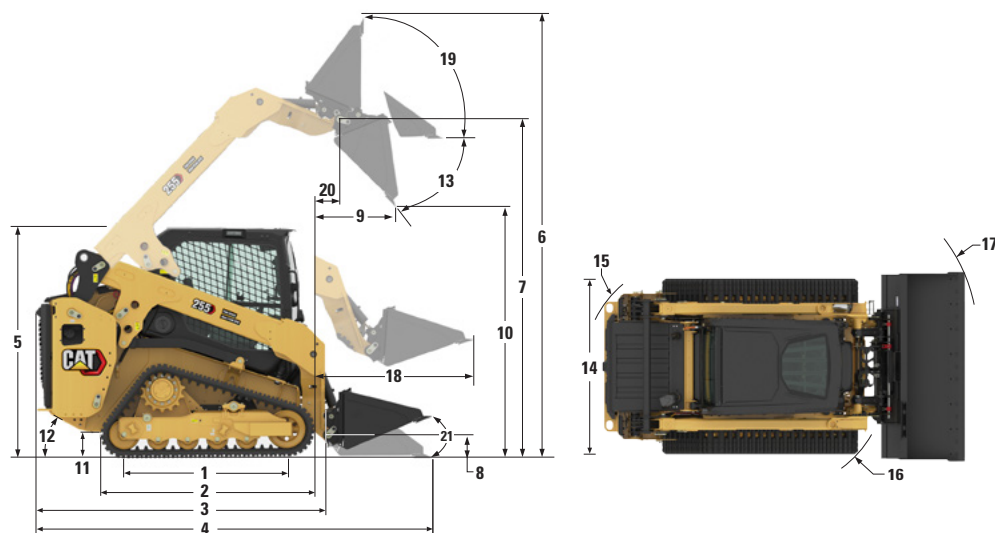
Operating Weight	4345 kg	9,578 lb
Tip Load	3238 kg	7,140 lb
Rated Operating Capacity (ROC) (35%)	1133 kg	2,499 lb
ROC (50%)	1619 kg	3,570 lb
Enclosed Cab Adds to Operating Weight	+82 kg	+180 lb
Tip Load	+49 kg	+108 lb
ROC (35%)	+17 kg	+38 lb

Weights* (continued)

Counterweight Adds to Operating Weight	+125 kg	+276 lb
Tip Load	+172 kg	+379 lb
ROC (35%)	+60 kg	+132 lb
Wide Track (400 mm/15.7 in) Adds to Operating Weight	+54 kg	+119 lb
Tip Load	+36 kg	+79 lb
ROC (35%)	+13 kg	+28 lb

*Operating Weight, Operating Specifications, and Dimensions are all based on 1730 mm (68") Low Profile Bucket with bolt-on cutting edge, 320 mm (12.6") narrow track, 75 kg (165 lb) operator, open canopy, mechanical suspension seat, HD battery with disconnect, standard flow hydraulics, manual coupler, and full fluids. No external counterweights, and no dual self-level/return-to-dig/work tool positioner.

255 Compact Track Loader



Dimensions*

1 Length of Track on Ground	1485 mm	58.5 in	12 Departure Angle	30.6°
2 Overall Length of Track	1948 mm	76.7 in	13 Maximum Dump Angle	46.3°
3 Length without Bucket	2800 mm	110.2 in	14 Vehicle Width (320 mm/12.6 in tracks)	1675 mm 65.9 in
4 Length with Bucket on Ground	3430 mm	135 in	Vehicle Width (400 mm/15.7 in tracks)	1760 mm 69.3 in
5 Height to Top of Cab	2115 mm	83.3 in	15 Turning Radius from Center – Machine Rear	1656 mm 65.2 in
6 Maximum Overall Height	3941 mm	155.2 in	16 Turning Radius from Center – Coupler	1377 mm 54.2 in
7 Bucket Pin Height at Maximum Lift	3150 mm	124.0 in	17 Turning Radius from Center – Bucket (racked)	2105 mm 82.9 in
8 Bucket Pin Height at Carry Position	195 mm	7.7 in	18 Maximum Reach with Arms Parallel to Ground	1162 mm 45.7 in
9 Reach at Maximum Lift and Dump	540 mm	21.3 in	19 Rack Back Angle at Maximum Height	85.2°
10 Clearance at Maximum Lift and Dump	2424 mm	95.4 in	20 Bucket Pin Reach at Maximum Lift	151 mm 5.9 in
11 Ground Clearance	212 mm	8.3 in	21 Bucket rollback angle (ground level)	27°

Power Train

Travel Speed (Forward or Reverse)		
One Speed	9.2 km/h	5.7 mph
Two Speed	14.7 km/h	9.1 mph

Hydraulic System

Hydraulic Flow – Standard:		
Loader Hydraulic Pressure	24 130 kPa	3,500 psi
Loader Hydraulic Flow	86 L/min	23 gal/min
Hydraulic Power (calculated)	34.6 kw	46.4 hp
Hydraulic Flow – High Flow:		
Loader Hydraulic Pressure	24 130 kPa	3,500 psi
Loader Hydraulic Flow	113 L/min	30 gal/min
Hydraulic Power (calculated)	45.4 kW	60.9 hp
Hydraulic Flow – High Flow XPS:		
Loader Hydraulic Pressure	28 000 kPa	4,061 psi
Loader Hydraulic Flow	113 L/min	30 gal/min
Hydraulic Power (calculated)	52.7 kW	70.7 hp

Operating Specifications*

Rated Operating Capacity:		
35% Tipping Load	1133 kg	2,499 lb
50% Tipping Load	1619 kg	3,570 lb
Rated Operating Capacity with Optional Counterweight (at 35%)		
Tipping Load	1194 kg	2,631 lb
Breakout Force, Tilt Cylinder	3238 kg	7,140 lb
Breakout Force, Lift Cylinder	3060 kg	6,746 lb
Ground Contact Area (320 mm/12.6 in track)	2674 kg	5,895 lb
Ground Contact Area (400 mm/15.7 in track)	1.02 m ²	1,582 in ²
Ground Pressure (320 mm/12.6 in track)	1.28 m ²	1,977 in ²
Ground Pressure (400 mm/15.7 in track)	41.8 kPa	6.1 psi
	34.0 kPa	4.9 psi

Cab

Rollover Protective Structure (ROPS)	ISO 3471:2008
Falling Object Protective Structure (FOPS)	ISO 3449:2005 Level I

Service Refill Capacities

Cooling System	11.5 L	3.0 gal
Engine Crankcase	8.2 L	2.2 gal
Fuel Tank	95 L	25.1 gal
Hydraulic System	36.8 L	9.7 gal
Hydraulic Tank	26 L	6.9 gal

The following information applies to the machine at the time of final manufacture as configured for sale in the regions covered in this document. The content of this declaration is valid as of the date issued; however, content related to machine features and specifications are subject to change without notice. For additional information, please see the machine's Operation and Maintenance Manual.

For more information on sustainability in action and our progress, please visit <https://www.caterpillar.com/en/company/sustainability>.

Engine

- The Cat® C2.8T (turbo) engine meet U.S. EPA Tier 4 Final and EU Stage V emission standards.
- Cat diesel engines are required to use ULSD (ultra-low sulfur diesel fuel with 15 ppm of sulfur or less) or ULSD blended with the following lower-carbon intensity fuels up to:
 - ✓ 20% biodiesel FAME (fatty acid methyl ester)
 - ✓ 100% renewable diesel, HVO (hydrotreated vegetable oil) and GTL (gas-to-liquid) fuels
 Refer to guidelines for successful application. Please consult your Cat dealer or "Caterpillar Machine Fluids Recommendations" (SEBU6250) for details.

Air Conditioning System

- The air conditioning system on this machine contains the fluorinated greenhouse gas refrigerant R134a (Global Warming Potential = 1430). The system contains 0.85 kg of refrigerant which has a CO₂ equivalent of 1.216 metric tonnes.

Paint

- Based on best available knowledge, the maximum allowable concentration, measured in parts per million (PPM), of the following heavy metals in paint are:
 - Barium < 0.01%
 - Cadmium < 0.01%
 - Chromium < 0.01%
 - Lead < 0.01%

Sound Performance

Inside Cab* – 80 dB(A)

Outside Cab** – 103 dB(A)

- Cab and ROPS are standard in North America and Europe.
 - *The declared dynamic operator sound pressure levels per ISO 6395:2008. The measurements were conducted with the cab doors and windows closed and at 70% of the maximum engine cooling fan speed. The sound level may vary at different engine cooling fan speeds.
 - **The labeled sound power level for the CE marked configurations when measured according to the test procedure and conditions specified in 2000/14/EC.

Oils and Fluids

- Caterpillar factory fills with ethylene glycol coolants. Cat Diesel Engine Antifreeze/Coolant (DEAC) and Cat Extended Life Coolant (ELC) can be recycled. Consult your Cat dealer for more information.
- Cat Bio HYDO™ Advanced is an EU Ecolabel approved biodegradable hydraulic oil.
- Additional fluids are likely to be present, please consult the Operations and Maintenance Manual or the Application and Installation guide for complete fluid recommendations and maintenance intervals.

Features and Technology

- The following features and technology may contribute to fuel savings and/or carbon reduction. Features may vary. Consult your Cat dealer for details.
 - Extended life coolant and long life hydraulic fluid extend maintenance intervals to reduce fluid consumption
 - Boost productivity with Cat technologies like work tool positioner, return to dig and Cat Smart Attachments
 - Save fuel with efficiency features such as foot throttle pedal and cooling system demand fan
 - Remote machine monitoring through onboard Product Link telematics

Recycling

- The materials included in machines are categorized as below with approximate weight percentage. Because of variations of product configurations, the following values in the table may vary.

Material Type	Weight Percentage
Steel	64.94
Rubber	8.85
Iron	7.66
Other	4.57
Nonferrous Metal	3.90
Fluid	3.43
Plastic	2.31
Mixed Metal	2.00
Mixed-Metal and Nonmetal	1.18
Uncategorized	1.16
Mixed Nonmetallic	0.01
Total	100.00

- A machine with higher recyclability rate will ensure more efficient usage of valuable natural resources and enhance End-of-Life value of the product. According to ISO 16714:2008 (Earth-moving machinery – Recyclability and recoverability – Terminology and calculation method), recyclability rate is defined as percentage by mass (mass fraction in percent) of the new machine potentially able to be recycled, reused or both.

All parts in the bill of material are first evaluated by component type based on a list of components defined by the ISO 16714:2008 and Japan CEMA (Construction Equipment Manufacturers Association) standards. Remaining parts are further evaluated for recyclability based on material type.

Because of variations of product configurations, the following values in the table may vary.

Recyclability – 95%

The data provided above was based on the product configuration as provided by the individual product group.

255 Compact Track Loader

ATTACHMENTS

Get more from your machine with Cat attachments. Choose from a wide variety of options and tailor your machine to different tasks and conditions.

Augers
Backhoes
Bale Grabs
Bale Spears
Blades, Grader, Box, Angle and Dozer
Brooms, Angle, Pickup and Utility
Brushcutters
Buckets
Cold Planers
Compactors
Fork Tines and Carriages
Hammers
Material Handling Arm
Mulchers
Nursery Forks
Rakes, Grapple, Landscape
and Power Box
Shears
Snow Blowers
Snow Plows
Snow Pushes
Snow Wings
Stump Grinders
Tillers
Trenchers
Wheel Saws
Smart Backhoe
Smart Dozer Blade with Assist
Smart Grader Blade with Assist



MANDATORY EQUIPMENT

- Quick Coupler: Manual or Hydraulic
- High Visibility Seat Belt: 50 mm (2 in), 75 mm (3 in), or 3-point lap/shoulder
- Steel Imbed Rubber Track – 320 mm (12.6 in) bar tread, 400 mm (15.7 in) block tread, 400 mm (15.7 in) bar tread
- Dual Flange Front Idler/Single Flange Rear Idler or Triple Flange Front/Rear Idlers

PERFORMANCE PACKAGES

- Performance Package HP1: *Standard Flow Hydraulics*
- Performance Package HP3: *High Flow XPS Hydraulics*

COMFORT PACKAGES

- Open canopy: *Cup Holder, Cell Phone Pocket, choice of vinyl Seat (Mechanical Suspension, High Back/Heated/Air Ride Seat)*
- Enclosed Cab with heat and air conditioning: *Side Windows, Cup Holder, Cell Phone Pocket, choice of Seat (Mechanical Suspension, High Back/Heated Air Ride Seat, High Back/Ventilated and Heated Air Ride Seat) and Door choice (Glass or Polycarbonate)*

TECHNOLOGY PACKAGES

- T2 – *Standard Display, Standard Joysticks, traditional Key Start switch, and Rear-view camera.*
- T4 – *Advanced Touchscreen Monitor, Advanced Joysticks, Push start, X-mount cell phone holder, and a Rear-view camera.*
- T5 – *T4 + 2 additional side view cameras.*

RADIO

- Radio, *none* – *for open canopy machines and countries not certified for Bluetooth® technology*
- Integrated AM/FM radio with Bluetooth technology. *Includes USB port, 3.5 mm (0.13 in) AUX input, and BT microphone. Only for use with enclosed cab. Availability varies by country.*
- Integrated DAB+/AM/FM radio with Bluetooth technology. *Includes USB port, 3.5 mm (0.13 in) AUX input, and BT microphone. Only for use with enclosed cab. Availability varies by country.*

PRODUCT LINK™

- Product Link™ Basic series PL243
- Product Link Elite series PLE643

COOLING FAN

- On-demand, variable speed hydraulic cooling fan
- On-demand, variable speed hydraulic cooling fan, with automatic and manual purge reversing operation

GUARDING AND SEALING PACKAGES

- HD0 – *base guarding and sealing (engine air inlet rain cap, front cab-to-frame sealing, and hydraulic fill access door)*
- HD1 – *intermediate guarding and sealing† (HD0 + cab-to-frame side sealing, lockable fuel fill access door, tilt cylinder guarding, and drive line bottom guarding.)*
- HD2 – *most comprehensive guarding and sealing† (HD1 + turbo guard, exhaust stack wrap, DPF wrap, quick disconnect guarding, fully enclosed drive line guarding, under step hydraulic lines guard cover, engine air inlet pre-cleaner.)*

†Some equipment varies by region.

255 Compact Track Loader

STANDARD EQUIPMENT

ELECTRICAL

- Work Tool Electrical Harness
- Heavy duty battery
- Battery disconnect with lockout feature
- 12-volt Electrical System
- 85 Ampere Alternator
- LED Work Lights
- Auto Reverse Lights
- Switch Backlighting
- Interior LED Dome Light
- Backup Alarm
- Electrical Outlet, Beacon
- Exterior Courtesy Lighting

OPERATOR ENVIRONMENT

- Full color LCD monitor: *Creep speed control, Drive response adjustment, Implement response adjustment, Drive Power Priority adjustment, Language selection (× 32), Multi-operator Anti-theft Security System and Monitoring, Maintenance schedule and reminders, Event and Diagnostic Code monitoring, Date /Time/ Units/Brightness settings, and Smart Technology for use with Smart Attachments.*
- Operator Warning System Indicators: *Air Filter Restriction, Alternator Output, Armrest Raised/Operator Out of Seat, Engine Coolant Temperature, Engine Oil Pressure, Glow Plug Activation, Hydraulic Supply Filter Restriction, Hydraulic Oil Temperature, Park Brake Engaged, Engine Emission System (where applicable)*
- Gauges: *Fuel Level, Hour Meter, Hydraulic Temperature, Hour Meter, Battery Voltage, Tachometer*
- Fold In Ergonomic Contoured Armrest
- Control Interlock System, when operator leaves seat or armrest raised: *Hydraulic System Disables, Hydrostatic Transmission Disables, Parking Brake Engages*
- ROPS Cab, Tilt Up
- FOPS, Level I
- Top and Rear Windows
- Floor Mat
- Headliner
- Interior Rearview Mirror
- Horn
- Hand (Dial) Throttle, Electronic
- Seat Mounted Joystick Controls
- Cell Phone Storage Pocket
- Cup Holder
- 12-volt power port
- Foot Throttle
- Rear-view Camera

HYDRAULICS

- Selectable control pattern – ISO or H
- Electro/hydraulic implement control
- Electro/hydraulic hydrostatic transmission control
- Speed sensor guarding
- Heavy duty flat faced quick disconnects with integrated pressure release lever
- Hydraulic oil level sight gauge

POWER TRAIN

- Cat C2.8T turbocharged diesel engine, meeting Tier 4 Final and Stage V Emission Standards:
 - Glow plugs starting aid
 - Liquid cooled, direct injection
- Extended life antifreeze (–37° C, –34° F)
- Air cleaner, dual element, radial seal
- Scheduled Oil Sampling (S-O-SSM) Valve, Hydraulic Oil
- Ecology drain – coolant
- Radiator coolant level sight gauge
- Radiator expansion bottle
- Filter, hydraulic supply, cartridge type
- Filter, hydraulic return, cartridge type
- Filter, canister type, engine oil
- Filter, canister type, fuel and water separator
- Radiator/hydraulic oil
- Cooler (side-by-side)
- Spring applied, hydraulically released, parking brakes
- Hydrostatic transmission
- Lockable fuel cap
- Hydraulic demand cooling fan
- Auto engine idle

UNDERCARRIAGE

- Torsion Suspension (4 independent torsion axles)
- Two speed travel
- Integrated tie downs on track frame (4)

FRAME

- Machine tie down points (9)
- Removable panels for machine frame cleanout
- Support, lift arm
- Steel rear and front bumpers, welded
- Fuel fill, machine right hand side

OTHER

- Auxiliary Hydraulics, Continuous Flow
- Telematics, Product Link, Cellular
- Steel engine door with replaceable louvers
- Engine door – lockable
- Work tool attachment coupler
- Cat ToughGuardTM hose

OPTIONAL EQUIPMENT

- External Counterweights
- Beacon, LED
- Engine Block Heater – 120V
- Oil, Hydraulic, Cold Operation
- 4-point machine lifting eyes
- Paint, Custom
- Speed Sensitive Ride Control
- Bluetooth Key Security
- Attachment Hose Guide
- Corrosion Inhibitor Coating

255 Compact Track Loader

For more complete information on Cat products, dealer services, and industry solutions, visit us on the web at www.cat.com

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AEHQ8449-04 (06-2024)
Replaces AEHQ8449-03
Build Number: 05A
(N Am, EU, Chile, Turkey,
Colombia, S Korea)



Meeting Cycle: Thursday, November 7, 2024

Subject: **Resolution** - approving the purchase and installation of a metal garage storage building from ProBuilt of Memphis.

Staff Contact: Andrew Fisher, Parks and Recreation Director

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve resolution R-164-2024.

BUDGET IMPACT

This expenditure is appropriated in the Fiscal Year 2025 Annual Budget for the IH Park Improvement Fund.

DISCUSSION

The Parks and Recreation Department is growing and in need of additional storage space. This structure will serve as the new Parks Maintenance building to store all equipment necessary for day-to-day operations with room to expand for future equipment needs. The existing Parks Maintenance building will serve as storage for the Lakeland Senior Center and special events, as well as the Recreation department.

RESOLUTION R-164-2024

APPROVING THE PURCHASE AND INSTALLATION OF A METAL GARAGE
STORAGE BUILDING FROM PROBUILT OF MEMPHIS.

WHEREAS, the City of Lakeland, Tennessee, (the “City”) desires to purchase one (1) 30’x50’x12’ metal garage storage building; and,

WHEREAS, the Parks and Recreation Department is in need of additional storage space; and,

WHEREAS, funding for this purchase is appropriated in the Fiscal Year 2025 Annual Budget for the IH Park Improvement Fund:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the City Manager is hereby authorized to purchase one (1) 30’x50’x12’ metal garage storage building in the amount of Seventeen Thousand Nine Hundred Dollars (\$17,900.00).

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 7TH day of November 2024, the public welfare requiring it.

ATTEST:

Josh Roman
Mayor

Cheyenne Carter
City Recorder



ProBuilt of Memphis

3840 Winchester Ave
Memphis, TN 38118
(901)881-3500 Office

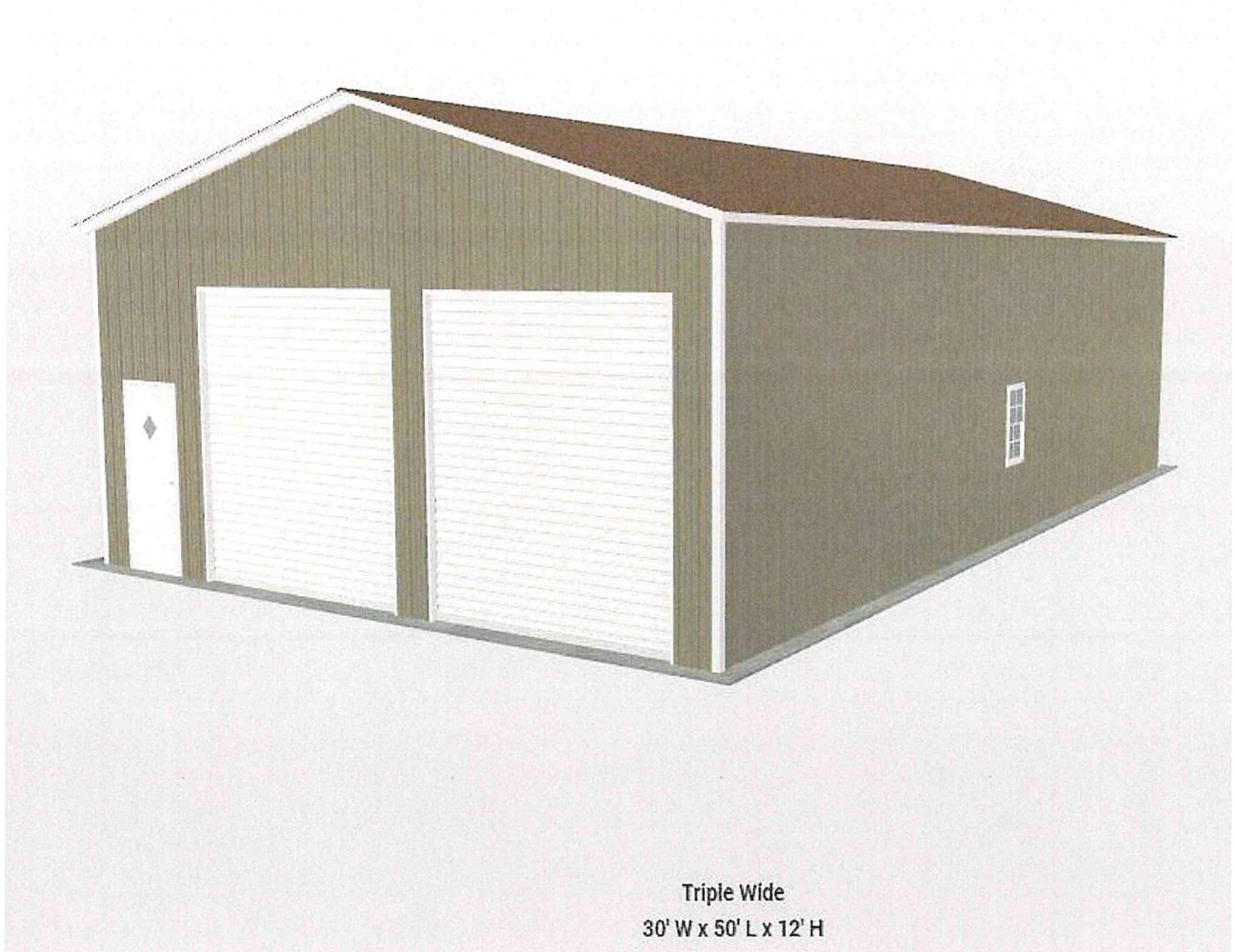
10/29/2024

John Proctor
10001 Hwy 70
Lakeland, TN 38002

30x50x12 Metal Garage
Vertical walls and roof
(2) 10x10 rollup doors
(1) 36"x80" man door

\$17,900 + tax = \$19,645.25

If this is for the City of Lakeland, I'm sure it's tax exempt. But I included an option with tax, in case the funds come from a different line item.



Meeting Cycle: Thursday, November 7, 2024

Subject: **Resolution** - approving a residential subdivision contract with Evergreen Planned Development (PD), LLC for a 32 lot subdivision to be known as Evergreen Planned Development Phase 2.

Staff Contact: Emily Harrell, City Engineer

STAFF RECOMMENDATION

City staff recommends the Board of Commissioners approve resolution R-162-2024.

BUDGET IMPACT

There are no budgetary expenditures related to this item. The development fees for Phase 2 of Evergreen PD include \$72,164.12 in revenue for the General Fund and \$99,200.00 in revenue for the Sewer Fund.

DISCUSSION

Evergreen Planned Development ("PD") is a 138-lot residential subdivision on approximately 80 acres located at the corner of Evergreen Road and Old Brownsville Road. The Outline Plan was originally approved in 2007. An amendment to the Outline Plan was approved in October 2020 and the Preliminary Development Plan was approved in October 2024.

Evergreen PD Phase 2 consists of 32 lots on approximately 13 acres on the east side of the property. The development contract includes construction of all roads, sanitary sewer, storm sewer, water, electricity and gas required for this phase of the development. A security in the amount of \$401,063.23 will be required to ensure public and common improvements are completed per the approved plans and specifications.

RESOLUTION R-162-2024

APPROVING A RESIDENTIAL SUBDIVISION DEVELOPMENT CONTRACT WITH
EVERGREEN PLANNED DEVELOPMENT (PD), LLC FOR A 32 LOT SUBDIVISION
TO BE KNOWN AS EVERGREEN PLANNED DEVELOPMENT PHASE 2

- WHEREAS,** Developer is the owner of record of tracts of land zoned AG-Agriculture which contains approximately 12.629 acres, also identified by Parcel ID # LO140 00326 LO140 00327 in the official records of the Shelby County Recorder's Office ("Subdivision Site") and desires to improve and develop the Subdivision Site into a 32-lot subdivision to be known as **EVERGREEN PLANNED DEVELOPMENT PHASE 2** ("Subdivision"); and
- WHEREAS,** the City's Municipal Planning Commission ("MPC"), has approved the subdivision plan submitted by Developer with respect to the Subdivision ("Preliminary Development Plan"); and,
- WHEREAS,** Developer is required to install, at its expense, public improvements, including, but not limited to, water lines, fire hydrants, sanitary sewer, underground electrical power and gas utilities, grading, storm water drainage system, streets, curbs, gutters, sidewalks, street name signs, traffic control devices and streetlights in connection with development of the Subdivision at its own cost; and,
- WHEREAS,** Developer may be required, pursuant to its application and MPC and/or the City's Design Review Commission ("DRC") approval, to install, at its expense, private improvements and amenities, including, but not limited to, private streets and alleys, fences, entrance treatments and signage, walls, lakes, playgrounds, swimming pools, tennis courts and other recreational facilities, common open space, walking trails, storm water retention and/or detention basins, landscaping and related irrigation systems, relative to said Subdivision, none of which shall be accepted for maintenance by the City; and,
- WHEREAS,** the City is willing to provide services to the Subdivision in accordance with the City's standard policies and applicable rates; and,
- WHEREAS,** the City and Developer, by the terms of this Contract, desire to specify those detailed costs, division of responsibilities and maintenance and other conditions in addition to the Land Development Regulations and the Construction Plat/Plan, heretofore approved, according to State Statute by the MPC and/or the Board of Commissioners ("BOC"), said additional terms not to be considered as a variance from or modification to Regulations, plans or plat, as approved on the date of execution; and,
- WHEREAS,** this Contract is entered into by the City at the insistence of Developer upon the understanding that Developer shall remain fully responsible for

RESOLUTION R-162-2024

APPROVING A RESIDENTIAL SUBDIVISION DEVELOPMENT CONTRACT WITH
EVERGREEN PLANNED DEVELOPMENT (PD), LLC FOR A 32 LOT SUBDIVISION
TO BE KNOWN AS EVERGREEN PLANNED DEVELOPMENT PHASE 2

specific compliance with the requirement of the Land Development Regulations, the Technical Specifications of the City and the Construction Plat/Plan, duly prepared by Developer subject to review and recommendation of the City Engineer and the City Planner or person(s) designated by the City Manager; and,

WHEREAS, the City is willing to approve the Subdivision, and all property and/or all street dedications, subject to Developer's compliance with any and all applicable Federal and State of Tennessee laws and local statutes, ordinances, codes, rules and/or regulations in addition to the specific conditions hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the Mayor is hereby authorized to execute a development contract with **EVERGREEN PD, LLC** for a 32-lot subdivision to be known as **EVERGREEN PLANNED DEVELOPMENT PHASE 2**.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee on this 7th day of November 2024, the public welfare requiring it.

ATTEST:

Michele Dial
Vice Mayor

Cheyenne Carter
City Recorder

RESIDENTIAL SUBDIVISION DEVELOPMENT CONTRACT

INTRODUCTION

THIS RESIDENTIAL SUBDIVISION DEVELOPMENT CONTRACT (“Contract”) is made and entered into this the _____ day of _____, **2024**, by and between **EVERGREEN PD, LLC**, a limited liability company organized and existing under the laws of the State of Tennessee (“Developer”), and **THE CITY OF LAKELAND TENNESSEE**, a municipality organized and existing under the laws of the State of Tennessee (“City”).

W I T N E S S E T H:

WHEREAS, Developer is the owner of record of a tract¹ of land zoned AG-Agriculture which contains approximately 12.629 acres, also identified by Parcel ID # L0140 00326 and L0140 00327 in the official records of the Shelby County Recorder’s Office (“Subdivision Site”) and desires to improve and develop the Subdivision Site into a 32-lot subdivision to be known as **Evergreen Planned Development Phase 2** (“Subdivision”); and

WHEREAS, the City’s Municipal Planning Commission (“MPC”), has approved the subdivision plan submitted by Developer with respect to the Subdivision (“Preliminary Development Plan”); and

WHEREAS, Developer is required to install, at its expense, public improvements, including, but not limited to, water lines, fire hydrants, sanitary sewer, underground electrical power and gas utilities, grading, storm water drainage system, streets, curbs, gutters, sidewalks, street name signs, traffic control devices and street lights in connection with development of the Subdivision at its own cost; and

WHEREAS, Developer may be required, pursuant to its application and MPC and/or the City’s Design Review Commission (“DRC”) approval, to install, at its expense, private improvements and amenities, including, but not limited to, private streets and alleys, fences, entrance treatments and signage, walls, lakes, playgrounds, swimming pools, tennis courts and other recreational facilities, common open space, walking trails, storm water retention and/or detention basins, landscaping and related irrigation systems, relative to said Subdivision, none of which shall be accepted for maintenance by the City; and

WHEREAS, the City is willing to provide services to the Subdivision in accordance with the City’s standard policies and applicable rates; and

WHEREAS, the City and Developer, by the terms of this Contract, desire to specify those detailed costs, division of responsibilities and maintenance and other conditions in addition to the Land Development Regulations and the Construction Plat/Plan, heretofore approved, according to

¹ If Developer is not the owner of record of the Subdivision Site but has permission from the actual owner of record to develop same, the owner will be required to join Developer herein and all obligations imposed upon Developer hereunder shall be jointly and severally imposed on Developer and Owner.

State Statute by the MPC and/or the Board of Commissioners (“BOC”), said additional terms not to be considered as a variance from or modification to Regulations, plans or plat, as approved on the date of execution; and

WHEREAS, this Contract is entered into by the City at the insistence of Developer upon the understanding that Developer shall remain fully responsible for specific compliance with the requirement of the Land Development Regulations, the Technical Specifications of the City and the Construction Plat/Plan, duly prepared by Developer subject to review and recommendation of the City Engineer and the City Planner or person(s) designated by the City Manager; and

WHEREAS, the City is willing to approve the Subdivision, and all property and/or all street dedications, subject to Developer’s compliance with any and all applicable Federal and State of Tennessee laws and local statutes, ordinances, codes, rules and/or regulations in addition to the specific conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties herein contained and all other consideration herein recited, it is understood and agreed as follows:

GENERAL PROVISIONS

1. Construction Standards. Developer shall construct the Subdivision in accordance with the Outline Plan approved by the BOC on July 5, 2007, Outline Plan Amendment approved November 13, 2014, Outline Plan Amendment dated September 17, 2020 approved by the MPC on September 17, 2020 and BOC on October 22, 2020, Preliminary Development Plan dated September 9, 2020 approved by the MPC on October 10, 2024 and Construction plans approved by City Engineer. and if applicable, the requirements of the DRC, and in accordance with the requirements of (a) City Land Development Regulations; (b) City Zoning Ordinance and any other applicable Ordinances of the City; (c) City Design Guidelines; (d) the applicable building and fire safety regulations of Shelby County Tennessee. Items (a) through (d) are hereby made a part of this Contract by reference as if fully set forth herein and are hereinafter referred to collectively as “Codes”. References herein to said Codes are to those in effect on the date this Contract is approved.

Developer shall also construct the Project in accordance with the following standards and specifications, all of which are incorporated herein by reference as if fully set forth:

- (a) The standards of the American Society of Testing Materials (ASTM);
- (b) The requirements of the Office of Safety and Health Administration (OSHA);
- (c) The requirements of the Federal Americans with Disabilities Act (ADA);
- (d) The Standard Specifications for Road and Bridge Construction of the Tennessee Department of Transportation; and
- (e) The Standards of the American National Standards Institute (ANSI).
- (f) The requirements of the Tennessee Department of Environment and Conservation.

All standards and specifications set forth above are those that are in effect on the date this Contract is approved.

2. Inspection and Testing – Costs. That Developer shall pay, on a monthly basis, the reasonable expenses of engineering inspection by the City Engineer or his designee, along with any laboratory testing expenses reasonably deemed necessary by the City Engineer and incurred for material testing and soil density and moisture content test, provided, however, that Developer shall remain fully responsible for construction to the approved design and quality control, and that the City Engineer is vested with the right of periodic inspections, final approval and stop work order as a measure of secondary or subsequent enforcement.

3. Approval of Subdivision Plans. In addition to the approval of MPC, Developer shall, within three (3) years of receiving approval of the Preliminary Development Plan, also obtain the approval of the City Engineer for the initial phase Subdivision Construction Plans. All construction relating to the Subdivision shall be subject to inspection and approval by the City until the end of the warranty period and release of Security.

OWNERSHIP

4. Developer agrees it shall have no claim, direct or implied, in the title or ownership of the public improvements, except sidewalks, specified in this contract that are to be dedicated to the City by virtue of the official recording of the Final Plat for the Subdivision and accepted (except for sidewalks) for perpetual maintenance by the City (the “Public Improvements”). The City, upon Initial Acceptance [hereinafter defined] and Final Plat recording, will take full title to the Public Improvements. Maintenance and or warranty responsibilities of the Developer prior to the end of the warranty period and release of Security are provided for hereinafter.

5. Developer agrees that it will not transfer ownership of the Subdivision Site without first providing the City with notice of when the transfer is to occur and the identity, current address and telephone number of the proposed Transferee. If it is Transferee’s intention to develop the Subdivision in accordance with this Contract, Developer agrees to provide the City an Assumption Agreement by which Transferee agrees to perform the obligations required under this Contract and to provide the security needed to assure such performance. Said Assumption Agreement will be subject to the approval of the BOC and City Attorney. Unless the Assumption Agreement specifically so provides, Developer shall not be released from its obligations hereunder. The City will not unreasonably withhold its consent with respect to the foregoing.

6. Developer understands that if it transfers the Subdivision site without first providing the notice of transfer and Assumption Agreement as required herein and receiving the approval of the BOC and City Attorney, it will be in breach of this Contract and the City may require that all work be stopped relative to the Subdivision and subject Developer to a declaration of fault.

7. Developer agrees to furnish, on demand, satisfactory evidence that it has the lawful right to enter into this Contract for the purposes herein contained. Any security for Developer's obligations hereunder is subject to the approval of the City Attorney.

8. Duration of Obligations. The obligations of Developer hereunder shall run with the Subdivision Site until Developer's obligations have been fully met. Any party taking title to the Subdivision Site, or any part thereof, shall take said real property subject to such obligations.

SECURITY

9. (a) Developer will furnish to the City, not later than the execution of this Contract by Developer, an estimate as to quantity and cost of all public and private improvements, on or off site (i.e., specific Design Review Commission requirements: brick walls and entrance treatments, landscaping, fencing, lighting, etc.) required by the City pursuant to MPC and/or DPC approval, with the exception of electrical power, water and gas utilities.

(b) Developer shall provide an Irrevocable Letter of Credit capable of presentation to the issuer in Shelby County, Tennessee, issued from a bank doing business, subject to service of process, and subject to both subject matter and personal jurisdiction in Shelby County, Tennessee, with no fixed expiration date, or other adequate security acceptable to the City ("Security") in the amount of **Four Hundred One Thousand Sixty Three Dollars and Twenty Three Cents (\$401,063.23)** for all public and/or private internal improvements, plus a sum equal to the cost, as estimated by Developer and approved by the City Engineer, of improvements public or private required by the City pursuant to MPC and/or DRC approval but to be constructed or installed off of the Project Site. It is the policy of the City to only accept as Security an Irrevocable Letter of Credit, cash or its equivalent. The form and substance of any Irrevocable Letter of Credit is subject to the approval of the City Attorney.

(c) The Final Plat of the Subdivision site shall not be recorded with the Shelby County Register's Office until the Subdivision has reached the level of Substantial Completion, as hereinafter defined. At that time, upon application of Developer and approval of the BOC, the amount of Security may be reduced to the cost, as estimated by the City, of uncompleted requirements relative to the Subdivision plus a reasonable sum to cover Developer's warranty obligations hereunder.

(d) Although the amount of the Security may be less than the total cost of completion by Developer of all of Developer's obligations hereunder, it is understood and agreed that the Security, subject to its limit, is to furnish security for the performance of all of Developer's obligations hereunder but that such obligations are not limited by the amount of such Security. The Security shall remain in force through the end of the warranty period, although Security may be reduced from time to time as provided herein. All collection expenses, court costs and reasonable attorney's fees incurred by the City in connection with collection under the Security shall be paid by Developer and such obligation shall be secured by the Security. The City shall be entitled to recover the cost thereof, reasonable administrative fees, reasonable attorney's fees and interest calculated on any unpaid balance at the rate of ten percent (10%) per annum until the unpaid balance is fully paid.

(e) Developer agrees that if the Security furnished to secure the obligations of Developer under this Contract, due to inflation and/or rising costs, previous errors in estimation, or otherwise, is inadequate to secure such obligations at the time an extension of time is sought, it will provide additional security to bring the Security amount in line with current cost projections made by the City Engineer.

INSURANCE

10. (a) Developer, upon affixing its signature to this agreement, shall provide at no cost to the City, a policy or policies of insurance to the City from insurance companies acceptable to the City and licensed by the Tennessee State Insurance Commissioner to conduct business in the State of Tennessee with coverage limits as set forth below. Said insurance policy or policies shall be evidenced by current original certificates and/or policies attached to this Contract and kept in full force and effect throughout the life of this Contract as required by the City. Each certificate or policy shall require and state in writing that “thirty (30) days prior to cancellation or material changes in the policies, notice thereof shall be given to the City of Lakeland Tennessee by registered mail, return receipt requested.”

(b) Developer shall purchase and maintain commercial general liability insurance and umbrella liability insurance with minimum limits of \$1,500,000.00 per occurrence and other insurance that shall insure against claims arising out of Developer’s performance under this Contract, whether such claims arise out of the actions of Developer, any subcontractor of the Developer, their employees, agents or independent contractors or anyone for whose acts any of them may be liable, including, without limitation:

(1) Claims brought under worker’s compensation in accordance with the Statutory Requirements and limits of the State of Tennessee. “All States Endorsement” is required or a Certificate of the State Worker’s Compensation Board showing proof of ability to pay compensation directly; provided, however, if Developer has no employees who are eligible to be covered under worker’s compensation insurance, Developer shall not be required to furnish insurance against worker’s compensation but shall require the party(s) contracting with Developer to perform work on the Project Site to furnish evidence of such insurance for the employees of same as required above;

(2) Claims for the personal injury, occupational illness or death of Developer’s employees, if any;

(3) Claims for the personal injury, illness or death of any person other than Developer’s employees or agents;

(4) Claims for injury to or destruction of tangible property, including loss of use resulting there from;

(5) Claims for property damage or personal injury or death of any person arising out of the ownership, maintenance or use of any motor vehicle;

(6) Claims by third parties for personal injury and property damage arising out of Developer's failure to comply with Developer's obligations under this contract;

(7) Premises and Operations;

(8) Independent Contractors;

(9) Products and Completed Operations;

(10) Blanket Contractual or its current equivalent policy language;

(11) XCU (Explosion, Collapse and Underground) Coverage or its current equivalent policy language;

(12) Broad Form Property Damage or its current equivalent policy language;

(13) Commercial automobile liability insurance covering owned, hired and non-owned vehicles.

(c) The insurance coverage required by this paragraph shall include the coverage specified above with policy limits of not less than \$1,500,000.00 Combined Single Limit general liability and \$1,500,000.00 Combined Single Limit automobile liability (including, but not limited to, bodily injury (including death) and property damage) per occurrence. These minimum limits may be met through a combination of primary and umbrella insurance policies. The commercial general liability insurance coverage shall include completed "incident" as opposed to "claims made" insurance coverage and liability insurance applicable to Developer's obligations under this Contract. All such insurance shall remain in effect until the City issues its written notice of the release of Security of the completed Project. In addition, Developer shall maintain "incident" as opposed to "claims made" insurance for at least one (1) year after the City issues its written notice of release of Security. Developer shall furnish the City with evidence of the continuation of all such insurance at the time of issuance of the notice of release of Security.

(d) Prior to commencing any work on the Project, Developer will furnish to the City a certificate of insurance evidencing the required coverage.

(e) The furnishing of the aforesaid insurance shall not relieve Developer of its obligation to indemnify the City in accordance with the provisions of this Contract.

TIME SCHEDULE

11. (a) It is agreed by Developer and the City that this Contract shall become void and Developer will be in material breach of this Contract unless the following items are accomplished within one (1) year from the date of approval of this Contract by the BOC. Items (1), (2), (3), and (4) below must be completed prior to starting Construction below.

- (1) Signatures of Developer, and, if applicable, of Owner of the Subdivision Site, on two original copies of this Contract.
- (2) Signatures of Developer, and, if applicable, of Owner of the Subdivision Site, on two original copies of the Inspection and Maintenance Agreement for Private Stormwater Facilities.
- (3) All fees paid to the City as specified herein.
- (4) Security is received by the City as specified herein.
- (5) Insurance certificate is received by the City as specified herein.

If items (1-5) above are completed within one year from the date of this Contract, Developer shall have one additional year to commence Construction.

“Construction” as used in this subsection is defined as the placing of construction materials in a permanent position and fastened permanently or extensive grading, including demolishing or removal of existing structures necessary for the development of the Subdivision.

(b) The failure of Developer to comply with the provisions of this paragraph shall, at the discretion of the City Manager, result in the approval of the City of Lakeland being withdrawn and the approvals of the MPC and, as applicable, the DRC similarly being withdrawn and of no further force and effect.

12. Developer shall substantially complete the Subdivision on a timely schedule and in an expeditious manner, with the date of Substantial Completion to be not later than four (4) years from the date the BOC approves this Contract. The term “Substantial Completion” as used herein shall be when Developer has completed all required Public and Private Improvements to the Subdivision Site, specifically including but not limited to sanitary sewer (unless served by septic system), water, natural gas and electricity service to each lot, and all required off-site Public Improvements relative to the Subdivision as verified by the City Engineer and approved by the MPC.

(a) Developer agrees that if due to unforeseen circumstances it is unable to complete all work included in this Contract within the time specified herein, it will submit a written request for extension of the Contract period to the City at least sixty (60) days prior to the expiration of the existing Contract period, specifying the reason for its failure to complete the work as agreed, and a prospective date for such completion.

(b) The City will not unreasonably withhold approval of extensions of time where Developer has complied with the requirements of notice to the City and provided the required additional Security, if any is needed.

13. Developer agrees that its failure to follow the extension of time procedure provided herein shall constitute a breach of this Contract. Developer agrees that should it fail to complete any part of the work outlined in this Contract in a good and workmanlike manner, as approved by the City Engineer, the City shall reserve the right to withhold and/or withdraw all building permits and/or sewer service within the Subdivision until all items of this Contract have been fulfilled by Developer.

14. (a) It is agreed that after the date of Substantial Completion, as recommended by the City Engineer and approved by the BOC, the City will record the Final Plat (Mylar) of the Subdivision in the Register's Office of Shelby County, Tennessee after Developer has submitted a Final Plat suitable for recording, provided the Security being held by the City to guarantee Developer's obligations under this Contract is sufficient to cover the cost of the remaining required Public Improvements and the private improvements as estimated by Developer's Engineer and approved by the City Engineer. If the Security being held by the City is not sufficient, Developer shall increase same accordingly prior to the City recording the Final Plat. The original Final Plat shall be retained by the City as a permanent record. Developer shall be responsible for paying all recording costs. Final Plat recording shall signify Initial Acceptance of the project.

(b) Developer shall provide the City with a copy of the Final Plat using State Plane Coordinate System with NAD – 83 datum on disk or CD in DXF format (AutoCAD Release 14 or more current) prior to recording of the Final Plat of the Project. All MTEXT must be exploded.

(c) Developer shall furnish as-built plans to the City on reproducible, stable mylar media. Said plans shall show the sanitary sewer, storm drainage system, grading, water main and service lines and streets within the Subdivision before the City shall record the Final Plat of the Subdivision. Departure from the original plans and specifications shall not be permitted without the approval of the City Engineer, the MPC, DRC, and BOC as necessary. In addition to the plans furnished on reproducible mylar media, Developer shall provide a scanned copy of the as-built plans as a TIF image on CD and a DXF copy (AutoCAD Release 14 or more current) of the as-built plans on CD.

(d) Developer shall also furnish, in writing, the itemized as-built construction cost of all public improvements.

15. (a) Sidewalks. Notwithstanding any provision to the contrary herein, Developer shall ultimately be responsible for the installation of all required sidewalks, at its expense, and will include in the Security an amount sufficient to insure installation of all required sidewalks. All required sidewalks shall be completed, without defect and on a lot-by-lot basis, prior to the issuance of a Certificate of Occupancy ("C. O.") to the owner of each lot. Developer shall be responsible for repairing any latent defects in the sidewalks prior to the issuance of a Certificate of Occupancy ("C. O.") to the owner of each lot. (All references to sidewalks herein include required handicap ramps.)

(b) Curb and Gutter. All required curb and gutter must be completed and without defect prior to the issuance of a Certificate of Occupancy ("C. O.") for the Subdivision.

Developer shall also be responsible for repairing any latent defects and/or failures in the curb and gutter that occur, or first appear, after the issuance of the relevant C.O. and prior to the end of the warranty period and release of Security for the Subdivision.

(c) Final Surface Asphalt. Developer shall furnish and install asphalt base and a final asphalt surface course (wearing surface) on all streets, public and private, as required hereunder in accordance with City specifications.

- (1) The final surface (1.5") shall not be installed until Seventy-Five Percent (75%) of the lots in the Subdivision are built upon or within four years after the issuance of the first building permit, whichever comes first, or as otherwise specified by the City.
- (2) Developer shall maintain all streets in accordance with the warranty provisions provided for herein.
- (2) Developer shall make all necessary adjustments to manholes and valve boxes to meet finished surface grade and to repair subsurface or base repair, as required, in areas designated by the City prior to the application of the final asphalt surface.

WARRANTY

16. Developer and City agree that neither the final certificate of payment nor any provision of this Contract or its incorporated documents nor partial or entire occupancy of the Subdivision shall constitute an approval or acceptance of any work not performed in accordance with the Contract and its incorporated documents, nor relieve Developer of liability with respect to any express warranty or responsibility for faulty materials or workmanship.

17. (a) Developer is required to complete the Public Improvements, which are ultimately to be accepted by the City for perpetual maintenance, and all other improvements required by the City relative to the Subdivision, in accordance with the terms of this Contract. Further, Developer is to correct any defects or failures in all of such improvements that occur within one (1) year of the Final Plat recording. Any defect first appearing within the applicable one (1) year period shall be required to be corrected by Developer; and thereafter Developer shall be required to correct any defect again occurring in or relating to what was previously corrected within a one (1) year period commencing from the date of approval by the City Engineer of such correction. If the defect recurs within any one (1) year of its repair, Developer shall remain obligated to correct it until the condition is satisfactory to the City after one (1) year from the date of its last repair. This Warranty does not diminish, but is in addition to, all other rights and liabilities assessed herein.

(b) No sooner than ten (10) months nor later than eleven (11) months after the Final Plat recording, Developer shall so notify the City Engineer and the City Engineer, or his/her designee, shall inspect the streets, curbs and gutters, sidewalks, storm drain system, detention basin, landscaping, irrigation, fencing and all other required improvements to determine any

defects or failures of the same. If no defects or failures are found, the City Engineer shall report the same to the BOC at a regular or special meeting within thirty (30) days of the date of said inspection. The BOC, provided it agrees with the City Engineer, shall approve the final release of the Security, which shall constitute the end of the warranty period for the Subdivision. If defects or failures are found upon the aforesaid inspection, written notification outlining deficiencies to be corrected shall be provided to Developer along with the time period for corrections, not to exceed sixty (60) days. Within seven (7) days of notification by Developer that such corrections have been made or the expiration of the time period, whichever occurs first, the City Engineer shall re-inspect for correction of defects and failures. If all deficiencies have not been corrected, the City Engineer shall provide an updated written notification of deficiencies and Developer shall have thirty (30) days to make the remaining corrections. If all corrections are not made at this time, the City may demand payment on the Security, and, upon collection, shall proceed to make the corrections. If and when Developer or the City, as the case may be, has corrected all failures and defects, and a period of one (1) year has expired from the date of such corrections without defects again appearing in the corrected work, the City Engineer shall report the same to the BOC at a regular or special meeting within thirty (30) days of the date of said re-inspection. The BOC, provided it agrees with the City Engineer, shall approve the final release of the Security, which shall constitute the end of the warranty period for the Subdivision.

(c) It is the intention of the parties hereto that any Public Improvement required of Developer relative to the Subdivision which was found to be satisfactory by the City Engineer upon inspection as provided in Section 17 (b) shall thereafter be the obligation of the City to maintain. However, any such improvement found to be unsatisfactory by the City Engineer upon the initial inspection as provided in Section 17 (b) or any later inspection made pursuant to Section 17 (b) shall not be the obligation of the City to maintain until same remains satisfactory to the City for a period of one (1) year from the date it was inspected and found to be satisfactory by the City Engineer.

(d) At any time during the one (1) year warranty period beginning from the date of the Subdivision Final Plat recording, the City Engineer may recommend to the BOC that a portion of the Security be released based upon the City Engineer's estimation of the needed Security to ensure that funds will be available to correct any then outstanding defects in the improvements or to correct any defects which have been corrected but may reoccur.

REQUIRED IMPROVEMENT AND RELATED FEES

WATER

18. Developer shall install, at its expense, all water mains, hydrants, valves and appurtenances to serve all lots within the Subdivision from the existing Memphis Light Gas & Water (MLGW) water system and to install, at its expense, water service lines and appurtenances from the water main to the meter center at the front property line of each lot. Further, Developer shall pay all engineering, testing and laboratory costs incident to the water service in and to the Subdivision. Additionally, Developer shall extend all water mains to within two feet of the property line of any roadways connecting to adjacent properties that may be served by said main(s).

19. Developer shall install at its expense fire hydrants throughout said Subdivision in accordance with the Shelby County Fire Code, and if not specified in said Code, the type and location of said hydrants is to be approved by the City Engineer.

SANITARY SEWER

20. Developer shall pay to the City, the sum of **Ninety Nine Thousand Two Hundred Dollars (\$99,200)**, which reflects the sewer development fee as required by Ordinance 07-105 and as amended in Ordinance 08-119.

21. Developer shall install at its expense a State Board of Health and City approved sewerage system complete with pumping stations (as necessary), force main, sewer mains, manholes and appurtenances, within and without the limits of the Project and sewer laterals to the front of each lot within said Project. Developer shall pay the cost of engineering, inspection, testing and laboratory costs incident to the sewer service in or to the Project. Developer shall provide and install, at its expense, a State and City approved outfall sewage system complete with necessary sewer mains, manholes, and service laterals in the Project and pump stations and force mains as approved by the City Engineer upon approval of the plans and specifications for the Project. Pump stations will not be allowed without specific approval from the City Engineer and the City Board of Sewerage Commissioners. Said service lateral connections shall be extended to the surface inside of the property line and capped six (6) inches below the surface of the ground with a protective cap pipe placed over it and extending thirty (30) inches into the air. Additionally, Developer shall extend all sewer mains to within two feet of the property line of all adjacent properties that may be served by said main(s).

22. Developer shall install at its expense a cellular based telemetry system as approved by the City of Lakeland, in accordance with specifications provided by City, on any and all sewer lift stations servicing said Project. Additionally, Developer shall install and maintain, at its expense, a sight proof fence in conformance with a design plan approved by the DRC around the perimeter of any and all sewer lift stations on said Project.

STREETS

23. Developer agrees to dedicate and improve and/or construct, at no cost to the City, all public and/or private streets located within or required by this Subdivision and to comply with the road standards of the City to the satisfaction and approval of the City Engineer.

24. Developer shall bear the cost of all engineering, inspection and laboratory costs incurred by Developer and/or the City, incidental to the construction of street(s) to be constructed or improved pursuant to this Contract, including, but not limited to, material and density testing; and, if the City deems it necessary to have additional work of such nature performed, the Developer shall bear such costs also.

25. It is agreed and understood that if it is not necessary to change the existing grade, alignment or disturb the pavement of an existing street or road, Developer shall only be required to construct drainage, grade, gravel and pavement to match the existing pavement and construct

sidewalks, curb and gutter as required. If the existing grade and/or alignment are changed, Developer shall be required to grade, gravel and pave the full width of said street or road.

26. Developer shall complete all grading within the street right-of-way before the public utilities are installed.

27. Developer shall design and construct all private streets and roadways authorized within the Subdivision to standards equal to or greater than required by the Land Development Regulations and Technical Specifications of the City.

28. Developer and the City agree that easements for sanitary sewers, drainage and other required services may be located and utilized within private streets and shall be so noted on the Final Plat of said Subdivision.

29. Developer agrees that the City is not responsible for street repairs within private streets. The responsibility for repairing private streets will be that of the property owners and/or property owner's association and such responsibility shall be so noted on the Final Plat of said Subdivision.

SIDEWALKS

30. Developer shall furnish all labor and materials to construct and install all sidewalks and handicap ramps, at its expense, in accordance with the Land Development Regulations, Technical Specifications and the approved Development Plan.

STREET SIGNS, TRAFFIC CONTROL DEVICES, ETC.

31. Developer agrees to install, at its expense, permanent street signposts and markers at all street intersections in the Subdivision and to install, at its expense, traffic control devices, signage and striping relative to the Subdivision. The location of street signs to be installed shall be approved by the City Engineer. Variance from standard street sign type must be approved by the City. All traffic control devices, signage and striping shall be installed as per City Subdivision Regulations, the Manual on Uniform Traffic Control Devices and approved by the City Engineer.

EROSION, SEDIMENT AND DEBRIS

32. Developer agrees that all drainage and related facilities, including, without limitation, ditch paving, bank protection and fencing adjacent to open ditches, made necessary by the development of the Subdivision are to be constructed by Developer according to plans and specifications approved by the City Engineer.

33. Developer agrees that it will provide necessary erosion control, including, but not limited to, seeding for gentle slopes (4 to 1 or less) and grass sod for steeper slopes, with special grading and terracing, to the specifications of the City Engineer. All freshly excavated and embankment areas not covered with satisfactory vegetation shall be fertilized, mulched and seeded and/or sodded as required by the City Engineer to prevent erosion. In the event the City Engineer

determines that Developer is not providing necessary erosion control, the City Engineer shall officially notify Developer of the problem. If Developer has not corrected the problem within 7 days after notice, the City Engineer may make arrangements for the necessary materials, labor and associated costs to eliminate the erosion problem, documenting all expenses, specifically including reasonable administrative expenses, incurred in performing the work. Alternatively, the City reserves the right to issue a Stop Work Order on all work in progress within the bounds of the Subdivision until such time as Developer has corrected any erosion control deficiencies. Prior to releasing any Security hereunder, all expenses incurred by the City relative to the foregoing shall be paid in full by Developer plus interest on any unpaid balance accruing at the rate of ten percent (10%) per annum.

34. Any and all unenclosed watercourses lying partially or wholly within the boundary of the Subdivision Site shall be constructed to an adequate cross section to provide design flow without threat of erosion or flooding of any property within the Subdivision Site or any off-site property. Such watercourses shall be lined in a manner satisfactory to the City Engineer and any other agencies that may have jurisdiction.

35. All drainage structures necessary for the road plans affecting any watercourse lying partially or wholly within the Subdivision Site are to be provided by Developer.

DRAINAGE DESIGN AND RESPONSIBILITY

36. Developer shall pay to the City, the sum of **Sixteen Thousand Dollars (\$16,000)**, which reflects the drainage control fee with detention as required by Ordinance 10-150.

37. Developer shall construct and install, at its expense, all storm water drainage channels, ditches and structures. All drainage control fees shall be paid to the City, and a retention/detention storage basin, as required, with sufficient hydrologic capacity to control all surface and ground water originating within and upstream of the Subdivision shall be constructed as required by the City. Said drainage system shall be designed such that the amount and rate of water from all sources leaving the Subdivision after full development shall not be significantly different after than before initiation of development unless approved by the City Engineer upon certification of a Professional Engineer registered in the State of Tennessee that the drainage system design and improvements upon full development of upstream and downstream properties, in accordance with the City's Land Use Plan, are sufficient to accept surface and ground water reasonably expected to flow on the Subdivision and discharge all waters reasonably expected to flow from the Subdivision so as not to damage or flood properties nor to increase the established base flood elevation of the upstream or downstream portion of Flood Plain within or without the Subdivision. Further, the adequacy of the drainage plan and construction thereof shall in all cases be certified by Developer's engineer as indicated by his signature and seal affixed upon the Final Plat of said Subdivision prior to the Initial Acceptance by the City and recording of said Final Plat.

38. Developer shall provide to the City, and to each lot purchaser or builder, a coordinated grading and drainage plan designed to ensure proper drainage of all lots and building sites within the Subdivision. Said plan shall be compatible with the overall drainage plan for the Subdivision and shall comply with the Subdivision Regulations. Further, the Final Plat shall

contain a notation stating that compliance with the Drainage Plan by individual lot owners and builders shall be a condition of the Building Permit issued by the City.

39. That in any development that alters or revises the Flood Plain shown on the Flood Hazard Boundary Map issued by the Federal Emergency Management Region Office, Developer shall provide to the City a Development Permit issued by the Federal Insurance Administration Regional Office accepting said alteration or revision of the Flood Plain. Further, until said Development Permit is provided, Developer shall not proceed with any work affecting the Flood Plain nor will the Final Plat of the Project be approved by the MPC.

40. Developer understands and agrees that the City, in its proprietary function, does not purport to specify the development layout nor the choice of available land uses; nor does the City design, construct, supervise nor certify the adequacy of the drainage improvements.

41. Developer understands and agrees that the City Engineer is not vested with any responsibility for the design of drainage improvements, nor is he required to determine drainage capacities, survey elevation, cross check adequacy nor specify the type and locations of drainage improvements; and in providing technical assistance, planning and review, the City does not commit itself to the construction, improvements or modification of the drainage system within or without the Subdivision.

42. Developer understands and agrees that it is the responsibility of Developer to properly anticipate, survey, design and construct all drainage improvements so that the Subdivision will not increase, alter or affect the flow of surface or channelized waters from or onto any property as to damage or flood any property or contribute to the same.

43. Developer understands and agrees that in providing technical assistance, planning and review, the City seeks to enforce its minimal governmental standards and does not relieve or accept any of Developer's liability and responsibility to properly design and construct the Subdivision.

44. Developer further agrees to indemnify and hold harmless the City and the City Engineer from any loss or damage from any claim, cause of action or liability resulting in whole or part from the design, construction and/or installation of the Subdivision. The aforesaid indemnity and hold harmless agreement include, without limitation, the reasonable expenses of the City incurred in defending itself against any matter covered by such indemnity agreement, including attorney fees and expenses of litigation.

45. As long as the City holds Security it reserves the right to use said Security for completion and/or repair of any drainage structure during the warranty period of the Subdivision served by said structure.

46. The Final Plat which is to be recorded shall contain provisions substantially similar to the following if the Subdivision is to be subject to covenants and restrictions imposed by the Developer and/or if any area of the Subdivision is to be maintained at the expense of a property owners association:

“The Covenants and Restrictions set out herein are private in nature and are not subject to enforcement by the City of Lakeland.

The Developer will establish a not-for-profit property owners association (“POA”), which will have total responsibility for maintenance and repair of the common area(s) in the Subdivision after the present owner ceases such function. In the event the present Owner of the property shown hereon fails to organize the POA, or, if, after its organization, it ceases to function or exist, then, in the event the City of Lakeland, in accordance with applicable law and/or ordinances, expends funds to maintain or repair the common area, the expenses thereof plus an administrative fee shall become a lien, on a pro rata basis and severally, on each lot shown hereon and may be enforced in accordance with law. All owners of lots will be required to become members of the POA.”

ADMINISTRATIVE FEES

Engineering Review Fee

47. Developer agrees to pay to the City the sum of **Nine Thousand Six Hundred Dollars (\$9,600)**, (\$300 per lot), which represents the engineering review fee as required by Ordinance 10-150, prior to the execution of this Contract.

Construction Inspection Fee

48. Developer agrees to pay to the City the sum of **Ten Thousand One Hundred Dollars (\$10,100)**, (\$500 base fee plus \$300 per lot), which sum represents the construction inspection fee required by Ordinance 10-150, which shall be paid prior to the execution of this Contract. Neither observations by the City Engineer and Construction Inspectors, nor inspections, tests or approvals by others shall relieve the Developer from its obligation to perform work in accordance with the terms of this Contract. Developer further agrees to pay a \$50 re-inspection fee for each inspection after a Notice of Violation has issued, payable within ten (10) days of receipt of invoice.

Administrative Review Fee

49. Developer agrees to pay to the City the sum of **Three Thousand Three Hundred Dollars (\$3,300)**, (\$200 1st lot and \$100 per lot thereafter), which represents the administrative review fee as required by Ordinance 10-150, prior to the execution of this Contract.

Geographical Information System (GIS) Fee

50. Developer agrees to pay to the City the sum of **One Thousand Seven Hundred Fifty Dollars (\$1,750)**, (\$200 plus \$50 per lot thereafter), which represents the Geographical Information System (GIS) Fee as required by Ordinance 10-150.

Natural Resources Inventory/Analysis Fee (per acre)

51. Developer agrees to pay to the City the sum of **Four Hundred Ninety Dollars and Seventy Three Cents (\$490.73)**, (\$200 plus \$25 per acre thereafter), which represents the Natural Resources Inventory/Analysis Fee as required by Ordinance 10-150.

Parkland Improvement Fee (per lot)

52. Developer agrees to pay to the City the sum of **Three Thousand Two Hundred Dollars (\$3,200)**, (\$100 per lot), which represents the Parkland Improvement Fee as required by Ordinance 10-150.

Tree Removal Fee (per acre)

53. Developer agrees to pay to the City the sum of **One Thousand Two Hundred Sixty Two Dollars (\$1,262)**, (\$100 per acre or portion thereof, maximum \$10,000), which represents the tree removal fee as required by Ordinance 10-150, prior to the execution of this Contract.

Warning Siren Fee (per lot)

54. Developer agrees to pay to the City the sum of **One Thousand Six Hundred Dollars (\$1,600)**, (\$50 per lot), which represents the Warning Siren Fee as required by Ordinance 10-150.

Parkland Review Fee (per acre)

55. Developer agrees to pay to the City the sum of **Six Hundred Fifty-Two Dollars and Fifty Eight Cents (\$652.58)**, (\$400 plus \$20 per acre) which represents the Parkland Review/Development Fee as required by Ordinance 10-150.

MISCELLANEOUS CONDITIONS

56. Easements. Developer agrees that it will grant any and all necessary easements and rights-of-way across its property to effectuate the requirements of this Contract. Any off-site easements and/or right-of-way required for the Subdivision must be obtained and furnished by Developer to the City and recorded prior to Contract approval. Said easements and rights-of-way shall be in form, type, size and character acceptable to the City. Developer shall grant and/or obtain and furnish said easements without expense to the City of Lakeland and will waive any claim for damages arising from the granting or obtaining thereof.

57. It is understood and agreed that the City is not and could not be expected to oversee, supervise and/or direct the construction of all construction and improvements contemplated hereunder. Neither is the City Engineer vested with the original design responsibility nor the means to formally survey elevations, capacity, structural integrity, type, adequacy or the locations of improvements at every stage of the construction process. The City Engineer is vested with the

right of periodic inspections, final approval and stop work order as a measure of secondary or subsequent enforcement. Developer now has and shall retain the responsibility to properly anticipate, survey, design and construct the development improvements and give full assurance that same shall not adversely affect the flow of surface water from or upon any property. In providing technical assistance, plan and design review, the City does not and shall not relieve Developer from or accept any liability from Developer. Developer will provide his own Project Engineer whose duties and responsibilities are explained in the General Conditions of the City of Lakeland Construction Specifications.

58. In situations which may affect the safety or protection of persons, the work, or property at the Subdivision Site or adjacent thereto, Developer, without special instruction or authorization from the City, is obligated to act to prevent any and all threatened damage, injury or loss. If the City has to use its resources to respond to situations which may affect the safety or protection of persons, the work, or property at the Subdivision Site or adjacent thereto, it is agreed that the City will keep a record of costs associated therewith, including without reservation reasonable administrative fees and expenses, and will be reimbursed by Developer.

59. Developer agrees that the City shall have the right to enter the Subdivision Site and make emergency repairs to any improvements when the health and safety of the general public requires it. Developer will reimburse the City for reasonable cost, including without reservation reasonable administrative fees and expenses, incurred by it in making such repairs.

60. Developer agrees to secure all required permits for the demolition of structures on the subject property. Developer further agrees that it will haul all scrap, buildings, materials, trees, debris, rubbish and other degradable materials to a permitted landfill on a timely basis and not bury, burn or cause to be burned, such materials or allow them to accumulate within the Subdivision Site or within the corporate limits of the City.

61. Developer agrees that should it default in performing any of its obligations under this Contract and it becomes necessary to engage an attorney to file necessary legal action to enforce provisions of this Contract or sue for any sums of money due and owing or liability arising incidental to the Contract, Developer will pay to the City reasonable attorney's fees and expenses of litigation.

62. Prior to the release of Security for the Subdivision by the City, Developer shall deliver to the City an affidavit certifying that all subcontractors and material suppliers furnishing labor and/or material for the improvements required under this Contract have been paid in full. The Developer shall also provide a release of all liens, and of the right to claim liens, from all subcontractors and material suppliers furnishing labor or materials for the development.

63. Developer shall be responsible for the cost of any and all relocation, adjustment, modification, installation and/or removal of utilities, streets, curbs, gutters, sidewalks, drainage and all other improvements made necessary by the development of the Subdivision, both on and off site. All electrical utilities shall be installed underground unless expressly waived by the BOC upon written request to the DRC and after a recommendation by the DRC is submitted to the BOC.

64. Developer agrees to pay a “Payment in-Lieu-of or Dedication for Parkland” in the amount of **Twenty Four Thousand Two Hundred Seven Dollars and Ninety One Cents (\$24,207.91)** as per Article II Neighborhood Development Regulations, Section D, 4.b. of the Lakeland Subdivision Regulations.

65. Gas and Electric Service. Developer shall install underground electric and natural gas service to the Subdivision in accordance with the electric and natural gas service policy specified by the agreement between the City and the Memphis Light, Gas and Water Division of the City of Memphis and City ordinances and/or policies in effect at the time of such installation.

66. Indemnity. Developer will indemnify and hold the City harmless against all claims that may arise out of or result from Developer’s performance under this Contract, whether such claims arise out of the actions of Developer, any subcontractor of Developer, or anyone directly or indirectly employed or directed by either of them. This indemnity agreement includes, without limitation, all tort claims, both intentional and otherwise, and all claims based upon any right of recovery for property damage, personal injuries, death, damages caused by downstream deposits, sediment or debris from drainage, damages resulting from Developer changing the volume or velocity of water leaving Developer’s property and entering upon the property of others, and claims under any statutes, Federal or state, relative to water, drainage and/or wetlands, and reasonable attorney’s fees and costs incurred by the City in defending itself as a result of the aforesaid and/or enforcing this Contract.

67. Safety. Developer shall maintain barricades, fences, guards and flagmen as reasonably necessary to ensure the safety of all persons at or near the Subdivision Site during construction. All construction material, including, without limitation, mud, silt, dirt and gravel, shall be kept off existing streets at all times. In the event such mud, silt, dirt, gravel or other construction material is washed, blown or carried into an existing street, Developer shall take immediate steps to remove such materials. If Developer does not remove such materials after notification by the City, and the City deems it necessary to clean the affected streets, the Developer agrees to reimburse the City for all such cleaning expenses.

68. Construction Activity. (a) Developer will not carry on or permit construction activity under this Contract earlier than 6:00 a.m. nor later than 7:00 p.m., Monday through Saturday, and no construction activity, other than emergency repairs, shall be carried out on Sundays.

(b) Developer agrees to include the language “all streets shall be kept clear and free of dirt and debris” in all contracts between Developer and the contractors, subcontractors, builders, etc., unless otherwise authorized in writing by the City Engineer.

(c) Developer shall provide the City with the name, address and phone number of person(s) to be contacted and responsible for correcting any of the requirements set forth above should the occasion arise to do so.

69. The use of any gender herein shall apply to all genders, the singular shall include the plural, and the plural shall include the singular, as the content and context may require.

70. If litigation ensues with respect to this Contract and the City prevails therein, the City shall be entitled to recover from Developer its reasonable attorney's fees and the costs and expenses of such litigation, including reasonable attorney's fees and the costs and expenses of such litigation related to any appeal. The court(s) before which such litigation is pending shall determine whether the City prevailed and the amount of such fees, costs, and expenses to be recovered by the City as a result of prevailing; and, if the City prevails in part, but not in whole, an equitable award of its attorney's fees and expenses shall be made by the court(s). The same provision as immediately aforesaid shall be applicable to any litigation necessary to establish the City's right to recover under the Security. The Security shall cover all Developer's obligations under this Contract, including, without limitation, the obligation of Developer to pay the fees, costs and expenses of the City as provided for in this Section of the Contract.

71. Interpretation and Severability. If any provision of this Contract is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provisions shall be fully severable and this Contract shall be construed and enforced as if such unlawful, invalid or unenforceable provision was not a part of this contract. Furthermore, if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other which would render the provision valid, then the provision shall have the meaning that renders it valid.

72. Construction of Contract. Each party has received and had the opportunity to review this Contract, and each party has had the opportunity, whether exercised or not, to have each respective party's attorney review this Contract, and, accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

73. No Waiver. The failure of the City to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Contract, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking or right.

74. Amendments and Modification. This Contract shall not be modified in any manner, except by an instrument in writing executed by or on behalf of all parties.

75. Authority to Execute. City and Developer each warrant and represent that the party signing this Contract on behalf of each has authority to enter into this Contract and to bind the City and Developer, respectively, to the terms, covenants and conditions contained herein. Each party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of all resolutions, consents or minutes reflecting the authority of persons or parties to enter into agreements on behalf of such party.

76. Notices. All notices, demands and requests required or permitted by this Contract shall be in writing (including telecopy communications) and shall be sent by facsimile transmission, air or other courier, or hand delivery, as follows:

- (i) CITY
CITY OF LAKELAND
ATTN: CITY MANAGER
10001 HIGHWAY 70
LAKELAND, TN 38002
Telephone: **(901) 867-2717**
Facsimile: **(901) 867-2063**

With Required Copies To:
City Engineer; and
City Attorney
At same address as above.

- (ii) DEVELOPER
EVERGREEN PD, LLC
ATTN: RON MAY
10971 CHAPEL HILL ROAD
LAKELAND, TN 38002
Telephone: **(901) 277-1696**

77. Any party to this Contract may change such party's address for the purpose of notices, demands and requests required or permitted under this Contract by providing written notice of such change of address to the other party, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

78. Choice of Law. This Contract is being execute and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles of conflicts of law) of the State of Tennessee shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof.

OVERALL FEE/COST SUMMARY
(as more specifically set forth in Exhibit A hereto)

(1)	Sewer Development Fee	\$92,200.00
(2)	Sewer Lift Station Maintenance Fee	N/A
(3)	Sewer Connection Fee	N/A
(4)	Street Light Fee	N/A
(5)	Road Cut Fee	N/A
(5)	Drainage Control Fee (w/ Basin)	\$16,000.00
(6)	Drainage Control Fee (w/o Basin)	N/A
(7)	Engineering Review Fee	\$9,600.00
(8)	Construction Inspection Fee	\$10,100.00
(9)	Administrative Review Fee	\$3,300.00
(10)	Geographical Information Systems Fee	\$1,750.00
(11)	Natural Resources Inventory & Analysis Fee	\$490.73
(12)	Parkland Improvement Fee	\$652.58
(13)	Tree Removal Fee	\$1,262.90
(14)	Warning Siren Fee	\$1,600.00
(15)	Parkland Review Fee	\$652.58
(16)	Parkland Dedication Fee	<u>\$24,207.91</u>
	Total	\$171,364.12

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals at Lakeland, Tennessee, this _____ day of _____, **2024**.

DEVELOPER:
EVERGREEN PD, LLC

CITY OF LAKELAND:

By:_____

Date:_____

ATTEST:_____

APPROVED AS TO FORM:

By:_____

DATE APPROVED BY BOARD OF COMMISSIONERS:_____

DATE APPROVED BY BOARD OF SEWERAGE COMMISSIONERS:_____

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a notary of public of the state and county mentioned, personally appeared _____, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be _____, the within named bargainer, a corporation, and that such officer, as such _____, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as managing partner, by himself as _____.

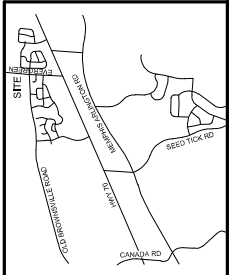
Witness my hand and seal at office; this is the ____ day of ____, 20__.

Notary Public

My Commission Expires:_____

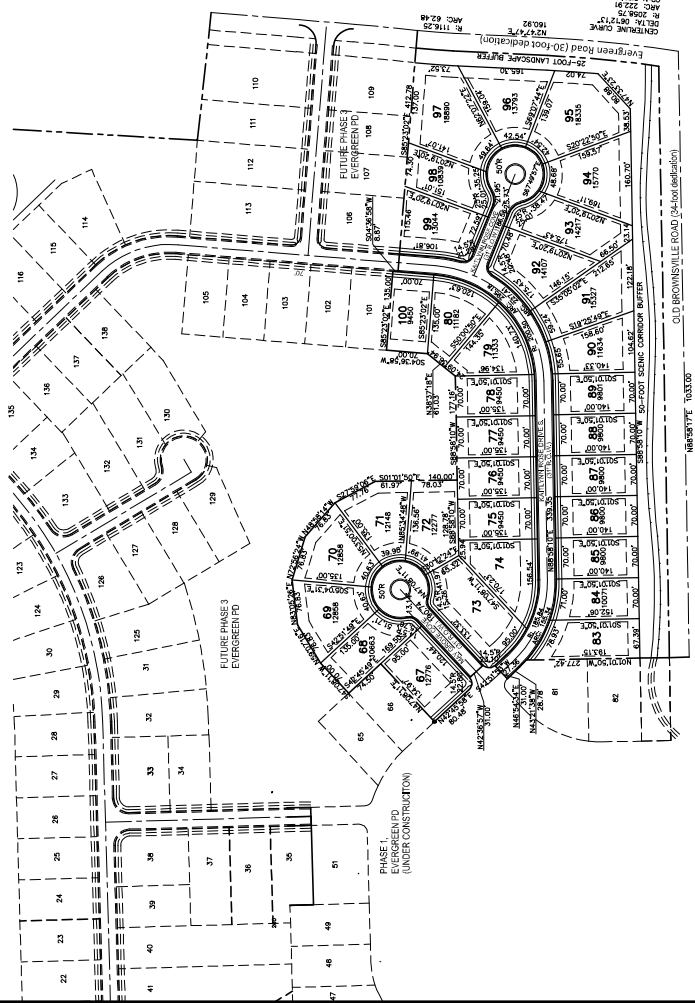
EXHIBIT "A"

Subdivision Development Fees Worksheet					
Evergreen PD Phase 2				32 Lots	12.629 Acres
	Per Lot Fee				
Sewer Development Fee (Dev Charge see Ord 08-119)	\$3,100.00		\$99,200.00		
Sewer Lift Station Maintenance Fee (per lift station)	\$110,000.00				
Sewer Connection Fee (per connection)			N/A		
Drainage Control Fee w/basin (per lot)	\$500.00		\$16,000.00		
Drainage Control Fee wo/basin (per lot)	\$1,000.00		N/A		
Engineering Review Fee (per lot)	\$300.00		\$9,600.00		
Construction Inspection Fee (\$500 plus \$300 per lot)	\$300.00		\$10,100.00		
Administrative Fee (\$200 for 1st Lot and \$100 per lot thereafter)	Varies		\$3,300.00		
Natural Resources Inventory Fee (\$200 plus \$25 per acre thereafter)	Varies		\$490.73		
Street Light Fee	100% of Cost		N/A		
Road Cut Fees	\$35.00				
Warning Siren (per lot)	\$50.00		\$1,600.00		
Tree Removal Fee (per acre or fraction of disturbed area - maximum \$10,000)	\$100.00		\$1,262.90		
GIS Fee (per lot)\$200 plus \$50 per lot thereafter	Varies		\$1,750.00		
Parkland Improvement Fee (per lot)	\$100.00		\$3,200.00		
Parkland Review Fee	\$400+\$20/acre		\$652.58		
		Total =	\$147,156.21		
	Acres/Lot =	0.39465625			
Park Land Formula (D=LxAxPxM)					
L=Number of Lots (D.U.)	L =	32			
A=Avg. Family Size - use 2.94	A =	2.94			
P=Parkland Ratio use 0.010 (10 acres per 1000)	P =	0.010			
M=Density Multiplier from Table 2 of Sub. Regs	M =	1.76			
D=Dedication in acres	D =	1.655808	Acres		
Land Appraisal Value (per acre)		\$14,620.00	Payment in lieu of		
Total Dollar Value Required in Lieu of Dedication		=	\$24,207.91		
Total Amount Due			\$171,364.12		
Payment in Lieu					
Total Due Sewer			\$99,200.00		
Total Due General Fund			\$72,164.12		



- NOTES:
1. A FIVE (5) FOOT CONCRETE SIDEWALK ALONG THE FRONTAGE OF EACH LOT SHALL BE INSTALLED BY THE BUILDING PERMIT HOLDER PRIOR TO THE COMMENCEMENT OF CONSTRUCTION. THE SIDEWALK SHALL BE REPAIRED AS NECESSARY BY THE BUILDING PERMIT HOLDER ACROSS THE LOT FRONTAGE PRIOR TO OCCUPANCY OF THE HOUSE OR BUILDING.
 2. THERE IS A 20-FOOT BUILDING SETBACK ALONG THE FRONT LOT LINE OF ALL LOTS.
 3. THERE IS A 20-FOOT REAR YARD SETBACK ALONG THE REAR OF ALL LOTS.
 4. THERE IS A 5-FOOT BUILDING SETBACK ALONG THE SIDE AND REAR OF ALL LOTS.
 5. THERE IS A 9.5-FOOT WIDE LANDSCAPE/PEDESTRIAN EASEMENT ALONG THE FRONT LOT LINE OF ALL LOTS. THE EASEMENT SHALL BE MAINTAINED BY THE OWNER. EASEMENTS SHALL ALSO INCORPORATE UTILITY AND UTILITY AND SEWER LINES. UTILITY AND DRAINAGE EASEMENTS AND UTILITY AND SEWER EASEMENTS SHALL ALSO INCORPORATE UTILITY AND UTILITY AND SEWER LINES.
 6. THERE SHALL BE A 5-FOOT UTILITY EASEMENT ON ALL SIDE AND REAR LOT LINES WITH THE EXCEPTION OF SIDE LOT LINES WITH PUBLIC EASEMENTS.
 7. THIS PROPERTY IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD AREA AS PER F.I.R.M. COMMUNITY PANEL NUMBER 4704702150, DATED FEBRUARY 6, 2013. BPE/201.0

VICINITY MAP
N.E.S.



SHEET 1 OF 3
PRELIMINARY DEVELOPMENT PLAN
PHASE TWO
EVERGREEN PLANNED DEVELOPMENT
LAKELAND, SHELBY COUNTY, TENNESSEE

THE BRAY FIRM
10371 CHAPEL HILL ROAD
NASHVILLE, TN 37203
615-381-3800
615-381-3814
OWNER/DEVELOPER
ENGINEER
DATE: JULY 2024
SCALE: 1"=100'
LOTS: 32 ACRES-12.629 ACRES
ZONED: PLANNED DEVELOPMENT

Meeting Cycle: Thursday, November 7, 2024

Subject: **Resolution** - approving a development contract with Valleybrook Development, LLC & Seedtick, LLC, as a Joint Venture, to improve and develop the site into a road extension to be known as Seed Tick Road Extension.

Staff Contact: Emily Harrell, City Engineer

STAFF RECOMMENDATION

City staff recommends the Board of Commissioners approve resolution R-165-2024.

BUDGET IMPACT

There is no budgetary impact related to this item.

DISCUSSION

The developers of Heathfield at Scotts Creek and Lakeland Meadows are responsible for the construction of Seed Tick Road from Highway 70 to Old Brownsville Road. The development contract includes construction of the road, storm sewer, and all utility extensions required for these developments. A security in the amount of \$276,565.00 will be required to ensure public and common improvements are completed per the approved plans and specifications.

RESOLUTION R-165-2024

APPROVING A DEVELOPMENT CONTRACT WITH VALLEYBROOK
DEVELOPMENT, LLC & SEEDTICK, LLC, AS A JOINT VENTURE, TO IMPROVE AND
DEVELOP THE SITE INTO A ROAD EXTENSION TO BE KNOWN AS SEED TICK
ROAD EXTENSION

- WHEREAS,** Developer is the owner of record of tracts of land zoned AG-Agriculture which contains approximately 2.351 acres, also identified by Parcel ID # LO150 00563, LO150 00564, LO150 00457C, and LO150 00541 in the official records of the Shelby County Recorder's Office ("Extension Site") and desires to improve and develop the Site a road Extension to be known as **SEED TICK ROAD EXTENSION** ("Extension"); and
- WHEREAS,** the City's Municipal Planning Commission ("MPC"), has approved the subdivision plan submitted by Developer with respect to the Subdivision ("Preliminary Development Plan"); and,
- WHEREAS,** Developer is required to install, at its expense, public improvements, including, but not limited to, water lines, fire hydrants, sanitary sewer, underground electrical power and gas utilities, grading, storm water drainage system, streets, curbs, gutters, sidewalks, street name signs, traffic control devices and streetlights in connection with development of the Subdivision at its own cost; and,
- WHEREAS,** Developer may be required, pursuant to its application and MPC and/or the City's Design Review Commission ("DRC") approval, to install, at its expense, private improvements and amenities, including, but not limited to, private streets and alleys, fences, entrance treatments and signage, walls, lakes, playgrounds, swimming pools, tennis courts and other recreational facilities, common open space, walking trails, storm water retention and/or detention basins, landscaping and related irrigation systems, relative to said Subdivision, none of which shall be accepted for maintenance by the City; and,
- WHEREAS,** the City is willing to provide services to the Extension in accordance with the City's standard policies and applicable rates; and,
- WHEREAS,** the City and Developer, by the terms of this Contract, desire to specify those detailed costs, division of responsibilities and maintenance and other conditions in addition to the Land Development Regulations and the Construction Plat/Plan, heretofore approved, according to State Statute by the MPC and/or the Board of Commissioners ("BOC"), said additional terms not to be considered as a variance from or modification to Regulations, plans or plat, as approved on the date of execution; and,
- WHEREAS,** this Contract is entered into by the City at the insistence of Developer upon the understanding that Developer shall remain fully responsible for

RESOLUTION R-165-2024

APPROVING A DEVELOPMENT CONTRACT WITH VALLEYBROOK
DEVELOPMENT, LLC & SEEDTICK, LLC, AS A JOINT VENTURE, TO IMPROVE AND
DEVELOP THE SITE INTO A ROAD EXTENSION TO BE KNOWN AS SEED TICK
ROAD EXTENSION

specific compliance with the requirement of the Land Development Regulations, the Technical Specifications of the City and the Construction Plat/Plan, duly prepared by Developer subject to review and recommendation of the City Engineer and the City Planner or person(s) designated by the City Manager; and,

WHEREAS, the City is willing to approve the Subdivision, and all property and/or all street dedications, subject to Developer's compliance with any and all applicable Federal and State of Tennessee laws and local statutes, ordinances, codes, rules and/or regulations in addition to the specific conditions hereinafter set forth.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the Mayor is hereby authorized to execute a development contract with **VALLEYBROOK DEVELOPMENT, LLC AND SEEDTICK, LLC. as a joint venture**, to improve and develop the site into a road extension to be known as **SEED TICK ROAD EXTENSION**.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee on this 7th day of November 2024, the public welfare requiring it.

ATTEST:

Michele Dial
Vice Mayor

Cheyenne Carter
City Recorder

RESIDENTIAL EXTENSION DEVELOPMENT CONTRACT

INTRODUCTION

THIS RESIDENTIAL EXTENSION DEVELOPMENT CONTRACT (“Contract”) is made and entered into this the _____ day of _____, **2024**, by and between **VALLEYBROOK DEVELOPMENT, LLC AND SEEDTICK, LLC. as a joint venture**, both limited liability company organized and existing under the laws of the State of Tennessee (“Developer”), and **THE CITY OF LAKELAND TENNESSEE**, a municipality organized and existing under the laws of the State of Tennessee (“City”).

W I T N E S S E T H:

WHEREAS, Developer is the owner of record of a tract¹ of land zoned AG-Agriculture which contains approximately 2.351 acres, also identified by Parcel ID # LO150 00563, LO150 00564, LO150 00457C, and LO150 00541 in the official records of the Shelby County Recorder’s Office (“Extension Site”) and desires to improve and develop the Site into a road Extension to be known as **SEED TICK ROAD EXTENSION** (“Extension”); and

WHEREAS, the City’s Municipal Planning Commission (“MPC”), has approved the Extension plan submitted by Developer with respect to the Extension (“Preliminary Development Plan”); and

WHEREAS, Developer is required to install, at its expense, public improvements, including, but not limited to, water lines, fire hydrants, sanitary sewer, underground electrical power and gas utilities, grading, storm water drainage system, streets, curbs, gutters, sidewalks, street name signs, traffic control devices and street lights in connection with development of the Extension at its own cost; and

WHEREAS, Developer may be required, pursuant to its application and MPC and/or the City’s Design Review Commission (“DRC”) approval, to install, at its expense, private improvements and amenities, including, but not limited to, private streets and alleys, fences, entrance treatments and signage, walls, lakes, playgrounds, swimming pools, tennis courts and other recreational facilities, common open space, walking trails, storm water retention and/or detention basins, landscaping and related irrigation systems, relative to said Extension, none of which shall be accepted for maintenance by the City; and

WHEREAS, the City is willing to provide services to the Extension in accordance with the City’s standard policies and applicable rates; and

WHEREAS, the City and Developer, by the terms of this Contract, desire to specify those detailed costs, division of responsibilities and maintenance and other conditions in addition to the

¹ If Developer is not the owner of record of the Extension Site but has permission from the actual owner of record to develop same, the owner will be required to join Developer herein and all obligations imposed upon Developer hereunder shall be jointly and severally imposed on Developer and Owner.

Land Development Regulations and the Construction Plat/Plan, heretofore approved, according to State Statute by the MPC and/or the Board of Commissioners (“BOC”), said additional terms not to be considered as a variance from or modification to Regulations, plans or plat, as approved on the date of execution; and

WHEREAS, this Contract is entered into by the City at the insistence of Developer upon the understanding that Developer shall remain fully responsible for specific compliance with the requirement of the Land Development Regulations, the Technical Specifications of the City and the Construction Plat/Plan, duly prepared by Developer subject to review and recommendation of the City Engineer and the City Planner or person(s) designated by the City Manager; and

WHEREAS, the City is willing to approve the Extension, and all property and/or all street dedications, subject to Developer’s compliance with any and all applicable Federal and State of Tennessee laws and local statutes, ordinances, codes, rules and/or regulations in addition to the specific conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties herein contained and all other consideration herein recited, it is understood and agreed as follows:

GENERAL PROVISIONS

1. Construction Standards. Developer shall construct the Extension in accordance with Construction plans approved by City Engineer on September 24, 2024, and if applicable, the requirements of the DRC, and in accordance with the requirements of (a) City Land Development Regulations; (b) City Zoning Ordinance and any other applicable Ordinances of the City; (c) City Design Guidelines; (d) the applicable building and fire safety regulations of Shelby County Tennessee. Items (a) through (d) are hereby made a part of this Contract by reference as if fully set forth herein and are hereinafter referred to collectively as “Codes”. References herein to said Codes are to those in effect on the date this Contract is approved.

Developer shall also construct the Project in accordance with the following standards and specifications, all of which are incorporated herein by reference as if fully set forth:

- (a) The standards of the American Society of Testing Materials (ASTM);
- (b) The requirements of the Office of Safety and Health Administration (OSHA);
- (c) The requirements of the Federal Americans with Disabilities Act (ADA);
- (d) The Standard Specifications for Road and Bridge Construction of the Tennessee Department of Transportation; and
- (e) The Standards of the American National Standards Institute (ANSI).
- (f) The requirements of the Tennessee Department of Environment and Conservation.

All standards and specifications set forth above are those that are in effect on the date this Contract is approved.

2. Inspection and Testing – Costs. That Developer shall pay, on a monthly basis, the reasonable expenses of engineering inspection by the City Engineer or his designee, along with any laboratory testing expenses reasonably deemed necessary by the City Engineer and incurred for material testing and soil density and moisture content test, provided, however, that Developer shall remain fully responsible for construction to the approved design and quality control, and that the City Engineer is vested with the right of periodic inspections, final approval and stop work order as a measure of secondary or subsequent enforcement.

3. Approval of Extension Plans. In addition to the approval of MPC, Developer shall, within three (3) years of receiving approval of the Preliminary Development Plan, also obtain the approval of the City Engineer for the initial phase Extension Construction Plans. All construction relating to the Extension shall be subject to inspection and approval by the City until the end of the warranty period and release of Security.

OWNERSHIP

4. Developer agrees it shall have no claim, direct or implied, in the title or ownership of the public improvements, except sidewalks, specified in this contract that are to be dedicated to the City by virtue of the official recording of the Final Plat for the Extension and accepted (except for sidewalks) for perpetual maintenance by the City (the “Public Improvements”). The City, upon Initial Acceptance [hereinafter defined] and Final Plat recording, will take full title to the Public Improvements. Maintenance and or warranty responsibilities of the Developer prior to the end of the warranty period and release of Security are provided for hereinafter.

5. Developer agrees that it will not transfer ownership of the Extension Site without first providing the City with notice of when the transfer is to occur and the identity, current address and telephone number of the proposed Transferee. If it is Transferee’s intention to develop the Extension in accordance with this Contract, Developer agrees to provide the City an Assumption Agreement by which Transferee agrees to perform the obligations required under this Contract and to provide the security needed to assure such performance. Said Assumption Agreement will be subject to the approval of the BOC and City Attorney. Unless the Assumption Agreement specifically so provides, Developer shall not be released from its obligations hereunder. The City will not unreasonably withhold its consent with respect to the foregoing.

6. Developer understands that if it transfers the Extension site without first providing the notice of transfer and Assumption Agreement as required herein and receiving the approval of the BOC and City Attorney, it will be in breach of this Contract and the City may require that all work be stopped relative to the Extension and subject Developer to a declaration of fault.

7. Developer agrees to furnish, on demand, satisfactory evidence that it has the lawful right to enter into this Contract for the purposes herein contained. Any security for Developer’s obligations hereunder is subject to the approval of the City Attorney.

8. Duration of Obligations. The obligations of Developer hereunder shall run with the Extension Site until Developer's obligations have been fully met. Any party taking title to the Extension Site, or any part thereof, shall take said real property subject to such obligations.

SECURITY

9. (a) Developer will furnish to the City, not later than the execution of this Contract by Developer, an estimate as to quantity and cost of all public and private improvements, on or off site (i.e., specific Design Review Commission requirements: brick walls and entrance treatments, landscaping, fencing, lighting, etc.) required by the City pursuant to MPC and/or DPC approval, with the exception of electrical power, water and gas utilities.

(b) Developer shall provide an Irrevocable Letter of Credit capable of presentation to the issuer in Shelby County, Tennessee, issued from a bank doing business, subject to service of process, and subject to both subject matter and personal jurisdiction in Shelby County, Tennessee, with no fixed expiration date, or other adequate security acceptable to the City ("Security") in the amount of **Two Hundred Seventy-Six Thousand Five Hundred Sixty-Five Dollars (\$276,565.00)** for all public and/or private internal improvements, plus a sum equal to the cost, as estimated by Developer and approved by the City Engineer, of improvements public or private required by the City pursuant to MPC and/or DRC approval but to be constructed or installed off of the Project Site. It is the policy of the City to only accept as Security an Irrevocable Letter of Credit, cash or its equivalent. The form and substance of any Irrevocable Letter of Credit is subject to the approval of the City Attorney.

(c) The Final Plat of the Extension site shall not be recorded with the Shelby County Register's Office until the Extension has reached the level of Substantial Completion, as hereinafter defined. At that time, upon application of Developer and approval of the BOC, the amount of Security may be reduced to the cost, as estimated by the City, of uncompleted requirements relative to the Extension plus a reasonable sum to cover Developer's warranty obligations hereunder.

(d) Although the amount of the Security may be less than the total cost of completion by Developer of all of Developer's obligations hereunder, it is understood and agreed that the Security, subject to its limit, is to furnish security for the performance of all of Developer's obligations hereunder but that such obligations are not limited by the amount of such Security. The Security shall remain in force through the end of the warranty period, although Security may be reduced from time to time as provided herein. All collection expenses, court costs and reasonable attorney's fees incurred by the City in connection with collection under the Security shall be paid by Developer and such obligation shall be secured by the Security. The City shall be entitled to recover the cost thereof, reasonable administrative fees, reasonable attorney's fees and interest calculated on any unpaid balance at the rate of ten percent (10%) per annum until the unpaid balance is fully paid.

(e) Developer agrees that if the Security furnished to secure the obligations of Developer under this Contract, due to inflation and/or rising costs, previous errors in estimation, or otherwise, is inadequate to secure such obligations at the time an extension of time is sought, it

will provide additional security to bring the Security amount in line with current cost projections made by the City Engineer.

INSURANCE

10. (a) Developer, upon affixing its signature to this agreement, shall provide at no cost to the City, a policy or policies of insurance to the City from insurance companies acceptable to the City and licensed by the Tennessee State Insurance Commissioner to conduct business in the State of Tennessee with coverage limits as set forth below. Said insurance policy or policies shall be evidenced by current original certificates and/or policies attached to this Contract and kept in full force and effect throughout the life of this Contract as required by the City. Each certificate or policy shall require and state in writing that “thirty (30) days prior to cancellation or material changes in the policies, notice thereof shall be given to the City of Lakeland Tennessee by registered mail, return receipt requested.”

(b) Developer shall purchase and maintain commercial general liability insurance and umbrella liability insurance with minimum limits of \$1,500,000.00 per occurrence and other insurance that shall insure against claims arising out of Developer’s performance under this Contract, whether such claims arise out of the actions of Developer, any subcontractor of the Developer, their employees, agents or independent contractors or anyone for whose acts any of them may be liable, including, without limitation:

(1) Claims brought under worker’s compensation in accordance with the Statutory Requirements and limits of the State of Tennessee. “All States Endorsement” is required or a Certificate of the State Worker’s Compensation Board showing proof of ability to pay compensation directly; provided, however, if Developer has no employees who are eligible to be covered under worker’s compensation insurance, Developer shall not be required to furnish insurance against worker’s compensation but shall require the party(s) contracting with Developer to perform work on the Project Site to furnish evidence of such insurance for the employees of same as required above;

(2) Claims for the personal injury, occupational illness or death of Developer’s employees, if any;

(3) Claims for the personal injury, illness or death of any person other than Developer’s employees or agents;

(4) Claims for injury to or destruction of tangible property, including loss of use resulting there from;

(5) Claims for property damage or personal injury or death of any person arising out of the ownership, maintenance or use of any motor vehicle;

(6) Claims by third parties for personal injury and property damage arising out of Developer’s failure to comply with Developer’s obligations under this contract;

- (7) Premises and Operations;
- (8) Independent Contractors;
- (9) Products and Completed Operations;
- (10) Blanket Contractual or its current equivalent policy language;
- (11) XCU (Explosion, Collapse and Underground) Coverage or its current equivalent policy language;
- (12) Broad Form Property Damage or its current equivalent policy language;
- (13) Commercial automobile liability insurance covering owned, hired and non-owned vehicles.

(c) The insurance coverage required by this paragraph shall include the coverage specified above with policy limits of not less than \$1,500,000.00 Combined Single Limit general liability and \$1,500,000.00 Combined Single Limit automobile liability (including, but not limited to, bodily injury (including death) and property damage) per occurrence. These minimum limits may be met through a combination of primary and umbrella insurance policies. The commercial general liability insurance coverage shall include completed "incident" as opposed to "claims made" insurance coverage and liability insurance applicable to Developer's obligations under this Contract. All such insurance shall remain in effect until the City issues its written notice of the release of Security of the completed Project. In addition, Developer shall maintain "incident" as opposed to "claims made" insurance for at least one (1) year after the City issues its written notice of release of Security. Developer shall furnish the City with evidence of the continuation of all such insurance at the time of issuance of the notice of release of Security.

(d) Prior to commencing any work on the Project, Developer will furnish to the City a certificate of insurance evidencing the required coverage.

(e) The furnishing of the aforesaid insurance shall not relieve Developer of its obligation to indemnify the City in accordance with the provisions of this Contract.

TIME SCHEDULE

11. (a) It is agreed by Developer and the City that this Contract shall become void and Developer will be in material breach of this Contract unless the following items are accomplished within one (1) year from the date of approval of this Contract by the BOC. Items (1), (2), (3), and (4) below must be completed prior to starting Construction below.

- (1) Signatures of Developer, and, if applicable, of Owner of the Extension Site, on two original copies of this Contract.

- (2) Signatures of Developer, and, if applicable, of Owner of the Extension Site, on two original copies of the Inspection and Maintenance Agreement for Private Stormwater Facilities.
- (3) All fees paid to the City as specified herein.
- (4) Security is received by the City as specified herein.
- (5) Insurance certificate is received by the City as specified herein.

If items (1-5) above are completed within one year from the date of this Contract, Developer shall have one additional year to commence Construction.

“Construction” as used in this subsection is defined as the placing of construction materials in a permanent position and fastened permanently or extensive grading, including demolishing or removal of existing structures necessary for the development of the Extension.

(b) The failure of Developer to comply with the provisions of this paragraph shall, at the discretion of the City Manager, result in the approval of the City of Lakeland being withdrawn and the approvals of the MPC and, as applicable, the DRC similarly being withdrawn and of no further force and effect.

12. Developer shall substantially complete the Extension on a timely schedule and in an expeditious manner, with the date of Substantial Completion to be not later than four (4) years from the date the BOC approves this Contract. The term “Substantial Completion” as used herein shall be when Developer has completed all required Public and Private Improvements to the Extension Site, specifically including but not limited to sanitary sewer (unless served by septic system), water, natural gas and electricity service to each lot, and all required off-site Public Improvements relative to the Extension as verified by the City Engineer and approved by the MPC.

(a) Developer agrees that if due to unforeseen circumstances it is unable to complete all work included in this Contract within the time specified herein, it will submit a written request for extension of the Contract period to the City at least sixty (60) days prior to the expiration of the existing Contract period, specifying the reason for its failure to complete the work as agreed, and a prospective date for such completion.

(b) The City will not unreasonably withhold approval of extensions of time where Developer has complied with the requirements of notice to the City and provided the required additional Security, if any is needed.

13. Developer agrees that its failure to follow the extension of time procedure provided herein shall constitute a breach of this Contract. Developer agrees that should it fail to complete any part of the work outlined in this Contract in a good and workmanlike manner, as approved by the City Engineer, the City shall reserve the right to withhold and/or withdraw all building permits

and/or sewer service within the Extension until all items of this Contract have been fulfilled by Developer.

14. (a) It is agreed that after the date of Substantial Completion, as recommended by the City Engineer and approved by the BOC, the City will record the Final Plat (Mylar) of the Extension in the Register's Office of Shelby County, Tennessee after Developer has submitted a Final Plat suitable for recording, provided the Security being held by the City to guarantee Developer's obligations under this Contract is sufficient to cover the cost of the remaining required Public Improvements and the private improvements as estimated by Developer's Engineer and approved by the City Engineer. If the Security being held by the City is not sufficient, Developer shall increase same accordingly prior to the City recording the Final Plat. The original Final Plat shall be retained by the City as a permanent record. Developer shall be responsible for paying all recording costs. Final Plat recording shall signify Initial Acceptance of the project.

(b) Developer shall provide the City with a copy of the Final Plat using State Plane Coordinate System with NAD – 83 datum on disk or CD in DXF format (AutoCAD Release 14 or more current) prior to recording of the Final Plat of the Project. All MTEXT must be exploded.

(c) Developer shall furnish as-built plans to the City on reproducible, stable mylar media. Said plans shall show the sanitary sewer, storm drainage system, grading, water main and service lines and streets within the Extension before the City shall record the Final Plat of the Extension. Departure from the original plans and specifications shall not be permitted without the approval of the City Engineer, the MPC, DRC, and BOC as necessary. In addition to the plans furnished on reproducible mylar media, Developer shall provide a scanned copy of the as-built plans as a TIF image on CD and a DXF copy (AutoCAD Release 14 or more current) of the as-built plans on CD.

(d) Developer shall also furnish, in writing, the itemized as-built construction cost of all public improvements.

15. (a) Sidewalks. Notwithstanding any provision to the contrary herein, Developer shall ultimately be responsible for the installation of all required sidewalks, at its expense, and will include in the Security an amount sufficient to insure installation of all required sidewalks. All required sidewalks shall be completed, without defect and on a lot-by-lot basis, prior to the issuance of a Certificate of Occupancy ("C. O.") to the owner of each lot. Developer shall be responsible for repairing any latent defects in the sidewalks prior to the issuance of a Certificate of Occupancy ("C. O.") to the owner of each lot. (All references to sidewalks herein include required handicap ramps.)

(b) Curb and Gutter. All required curb and gutter must be completed and without defect prior to the issuance of a Certificate of Occupancy ("C. O.") for the Extension. Developer shall also be responsible for repairing any latent defects and/or failures in the curb and gutter that occur, or first appear, after the issuance of the relevant C.O. and prior to the end of the warranty period and release of Security for the Extension.

(c) Final Surface Asphalt. Developer shall furnish and install asphalt base and a final asphalt surface course (wearing surface) on all streets, public and private, as required hereunder in accordance with City specifications.

- (1) The final surface (1.5") shall not be installed until Seventy-Five Percent (75%) of the lots in the Extension are built upon or within four years after the issuance of the first building permit, whichever comes first, or as otherwise specified by the City.
- (2) Developer shall maintain all streets in accordance with the warranty provisions provided for herein.
- (2) Developer shall make all necessary adjustments to manholes and valve boxes to meet finished surface grade and to repair subsurface or base repair, as required, in areas designated by the City prior to the application of the final asphalt surface.

WARRANTY

16. Developer and City agree that neither the final certificate of payment nor any provision of this Contract or its incorporated documents nor partial or entire occupancy of the Extension shall constitute an approval or acceptance of any work not performed in accordance with the Contract and its incorporated documents, nor relieve Developer of liability with respect to any express warranty or responsibility for faulty materials or workmanship.

17. (a) Developer is required to complete the Public Improvements, which are ultimately to be accepted by the City for perpetual maintenance, and all other improvements required by the City relative to the Extension, in accordance with the terms of this Contract. Further, Developer is to correct any defects or failures in all of such improvements that occur within one (1) year of the Final Plat recording. Any defect first appearing within the applicable one (1) year period shall be required to be corrected by Developer; and thereafter Developer shall be required to correct any defect again occurring in or relating to what was previously corrected within a one (1) year period commencing from the date of approval by the City Engineer of such correction. If the defect recurs within any one (1) year of its repair, Developer shall remain obligated to correct it until the condition is satisfactory to the City after one (1) year from the date of its last repair. This Warranty does not diminish, but is in addition to, all other rights and liabilities assessed herein.

(b) No sooner than ten (10) months nor later than eleven (11) months after the Final Plat recording, Developer shall so notify the City Engineer and the City Engineer, or his/her designee, shall inspect the streets, curbs and gutters, sidewalks, storm drain system, detention basin, landscaping, irrigation, fencing and all other required improvements to determine any defects or failures of the same. If no defects or failures are found, the City Engineer shall report the same to the BOC at a regular or special meeting within thirty (30) days of the date of said inspection. The BOC, provided it agrees with the City Engineer, shall approve the final release of the Security, which shall constitute the end of the warranty period for the Extension. If defects or

failures are found upon the aforesaid inspection, written notification outlining deficiencies to be corrected shall be provided to Developer along with the time period for corrections, not to exceed sixty (60) days. Within seven (7) days of notification by Developer that such corrections have been made or the expiration of the time period, whichever occurs first, the City Engineer shall re-inspect for correction of defects and failures. If all deficiencies have not been corrected, the City Engineer shall provide an updated written notification of deficiencies and Developer shall have thirty (30) days to make the remaining corrections. If all corrections are not made at this time, the City may demand payment on the Security, and, upon collection, shall proceed to make the corrections. If and when Developer or the City, as the case may be, has corrected all failures and defects, and a period of one (1) year has expired from the date of such corrections without defects again appearing in the corrected work, the City Engineer shall report the same to the BOC at a regular or special meeting within thirty (30) days of the date of said re-inspection. The BOC, provided it agrees with the City Engineer, shall approve the final release of the Security, which shall constitute the end of the warranty period for the Extension.

(c) It is the intention of the parties hereto that any Public Improvement required of Developer relative to the Extension which was found to be satisfactory by the City Engineer upon inspection as provided in Section 17 (b) shall thereafter be the obligation of the City to maintain. However, any such improvement found to be unsatisfactory by the City Engineer upon the initial inspection as provided in Section 17 (b) or any later inspection made pursuant to Section 17 (b) shall not be the obligation of the City to maintain until same remains satisfactory to the City for a period of one (1) year from the date it was inspected and found to be satisfactory by the City Engineer.

(d) At any time during the one (1) year warranty period beginning from the date of the Extension Final Plat recording, the City Engineer may recommend to the BOC that a portion of the Security be released based upon the City Engineer's estimation of the needed Security to ensure that funds will be available to correct any then outstanding defects in the improvements or to correct any defects which have been corrected but may reoccur.

REQUIRED IMPROVEMENT AND RELATED FEES

WATER

18. Developer shall install, at its expense, all water mains, hydrants, valves and appurtenances to serve all lots within the Extension from the existing Memphis Light Gas & Water (MLGW) water system and to install, at its expense, water service lines and appurtenances from the water main to the meter center at the front property line of each lot. Further, Developer shall pay all engineering, testing and laboratory costs incident to the water service in and to the Extension. Additionally, Developer shall extend all water mains to within two feet of the property line of any roadways connecting to adjacent properties that may be served by said main(s).

19. Developer shall install at its expense fire hydrants throughout said Extension in accordance with the Shelby County Fire Code, and if not specified in said Code, the type and location of said hydrants is to be approved by the City Engineer.

SANITARY SEWER

20. Developer shall pay to the City, the sum of **ZERO DOLLARS (\$0.00)**, which reflects the sewer development fee as required by Ordinance 07-105 and as amended in Ordinance 08-119.

21. Developer shall install at its expense a State Board of Health and City approved sewerage system complete with pumping stations (as necessary), force main, sewer mains, manholes and appurtenances, within and without the limits of the Project and sewer laterals to the front of each lot within said Project. Developer shall pay the cost of engineering, inspection, testing and laboratory costs incident to the sewer service in or to the Project. Developer shall provide and install, at its expense, a State and City approved outfall sewage system complete with necessary sewer mains, manholes, and service laterals in the Project and pump stations and force mains as approved by the City Engineer upon approval of the plans and specifications for the Project. Pump stations will not be allowed without specific approval from the City Engineer and the City Board of Sewerage Commissioners. Said service lateral connections shall be extended to the surface inside of the property line and capped six (6) inches below the surface of the ground with a protective cap pipe placed over it and extending thirty (30) inches into the air. Additionally, Developer shall extend all sewer mains to within two feet of the property line of all adjacent properties that may be served by said main(s).

22. Developer shall install at its expense a cellular based telemetry system as approved by the City of Lakeland, in accordance with specifications provided by City, on any and all sewer lift stations servicing said Project. Additionally, Developer shall install and maintain, at its expense, a sight proof fence in conformance with a design plan approved by the DRC around the perimeter of any and all sewer lift stations on said Project.

STREETS

23. Developer agrees to dedicate and improve and/or construct, at no cost to the City, all public and/or private streets located within or required by this Extension and to comply with the road standards of the City to the satisfaction and approval of the City Engineer.

24. Developer shall bear the cost of all engineering, inspection and laboratory costs incurred by Developer and/or the City, incidental to the construction of street(s) to be constructed or improved pursuant to this Contract, including, but not limited to, material and density testing; and, if the City deems it necessary to have additional work of such nature performed, the Developer shall bear such costs also.

25. It is agreed and understood that if it is not necessary to change the existing grade, alignment or disturb the pavement of an existing street or road, Developer shall only be required to construct drainage, grade, gravel and pavement to match the existing pavement and construct sidewalks, curb and gutter as required. If the existing grade and/or alignment are changed, Developer shall be required to grade, gravel and pave the full width of said street or road.

26. Developer shall complete all grading within the street right-of-way before the public utilities are installed.

27. Developer shall design and construct all private streets and roadways authorized within the Extension to standards equal to or greater than required by the Land Development Regulations and Technical Specifications of the City.

28. Developer and the City agree that easements for sanitary sewers, drainage and other required services may be located and utilized within private streets and shall be so noted on the Final Plat of said Extension.

29. Developer agrees that the City is not responsible for street repairs within private streets. The responsibility for repairing private streets will be that of the property owners and/or property owner's association and such responsibility shall be so noted on the Final Plat of said Extension.

SIDEWALKS

30. Developer shall furnish all labor and materials to construct and install all sidewalks and handicap ramps, at its expense, in accordance with the Land Development Regulations, Technical Specifications and the approved Development Plan.

STREET SIGNS, TRAFFIC CONTROL DEVICES, ETC.

31. Developer agrees to install, at its expense, permanent street signposts and markers at all street intersections in the Extension and to install, at its expense, traffic control devices, signage and striping relative to the Extension. The location of street signs to be installed shall be approved by the City Engineer. Variance from standard street sign type must be approved by the City. All traffic control devices, signage and striping shall be installed as per City Extension Regulations, the Manual on Uniform Traffic Control Devices and approved by the City Engineer.

EROSION, SEDIMENT AND DEBRIS

32. Developer agrees that all drainage and related facilities, including, without limitation, ditch paving, bank protection and fencing adjacent to open ditches, made necessary by the development of the Extension are to be constructed by Developer according to plans and specifications approved by the City Engineer.

33. Developer agrees that it will provide necessary erosion control, including, but not limited to, seeding for gentle slopes (4 to 1 or less) and grass sod for steeper slopes, with special grading and terracing, to the specifications of the City Engineer. All freshly excavated and embankment areas not covered with satisfactory vegetation shall be fertilized, mulched and seeded and/or sodded as required by the City Engineer to prevent erosion. In the event the City Engineer determines that Developer is not providing necessary erosion control, the City Engineer shall officially notify Developer of the problem. If Developer has not corrected the problem within 7 days after notice, the City Engineer may make arrangements for the necessary materials, labor and

associated costs to eliminate the erosion problem, documenting all expenses, specifically including reasonable administrative expenses, incurred in performing the work. Alternatively, the City reserves the right to issue a Stop Work Order on all work in progress within the bounds of the Extension until such time as Developer has corrected any erosion control deficiencies. Prior to releasing any Security hereunder, all expenses incurred by the City relative to the foregoing shall be paid in full by Developer plus interest on any unpaid balance accruing at the rate of ten percent (10%) per annum.

34. Any and all unenclosed watercourses lying partially or wholly within the boundary of the Extension Site shall be constructed to an adequate cross section to provide design flow without threat of erosion or flooding of any property within the Extension Site or any off-site property. Such watercourses shall be lined in a manner satisfactory to the City Engineer and any other agencies that may have jurisdiction.

35. All drainage structures necessary for the road plans affecting any watercourse lying partially or wholly within the Extension Site are to be provided by Developer.

DRAINAGE DESIGN AND RESPONSIBILITY

36. Developer shall pay to the City, the sum of **ZERO DOLLARS (\$0.00)**, which reflects the drainage control fee with detention as required by Ordinance 10-150.

37. Developer shall construct and install, at its expense, all storm water drainage channels, ditches and structures. All drainage control fees shall be paid to the City, and a retention/detention storage basin, as required, with sufficient hydrologic capacity to control all surface and ground water originating within and upstream of the Extension shall be constructed as required by the City. Said drainage system shall be designed such that the amount and rate of water from all sources leaving the Extension after full development shall not be significantly different after than before initiation of development unless approved by the City Engineer upon certification of a Professional Engineer registered in the State of Tennessee that the drainage system design and improvements upon full development of upstream and downstream properties, in accordance with the City's Land Use Plan, are sufficient to accept surface and ground water reasonably expected to flow on the Extension and discharge all waters reasonably expected to flow from the Extension so as not to damage or flood properties nor to increase the established base flood elevation of the upstream or downstream portion of Flood Plain within or without the Extension. Further, the adequacy of the drainage plan and construction thereof shall in all cases be certified by Developer's engineer as indicated by his signature and seal affixed upon the Final Plat of said Extension prior to the Initial Acceptance by the City and recording of said Final Plat.

38. Developer shall provide to the City, and to each lot purchaser or builder, a coordinated grading and drainage plan designed to ensure proper drainage of all lots and building sites within the Extension. Said plan shall be compatible with the overall drainage plan for the Extension and shall comply with the Extension Regulations. Further, the Final Plat shall contain a notation stating that compliance with the Drainage Plan by individual lot owners and builders shall be a condition of the Building Permit issued by the City.

39. That in any development that alters or revises the Flood Plain shown on the Flood Hazard Boundary Map issued by the Federal Emergency Management Region Office, Developer shall provide to the City a Development Permit issued by the Federal Insurance Administration Regional Office accepting said alteration or revision of the Flood Plain. Further, until said Development Permit is provided, Developer shall not proceed with any work affecting the Flood Plain nor will the Final Plat of the Project be approved by the MPC.

40. Developer understands and agrees that the City, in its proprietary function, does not purport to specify the development layout nor the choice of available land uses; nor does the City design, construct, supervise nor certify the adequacy of the drainage improvements.

41. Developer understands and agrees that the City Engineer is not vested with any responsibility for the design of drainage improvements, nor is he required to determine drainage capacities, survey elevation, cross check adequacy nor specify the type and locations of drainage improvements; and in providing technical assistance, planning and review, the City does not commit itself to the construction, improvements or modification of the drainage system within or without the Extension.

42. Developer understands and agrees that it is the responsibility of Developer to properly anticipate, survey, design and construct all drainage improvements so that the Extension will not increase, alter or affect the flow of surface or channelized waters from or onto any property as to damage or flood any property or contribute to the same.

43. Developer understands and agrees that in providing technical assistance, planning and review, the City seeks to enforce its minimal governmental standards and does not relieve or accept any of Developer's liability and responsibility to properly design and construct the Extension.

44. Developer further agrees to indemnify and hold harmless the City and the City Engineer from any loss or damage from any claim, cause of action or liability resulting in whole or part from the design, construction and/or installation of the Extension. The aforesaid indemnity and hold harmless agreement include, without limitation, the reasonable expenses of the City incurred in defending itself against any matter covered by such indemnity agreement, including attorney fees and expenses of litigation.

45. As long as the City holds Security it reserves the right to use said Security for completion and/or repair of any drainage structure during the warranty period of the Extension served by said structure.

46. The Final Plat which is to be recorded shall contain provisions substantially similar to the following if the Extension is to be subject to covenants and restrictions imposed by the Developer and/or if any area of the Extension is to be maintained at the expense of a property owners association:

"The Covenants and Restrictions set out herein are private in nature and are not subject to enforcement by the City of Lakeland.

The Developer will establish a not-for-profit property owners association (“POA”), which will have total responsibility for maintenance and repair of the common area(s) in the Extension after the present owner ceases such function. In the event the present Owner of the property shown hereon fails to organize the POA, or, if, after its organization, it ceases to function or exist, then, in the event the City of Lakeland, in accordance with applicable law and/or ordinances, expends funds to maintain or repair the common area, the expenses thereof plus an administrative fee shall become a lien, on a pro rata basis and severally, on each lot shown hereon and may be enforced in accordance with law. All owners of lots will be required to become members of the POA.”

ADMINISTRATIVE FEES

Engineering Review Fee

47. Developer agrees to pay to the City the sum of **ZERO DOLLARS (\$0.00)**, (\$300 per lot), which represents the engineering review fee as required by Ordinance 10-150, prior to the execution of this Contract.

Construction Inspection Fee

48. Developer agrees to pay to the City the sum of **ZERO DOLLARS (\$0.00)**, (\$500 base fee plus \$300 per lot), which sum represents the construction inspection fee required by Ordinance 10-150, which shall be paid prior to the execution of this Contract. Neither observations by the City Engineer and Construction Inspectors, nor inspections, tests or approvals by others shall relieve the Developer from its obligation to perform work in accordance with the terms of this Contract. Developer further agrees to pay a \$50 re-inspection fee for each inspection after a Notice of Violation has issued, payable within ten (10) days of receipt of invoice.

Administrative Review Fee

49. Developer agrees to pay to the City the sum of **ZERO DOLLARS (\$0.00)**, (\$200 1st lot and \$100 per lot thereafter), which represents the administrative review fee as required by Ordinance 10-150, prior to the execution of this Contract.

Geographical Information System (GIS) Fee

50. Developer agrees to pay to the City the sum of **ZERO DOLLARS (\$0.00)**, (\$200 plus \$50 per lot thereafter), which represents the Geographical Information System (GIS) Fee as required by Ordinance 10-150.

Natural Resources Inventory/Analysis Fee (per acre)

51. Developer agrees to pay to the City the sum of **ZERO DOLLARS (\$0.00)**, (\$200 plus \$25 per acre thereafter), which represents the Natural Resources Inventory/Analysis Fee as required by Ordinance 10-150.

Parkland Improvement Fee (per lot)

52. Developer agrees to pay to the City the sum of **ZERO DOLLARS (\$0.00)**, (\$100 per lot), which represents the Parkland Improvement Fee as required by Ordinance 10-150.

Tree Removal Fee (per acre)

53. Developer agrees to pay to the City the sum of **ZERO DOLLARS (\$0.00)**, (\$100 per acre or portion thereof, maximum \$10,000), which represents the tree removal fee as required by Ordinance 10-150, prior to the execution of this Contract.

Warning Siren Fee (per lot)

54. Developer agrees to pay to the City the sum of **ZERO DOLLARS (\$0.00)**, (\$50 per lot), which represents the Warning Siren Fee as required by Ordinance 10-150.

Parkland Review Fee (per acre)

55. Developer agrees to pay to the City the sum of **ZERO DOLLARS (\$0.00)**, (\$400 plus \$20 per acre) which represents the Parkland Review/Development Fee as required by Ordinance 10-150.

MISCELLANEOUS CONDITIONS

56. Easements. Developer agrees that it will grant any and all necessary easements and rights-of-way across its property to effectuate the requirements of this Contract. Any off-site easements and/or right-of-way required for the Extension must be obtained and furnished by Developer to the City and recorded prior to Contract approval. Said easements and rights-of-way shall be in form, type, size and character acceptable to the City. Developer shall grant and/or obtain and furnish said easements without expense to the City of Lakeland and will waive any claim for damages arising from the granting or obtaining thereof.

57. It is understood and agreed that the City is not and could not be expected to oversee, supervise and/or direct the construction of all construction and improvements contemplated hereunder. Neither is the City Engineer vested with the original design responsibility nor the means to formally survey elevations, capacity, structural integrity, type, adequacy or the locations of improvements at every stage of the construction process. The City Engineer is vested with the right of periodic inspections, final approval and stop work order as a measure of secondary or subsequent enforcement. Developer now has and shall retain the responsibility to properly anticipate, survey, design and construct the development improvements and give full assurance that same shall not adversely affect the flow of surface water from or upon any property. In providing technical assistance, plan and design review, the City does not and shall not relieve

Developer from or accept any liability from Developer. Developer will provide his own Project Engineer whose duties and responsibilities are explained in the General Conditions of the City of Lakeland Construction Specifications.

58. In situations which may affect the safety or protection of persons, the work, or property at the Extension Site or adjacent thereto, Developer, without special instruction or authorization from the City, is obligated to act to prevent any and all threatened damage, injury or loss. If the City has to use its resources to respond to situations which may affect the safety or protection of persons, the work, or property at the Extension Site or adjacent thereto, it is agreed that the City will keep a record of costs associated therewith, including without reservation reasonable administrative fees and expenses, and will be reimbursed by Developer.

59. Developer agrees that the City shall have the right to enter the Extension Site and make emergency repairs to any improvements when the health and safety of the general public requires it. Developer will reimburse the City for reasonable cost, including without reservation reasonable administrative fees and expenses, incurred by it in making such repairs.

60. Developer agrees to secure all required permits for the demolition of structures on the subject property. Developer further agrees that it will haul all scrap, buildings, materials, trees, debris, rubbish and other degradable materials to a permitted landfill on a timely basis and not bury, burn or cause to be burned, such materials or allow them to accumulate within the Extension Site or within the corporate limits of the City.

61. Developer agrees that should it default in performing any of its obligations under this Contract and it becomes necessary to engage an attorney to file necessary legal action to enforce provisions of this Contract or sue for any sums of money due and owing or liability arising incidental to the Contract, Developer will pay to the City reasonable attorney's fees and expenses of litigation.

62. Prior to the release of Security for the Extension by the City, Developer shall deliver to the City an affidavit certifying that all subcontractors and material suppliers furnishing labor and/or material for the improvements required under this Contract have been paid in full. The Developer shall also provide a release of all liens, and of the right to claim liens, from all subcontractors and material suppliers furnishing labor or materials for the development.

63. Developer shall be responsible for the cost of any and all relocation, adjustment, modification, installation and/or removal of utilities, streets, curbs, gutters, sidewalks, drainage and all other improvements made necessary by the development of the Extension, both on and off site. All electrical utilities shall be installed underground unless expressly waived by the BOC upon written request to the DRC and after a recommendation by the DRC is submitted to the BOC.

64. Developer agrees to pay a "Payment in-Lieu-of or Dedication for Parkland" in the amount of **ZERO DOLLARS (\$0.00)** as per Article II Neighborhood Development Regulations, Section D, 4.b. of the Lakeland Extension Regulations.

65. Gas and Electric Service. Developer shall install underground electric and natural gas service to the Extension in accordance with the electric and natural gas service policy specified by the agreement between the City and the Memphis Light, Gas and Water Division of the City of Memphis and City ordinances and/or policies in effect at the time of such installation.

66. Indemnity. Developer will indemnify and hold the City harmless against all claims that may arise out of or result from Developer's performance under this Contract, whether such claims arise out of the actions of Developer, any subcontractor of Developer, or anyone directly or indirectly employed or directed by either of them. This indemnity agreement includes, without limitation, all tort claims, both intentional and otherwise, and all claims based upon any right of recovery for property damage, personal injuries, death, damages caused by downstream deposits, sediment or debris from drainage, damages resulting from Developer changing the volume or velocity of water leaving Developer's property and entering upon the property of others, and claims under any statutes, Federal or state, relative to water, drainage and/or wetlands, and reasonable attorney's fees and costs incurred by the City in defending itself as a result of the aforesaid and/or enforcing this Contract.

67. Safety. Developer shall maintain barricades, fences, guards and flagmen as reasonably necessary to ensure the safety of all persons at or near the Extension Site during construction. All construction material, including, without limitation, mud, silt, dirt and gravel, shall be kept off existing streets at all times. In the event such mud, silt, dirt, gravel or other construction material is washed, blown or carried into an existing street, Developer shall take immediate steps to remove such materials. If Developer does not remove such materials after notification by the City, and the City deems it necessary to clean the affected streets, the Developer agrees to reimburse the City for all such cleaning expenses.

68. Construction Activity. (a) Developer will not carry on or permit construction activity under this Contract earlier than 6:00 a.m. nor later than 7:00 p.m., Monday through Saturday, and no construction activity, other than emergency repairs, shall be carried out on Sundays.

(b) Developer agrees to include the language "all streets shall be kept clear and free of dirt and debris" in all contracts between Developer and the contractors, subcontractors, builders, etc., unless otherwise authorized in writing by the City Engineer.

(c) Developer shall provide the City with the name, address and phone number of person(s) to be contacted and responsible for correcting any of the requirements set forth above should the occasion arise to do so.

69. The use of any gender herein shall apply to all genders, the singular shall include the plural, and the plural shall include the singular, as the content and context may require.

70. If litigation ensues with respect to this Contract and the City prevails therein, the City shall be entitled to recover from Developer its reasonable attorney's fees and the costs and expenses of such litigation, including reasonable attorney's fees and the costs and expenses of such litigation related to any appeal. The court(s) before which such litigation is pending shall

determine whether the City prevailed and the amount of such fees, costs, and expenses to be recovered by the City as a result of prevailing; and, if the City prevails in part, but not in whole, an equitable award of its attorney's fees and expenses shall be made by the court(s). The same provision as immediately aforesaid shall be applicable to any litigation necessary to establish the City's right to recover under the Security. The Security shall cover all Developer's obligations under this Contract, including, without limitation, the obligation of Developer to pay the fees, costs and expenses of the City as provided for in this Section of the Contract.

71. Interpretation and Severability. If any provision of this Contract is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provisions shall be fully severable and this Contract shall be construed and enforced as if such unlawful, invalid or unenforceable provision was not a part of this contract. Furthermore, if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other which would render the provision valid, then the provision shall have the meaning that renders it valid.

72. Construction of Contract. Each party has received and had the opportunity to review this Contract, and each party has had the opportunity, whether exercised or not, to have each respective party's attorney review this Contract, and, accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

73. No Waiver. The failure of the City to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Contract, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking or right.

74. Amendments and Modification. This Contract shall not be modified in any manner, except by an instrument in writing executed by or on behalf of all parties.

75. Authority to Execute. City and Developer each warrant and represent that the party signing this Contract on behalf of each has authority to enter into this Contract and to bind the City and Developer, respectively, to the terms, covenants and conditions contained herein. Each party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of all resolutions, consents or minutes reflecting the authority of persons or parties to enter into agreements on behalf of such party.

76. Notices. All notices, demands and requests required or permitted by this Contract shall be in writing (including telecopy communications) and shall be sent by facsimile transmission, air or other courier, or hand delivery, as follows:

- (i) CITY
CITY OF LAKELAND
ATTN: CITY MANAGER
10001 HIGHWAY 70
LAKELAND, TN 38002
Telephone: **(901) 867-2717**
Facsimile: **(901) 867-2063**

With Required Copies To:
City Engineer; and
City Attorney
At same address as above.

- (ii) DEVELOPER
VALLEYBROOK DEVELOPMENT, LLC AND SEEDTICK, LLC
AS A JOINT VENTURE PROJECT
8620 TRINITY RD., SUITE 202
CORDOVA, TN 38018
Telephone: **(901) 870-0900**

77. Any party to this Contract may change such party's address for the purpose of notices, demands and requests required or permitted under this Contract by providing written notice of such change of address to the other party, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

78. Choice of Law. This Contract is being execute and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles of conflicts of law) of the State of Tennessee shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof.

OVERALL FEE/COST SUMMARY
(as more specifically set forth in Exhibit A hereto)

(1)	Sewer Development Fee	N/A
(2)	Sewer Lift Station Maintenance Fee	N/A
(3)	Sewer Connection Fee	N/A
(4)	Street Light Fee	N/A
(5)	Road Cut Fee	N/A
(6)	Drainage Control Fee (w/ Basin)	N/A
(7)	Drainage Control Fee (w/o Basin)	N/A
(8)	Engineering Review Fee	N/A
(9)	Construction Inspection Fee	N/A
(10)	Administrative Review Fee	N/A
(11)	Geographical Information Systems Fee	N/A
(12)	Natural Resources Inventory & Analysis Fee	N/A
(13)	Parkland Improvement Fee	N/A
(14)	Tree Removal Fee	N/A
(15)	Warning Siren Fee	N/A
(16)	Parkland Review Fee	N/A
(17)	Parkland Dedication Fee	N/A
	Total	N/A

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals at Lakeland, Tennessee, this _____ day of _____, **2024**.

DEVELOPER:
VALLEYBROOK DEVELOPMENT, LLC

DEVELOPER:
SEEDTICK, LLC

CITY OF LAKELAND:

By:_____

Date: _____

ATTEST: _____

APPROVED AS TO FORM:

By: _____

DATE APPROVED BY BOARD OF COMMISSIONERS: _____

DATE APPROVED BY BOARD OF SEWERAGE COMMISSIONERS: _____

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a notary of public of the state and county mentioned, personally appeared _____, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be _____, the within named bargainer, a corporation, and that such officer, as such _____, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as managing partner, by himself as _____.

Witness my hand and seal at office; this is the ____ day of ____, 20__.

Notary Public

My Commission Expires: _____



Board of Commissioners

Meeting Cycle: Thursday, November 7, 2024

Subject: **Resolution** - approving a professional service agreement with 4FDesign, P.C. for the design of the Lakeland Community Center.

Staff Contact: Emily Harrell, City Engineer

STAFF RECOMMENDATION

City staff recommends the Board of Commissioners approve Resolution R-169-2024.

BUDGET IMPACT

This expenditure is appropriated in the Fiscal Year 2025 Annual Budget for the General Fund.

DISCUSSION

The proposed Lakeland Community Center, located at 4822 Huff n Puff Road, is a 38,820 square foot multi-use facility including an early learning childcare center, multipurpose gymnasium, workout studios, fitness spaces, aquatic training center, food distribution, and community meeting space.

A Request for Qualifications was issued for professional engineering services on September 26th, 2024. Six proposals were received and reviewed by the Consultant Selection Committee. 4FDesign, P.C. was selected based on their qualifications, experience with Community Center projects and familiarity with USDA requirements.

RESOLUTION R-169-2024

APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH 4FDESIGN, P.C.
FOR THE DESIGN OF THE LAKELAND COMMUNITY CENTER

WHEREAS, the City of Lakeland, Tennessee (the “City”) desires to hire a firm for professional services related to the Lakeland Community Center; and,

WHEREAS, 4FDesign, P.C. submitted a proposal for professional services on the Lakeland Community Center; and,

WHEREAS, 4FDesign, P.C. was selected by the consultant selection committee based on their qualifications to perform the work; and,

WHEREAS, funding is appropriated in the Fiscal Year 2025 Annual Budget for the General Fund:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland Tennessee, that the City Engineer is authorized to execute, a professional service agreement with 4FDesign, P.C. in the amount of One Million Five Hundred Forty-Five Thousand Two Hundred Thirty-One Dollars (\$1,545,231.00) for the design of the Lakeland Community Center contingent on the following:

1. Approval of the agreement from the United States Department of Agriculture (USDA); and,

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee on this 7th day of November 2024, the public welfare requiring it.

ATTEST:

Josh Roman
Mayor

Cheyenne Carter
City Recorder



AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Fourth day of November in the year 2024
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Lakeland
10001 Highway 70
Lakeland, TN 38002

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

4FDesign, P.C.
5101 Wheelis Drive, Suite 215
Memphis, TN 38117

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

Lakeland Community Center – Phase 1
Beverle Rivera Dr. – Lakeland, TN

PROJECT OUTLINE:

1. The site is located approximately near the intersection of Beverle Rivera Dr. and Huff N Puff Rd. in Lakeland, TN. The exact site and site boundaries are TBD.
2. The building will be approximately 45,000 SF and is based on a floor plan concept developed by 4FDesign (see Attachment 'A'). The building will include fitness spaces, locker rooms, gym with spectator seating, "airnasium" covered outdoor fitness area, and an Early Learning Center (daycare).
3. The site will include an outdoor 8-lane pool (with spectator seating) lounge/plaza areas, and an accessory pool equipment building in addition to ELC playground, parking, and related amenities.
4. The projected Cost of Construction is about \$21.3 million (see Attachment 'C').
5. A specialty aquatics consultant will be required for the outdoor aquatic and plaza elements. Specialty mechanical, plumbing, and electrical engineers will be required to design the specialized aquatic equipment and systems.
6. The proposed design and construction schedule is attached (see Attachment 'D').
7. The delivery method will be Design/Bid/Build per USDA requirements.
8. The project will be required to adhere to guidelines of and be approved by the Lakeland Municipal Planning/Design Review Commission. 4FDesign will assist with preparing documents for and presenting to the MP/DRC (including exterior building elevations, materials, and lighting photometric plans).

ADDITIONS AND DELETIONS:

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

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

The Owner and Architect agree as follows.

Init.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

A detailed program and schematic floor plan is included in Attachment 'B'.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

1. The site is located approximately near the intersection of Beverle Rivera Dr. and Huff N Puff Rd. in Lakeland, TN. The exact site and site boundaries are TBD.
2. The building will be approximately 45,000 SF and is based on a floor plan concept developed by 4FDesign (see Attachment 'A'). The building will include fitness spaces, locker rooms, gym with spectator seating, "airnasium" covered outdoor fitness area, and an Early Learning Center (daycare).
3. The site will include an outdoor 8-lane pool (with spectator seating) lounge/plaza areas, and an accessory pool equipment building in addition to ELC playground, parking, and related amenities.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

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(Provide total and, if known, a line item breakdown.)

The projected cost of construction is \$21.3 million. Refer to Attachment 'C'.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Refer to Attachment 'D' – Conceptual Project Timeline

.2 Construction commencement date:

Refer to Attachment 'D' – Conceptual Project Timeline

.3 Substantial Completion date or dates:

Refer to Attachment 'D' – Conceptual Project Timeline

.4 Other milestone dates:

Refer to Attachment 'D' – Conceptual Project Timeline

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Design/Bid/Build

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

(List name, address, and other contact information.)

Emily Harrell, PE
City Engineer
City of Lakeland
10001 Highway 70
Lakeland, TN 38002
P: 901-867-5418
E:charrell@lakelandtn.org

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address, and other contact information.)

N/A

§ 1.1.9 The Owner shall retain the following consultants and contractors:

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(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

(by City of Lakeland)

(Paragraphs deleted)

.2 Topographical Surveys:

(by City of Lakeland)

.3 Environmental Studies/Engineering:

(by City of Lakeland)

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

Michael Winter, Vice President/Principal
4FDesign
5101 Wheelis Drive, Suite 215
Memphis, TN 38117
P: 901-767-3924
E: michael@4f.design

Veronica Tansey, Interior Designer/Senior Project Manager
4FDesign
5101 Wheelis Drive, Suite 215
Memphis, TN 38117
P: 901-767-3924
E: veronica@4f.design

Tre Yancy, Project Manager
4FDesign
5101 Wheelis Drive, Suite 215
Memphis, TN 38117
P: 901-767-3924
E: tre@4f.design

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

EFI Global
7975 Stage Hills Blvd., Suite 1
Memphis, TN 38133
P: 901-377-9984

.2 Mechanical/Plumbing/Fire Protection Engineer:

Barham Cain Mynatt
1015 Cordova Station
Cordova, TN 38018
P: 901-685-2371

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/

.3 Electrical Engineer:

DePouw Edwards, LLC
9056 South Corporate Edge Drive
Germantown, TN 38138

§ 1.1.11.2 Consultants retained under Supplemental Services:

Civil Engineering – Kimley-Horn
Landscape Architect – Kimley-Horn
Aquatic Design & Specialty Engineering – Kimley-Horn

§ 1.1.12 Other Initial Information on which the Agreement is based:

N/A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than Two Million Dollars (\$ 2,000,000) for each occurrence and Four Million Dollars (\$ 4,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars (\$ 2,000,000) per claim and Four Million Dollars (\$ 4,000,000) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not

show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such

requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
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Supplemental Services		Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1	Programming	INCLUDED IN BASIC SERVICES
§ 4.1.1.2	Multiple preliminary designs	INCLUDED IN BASIC SERVICES
§ 4.1.1.3	Measured drawings	NOT PROVIDED
§ 4.1.1.4	Existing facilities surveys	NOT PROVIDED
§ 4.1.1.5	Site evaluation and planning	INCLUDED IN BASIC SERVICES
§ 4.1.1.6	Building Information Model management responsibilities	INCLUDED IN BASIC SERVICES
§ 4.1.1.7	Development of Building Information Models for post construction use	NOT PROVIDED
§ 4.1.1.8	Civil engineering	ARCHITECT
§ 4.1.1.9	Landscape design	ARCHITECT
§ 4.1.1.10	Architectural interior design	INCLUDED IN BASIC SERVICES
§ 4.1.1.11	Value analysis	NOT PROVIDED
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	NOT PROVIDED
§ 4.1.1.13	On-site project representation	NOT PROVIDED
§ 4.1.1.14	Conformed documents for construction	INCLUDED IN BASIC SERVICES
§ 4.1.1.15	As-designed record drawings	INCLUDED IN BASIC SERVICES
§ 4.1.1.16	As-constructed record drawings	OWNER (BY OWNER'S GC)
§ 4.1.1.17	Post-occupancy evaluation	NOT PROVIDED
§ 4.1.1.18	Facility support services	NOT PROVIDED
§ 4.1.1.19	Tenant-related services	NOT PROVIDED
§ 4.1.1.20	Architect's coordination of the Owner's consultants	INCLUDED IN BASIC SERVICES
§ 4.1.1.21	Telecommunications/data design	OWNER
§ 4.1.1.22	Security evaluation and planning	OWNER
§ 4.1.1.23	Commissioning	NOT PROVIDED
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	NOT PROVIDED
§ 4.1.1.25	Fast-track design services	NOT PROVIDED
§ 4.1.1.26	Multiple bid packages	NOT PROVIDED
§ 4.1.1.27	Historic preservation	NOT PROVIDED
§ 4.1.1.28	Furniture, furnishings, and equipment design and procurement	NOT PROVIDED
§ 4.1.1.29	(2) color 3D Exterior & (2) color 3D Interior Renderings	INCLUDED IN BASIC SERVICES
§ 4.1.1.30	Aquatic Design & Specialty Engineering	ARCHITECT
§ 4.1.1.31	Accessibility/ADA Consultant Services	OWNER
(Row deleted)		
§ 4.1.1.32	Waterproofing Consultant Services	OWNER
§ 4.1.1.33	Kitchen Design Services	OWNER
§ 4.1.1.34	Sustainable/Green Building/Commissioning	OWNER
§ 4.1.1.35	Security/Low Voltage/IT/AV Design	OWNER
§ 4.1.1.36	Graphics/Rendering Services (beyond that noted in 4.1.1.29)	NOT PROVIDED

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§ 4.1.1.37 Other Services Provided by Specialty Consultants	NOT PROVIDED
§ 4.1.1.38 Signage (Interior & Exterior)	INCLUDED IN BASIC SERVICES
§ 4.1.1.39 Community Engagement	NOT PROVIDED
§ 4.1.1.40 Planning/Permitting Services	INCLUDED IN BASIC SERVICES
§ 4.1.1.41 Design of Storm Shelter (ICC-500)	NOT PROVIDED
§ 4.1.1.42 Additional reporting, documentation, meetings, and/or coordination related to alternative funding sources (USDA, new market tax credits, grants, bank financing, etc).	NOT PROVIDED/ADDITIONAL SERVICES
§ 4.1.1.43 Redesign and/or revisions to drawings due to value engineering after the approval of a phase/drawings	NOT PROVIDED/ADDITIONAL SERVICES
§ 4.1.1.44 Zoning/Re-zoning Services	NOT PROVIDED/ADDITIONAL SERVICES
§ 4.1.1.45 Stormwater Construction Permitting/SWPPP	INCLUDED IN BASIC SERVICES

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

Refer to Attachment 'E': Kimley-Horn Civil Proposal, Kimley-Horn Landscape Proposal.

Scope of Kimley-Horn Aquatics & Specialty Engineering Services (Phase 1) TBD

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

The scope and description of these services will be developed during the course of the projects design phases.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Twenty (20) visits to the site by the Architect during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty Four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs.

The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to Section 8.3 of this Agreement
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

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

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

Negotiated percentage of compensation

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

Negotiated percentage of compensation

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably

necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1
(Paragraphs deleted)
Percentage Basis
(Insert percentage value)

Six (6) % of the Cost of Work, as calculated in accordance with Section 11.6.
(Paragraphs deleted)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Refer to Attachment 'F' – Schedule of Hourly Rates.

Civil: \$178,000 lump sum + \$25,000 hourly budget (Construction Phase services)
Landscape Architecture: \$58,000 lump sum + \$25,000 hourly budget (Construction Phase services)
Aquatics & Specialty Engineering (Phase 1): \$177,000

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Refer to Attachment 'F' – Schedule of Hourly Rates.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development	Thirty Five	percent (	35	%)
Phase/Pricing Set				
Construction Documents	Thirty	percent (	30	%)
Phase				
Bidding	Five	percent (	5	%)
Construction Phase	Fifteen	percent (	15	%)

Init.

Total Basic Compensation	one hundred	percent (	100	%)
--------------------------	-------------	-----------	-----	----

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.6.2 At the time the final Cost of Construction is established by the Owner's General Contractor, the Architect shall be compensated for additional services by multiplying the portion of the Cost of the Work exceeding the Cost of the Work outlined in Section 1.1.3 by 6%.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Refer to Attachment 'F' – Schedule of Hourly Rates

Employee or Category	Rate (\$0.00)
----------------------	---------------

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

§ 11.9 **Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Eight Thousand Two Hundred Fifty (\$ 8,250) (15% structural fee) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of zero (\$ 0) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

6 % annually

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect

.2

(Paragraphs deleted)

Other documents:

(List other documents, if any, forming part of the Agreement.)

Attachment 'A' – Conceptual Site Plan

Attachment 'B' – Building Program & Schematic Floor Plan

Attachment 'C' – Project/Construction Cost Estimate

Attachment 'D' – Conceptual Project Timeline

Attachment 'E' – Kimley-Horn Civil Proposal & Kimley-Horn Landscape Architecture Proposal

(Paragraph deleted)

Attachment 'F' – Schedule of Hourly Rates

Init.

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User Notes:

(1110864980)

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

OWNER *(Signature)*

Emily Harrell, PE
City Engineer

(Printed name and title)



ARCHITECT *(Signature)*

Michael W. Winter, AIA, NCARB
Vice President/Principal

(Printed name, title, and license number, if required)

Init.

/

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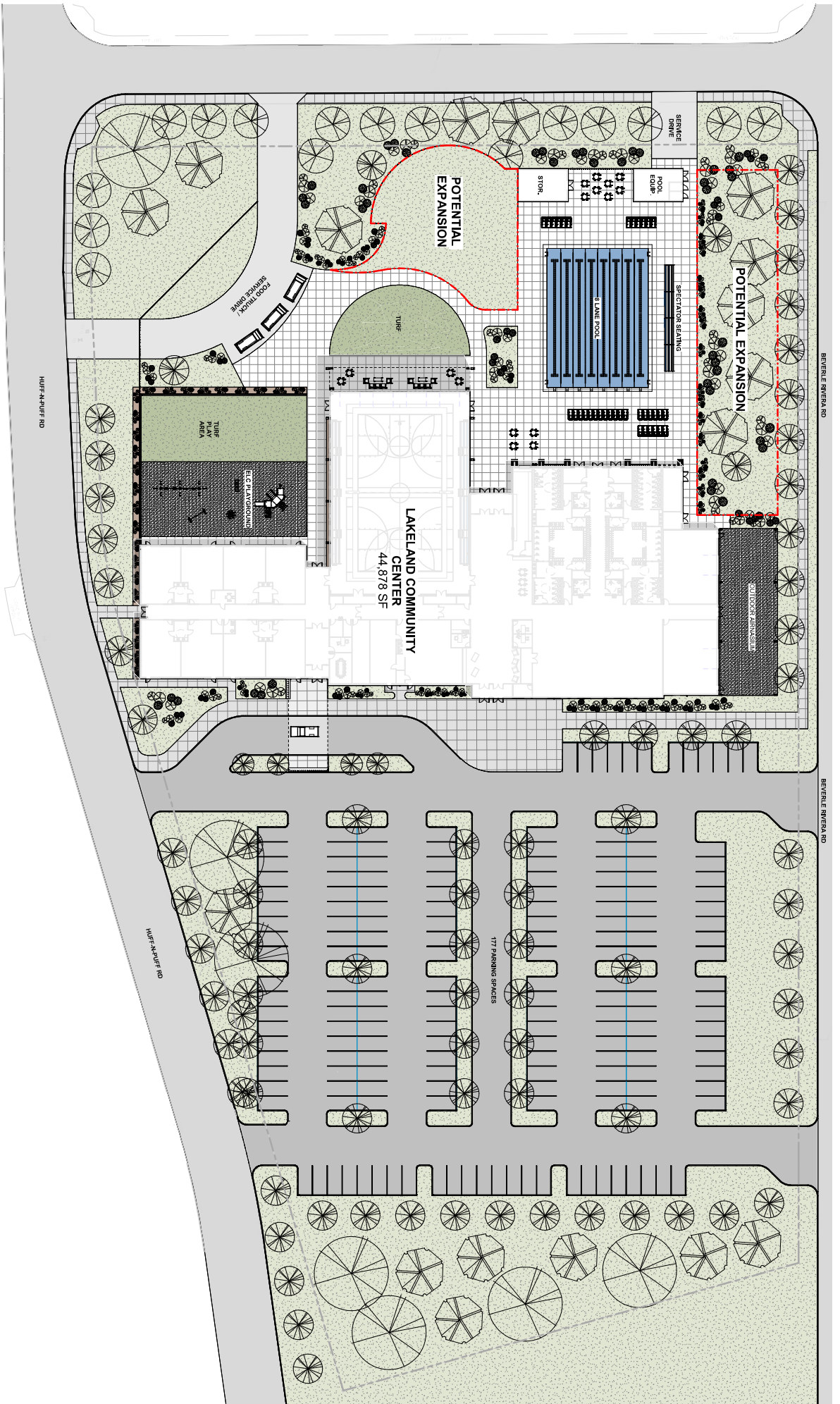
User Notes:

(1110864980)

1 PRESENTATION SITE PLAN
3/64" = 1'-0"



SITE PLAN



DESIGN

City of Lakeland / YMCA of Memphis & the Mid-South
LAKELAND COMMUNITY CENTER
9822 Huff-A-Puff Rd | Lakeland, TN

01
07/09/2024

BUILDING PROGRAM		
Department	Area	Name

CIRCULATION	557 SF	CORRIDOR
CIRCULATION	2151 SF	CORRIDOR
CIRCULATION	852 SF	CORRIDOR
CIRCULATION	674 SF	CORRIDOR
CIRCULATION	306 SF	ELC ENTRY
CIRCULATION	2932 SF	LOBBY
CIRCULATION	190 SF	WEST.
CIRCULATION	290 SF	WEST.
CIRCULATION	101 SF	WEST.
CIRCULATION	8054 SF	

	ELC	111 SF	BREAK ROOM
	ELC	747 SF	CLASSROOM 1 - INFANT
	ELC	744 SF	CLASSROOM 2 - INFANT
	ELC	747 SF	CLASSROOM 3 - TODDLER
	ELC	744 SF	CLASSROOM 4 - TODDLER
	ELC	744 SF	CLASSROOM 5 - PK
	ELC	748 SF	CLASSROOM 6 - PK
	ELC	748 SF	CLASSROOM 7 - PK
	ELC	744 SF	CLASSROOM 8 - PK
	ELC	242 SF	CONF. ROOM
	ELC	118 SF	DIR. OFFICE
	ELC	36 SF	ELEC.
	ELC	50 SF	JAN.
	ELC	398 SF	KITCHEN
	ELC	77 SF	LAUNDRY
	ELC	54 SF	STG.
	ELC	89 SF	STORAGE
	ELC	53 SF	TLT.
	ELC	96 SF	TLT.
	ELC	96 SF	TLT.
	ELC	96 SF	TLT.
ELC	ELC	96 SF	TLT.
		7581 SF	
GYM	GYM	10059 SF	GYM
GYM	GYM	89 SF	STORAGE
GYM		10148 SF	

BUILDING PROGRAM		
Department	Area	Name

POOL PUMP	39 SF	CHEM.
POOL PUMP	37 SF	CHEM.
POOL PUMP	283 SF	MECHANICAL
POOL PUMP	432 SF	POOL PUMP
POOL PUMP	791 SF	

YMCA	336 SF	CAFE
YMCA	47 SF	CHANGING
YMCA	42 SF	CHANGING
YMCA	47 SF	CHANGING
YMCA	42 SF	CHANGING
YMCA	134 SF	CHECK IN
YMCA	588 SF	CHILD WATCH
YMCA	1091 SF	CHILD WATCH
YMCA	39 SF	CLO.
YMCA	48 SF	CLO.
YMCA	556 SF	CONCESSIONS
YMCA	52 SF	ELEC.
YMCA	36 SF	ELEC.
YMCA	3659 SF	FITNESS/CARDIO
YMCA	52 SF	IT.
YMCA	602 SF	JAN.
YMCA	627 SF	MEN'S LOCKER ROOM
YMCA	90 SF	OFFICE
YMCA	90 SF	OFFICE
YMCA	91 SF	OFFICE
YMCA	124 SF	OFFICE
YMCA	87 SF	OFFICE
YMCA	124 SF	OFFICE
YMCA	180 SF	SHOWERS
YMCA	180 SF	SHOWERS
YMCA	52 SF	STG.
YMCA	140 SF	STORAGE
YMCA	112 SF	STORAGE
YMCA	33 SF	STORAGE
YMCA	526 SF	STORAGE
YMCA	1423 SF	STUDIO X
YMCA	1423 SF	STUDIO X

BUILDING PROGRAM		
Department	Area	Name

YMCA	56 SF	TLT.
YMCA	85 SF	TLT/ SHWR.
YMCA	85 SF	TLT/ SHWR.
YMCA	85 SF	TLT/ SHWR.
YMCA	85 SF	TLT/ SHWR.
YMCA	400 SF	TOILETS
YMCA	248 SF	TOILETS
YMCA	400 SF	TOILETS
YMCA	248 SF	TOILETS
YMCA	174 SF	VANITY
YMCA	174 SF	VANITY
YMCA	174 SF	VANITY
YMCA	174 SF	VANITY
YMCA	94 SF	VEST.
YMCA	50 SF	VEST.
YMCA	94 SF	VEST.
YMCA	50 SF	VEST.
YMCA	607 SF	WOMEN'S LOCKER ROOM
YMCA	90 SF	WORK ROOM

YMCA	15472 SF
Grand total: 88	42046 SF

BUILDING PROGRAM



DESIGN

City of Lakeland / YMCA of Memphis & the Mid-South

LAKELAND COMMUNITY CENTER

9822 Huff-N-Puff Rd | Lakeland, TN



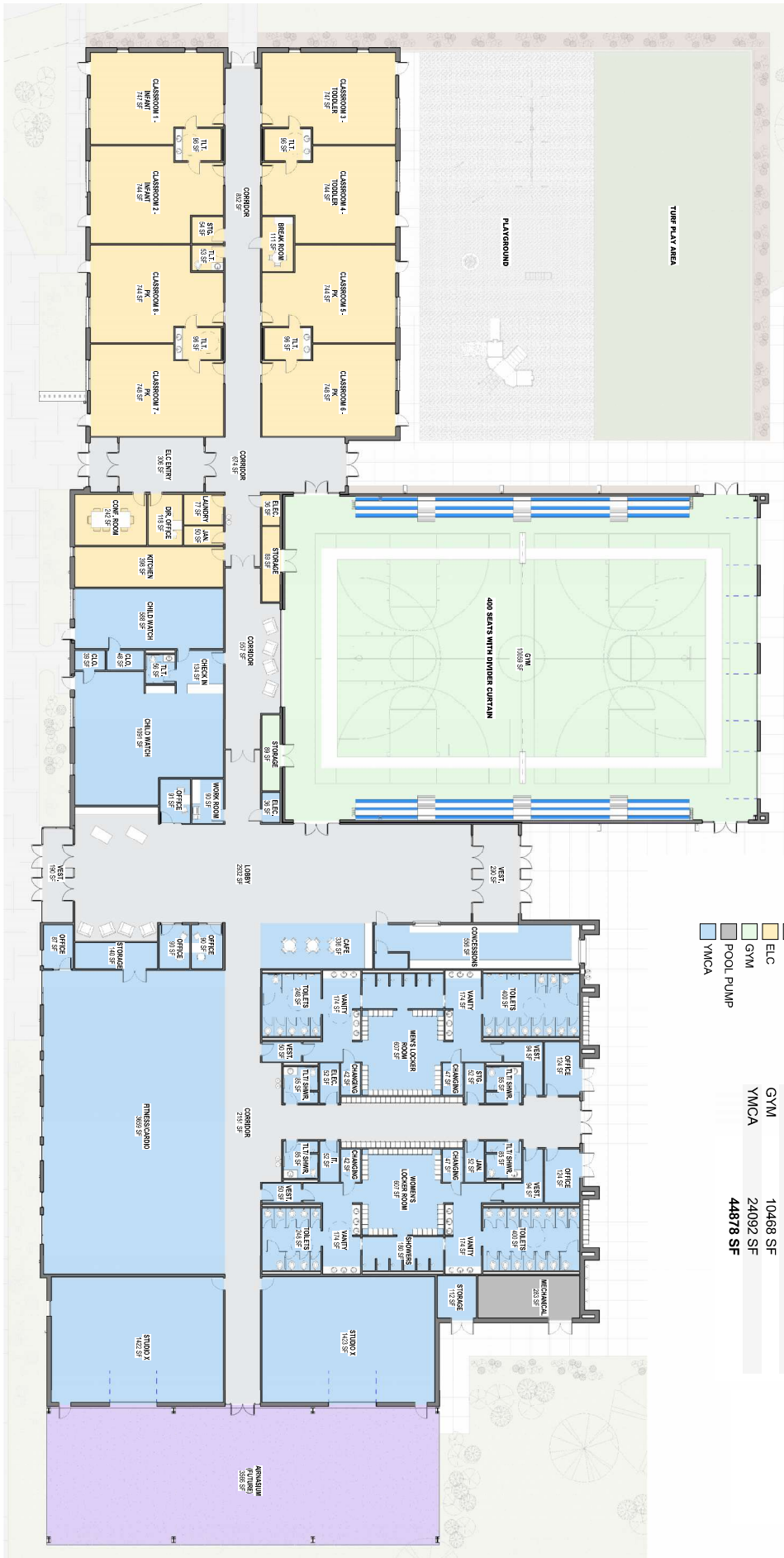
DESIGN

1 PRESENTATION FLOOR PLAN
3/32" = 1'-0"



BUILDING FLOOR PLAN

City of Lakeland / YMCA of Memphis & the Mid-South
LAKELAND COMMUNITY CENTER
9822 Huhns-Purrl Rd | Lakeland, TN



Department Legend		BUILDING AREAS	
AFRNASIUM		ELC	10318 SF
CIRCULATION		GYM	10468 SF
ELC		YMCA	24092 SF
GYM			44878 SF
POOL PUMP			
YMCA			

Lakeland Community Center

Project Cost Estimate		
A. Preliminary Construction Cost		Cost
1.	Building and Site (gross 44,878 sf with Pool)	
	a. Cost Estimate	\$ 18,918,882
	b. Markups (Permit, Escalation, Estimating Contingency, Fee)	\$ 1,779,974
	c. Indirect Cost Estimate (Insurance, Bonds, Builders Risk)	\$ 618,194
	Total Construction Cost (CC)	\$ 21,317,050 \$475/sf
B. Site Development		Cost
	Site Construction Cost INCLUDED in Section A	
C. Land and Rights		Cost
1.	Land Purchase Cost	\$ -
	Total Land & Rights	\$ -
D. Design Fees & Reimbursements		Cost
1.	Architecture , Engineering and Interior Finishes (6% of CC)	\$ 1,241,931
2.	Architectural Hourly PAR for USDA (NTE allowance)	\$ 10,000
3.	Site Survey	\$ 15,000
4.	Civil Engineering	\$ 149,800
	a. Civil Construction Administration	\$ 25,000
5.	Landscape/Irrigation Design	\$ 78,500
	a. Landscape Construction Administration	\$ 25,000
6.	Traffic Study	(\$26,500 - incl'd item 4)
	Total Design Fees & Reimbursements	\$ 1,545,231
E. Construction Monitoring		Cost
1.	Full-time Resident Inspector	\$ 250,000
	Total Construction Monitoring	\$ 250,000
F. Engineering Costs		Cost
1.	Test Borings/Geo. Tech Report	\$ 15,000
	Total Engineering Costs	\$ 15,000
G. Environmental		Cost
2.	Environmental Report	\$ 15,000
	Total Environmental	\$ 15,000
H. Direct Expenditures (Allowances)⁵		Cost
1.	Unsuitable Soils	\$ 175,000
2.	Unforeseen Code Items	\$ 50,000
3.	Material Testings	\$ 125,000
4.	MLGW Tap Fees and Deposits	\$ 50,000
5.	Signage beyond code reqm'ts	\$ 50,000
6.	AV/Security/Access Control/Data/Phone/Fiber/LV	\$ 230,000
	Total Furnishings, Fixtures & Equipment	\$ 680,000
I. Furnishing, Fixtures & Equipment Budget		Cost
1.	Kitchen/Breakroom Appliances	\$ 50,000
2.	Furniture	\$ 500,000
3.	Fitness Equipment	\$ 450,000
	Total Furnishings, Fixtures & Equipment	\$ 1,000,000
PROJECT SUBTOTAL		\$ 24,822,281
J. Legal		Cost
1.	City of Lakeland anticipated legal cost	\$ 70,000
K. Interim Financing Interest		Cost
1.	City of Lakeland anticipated interest (2 years at 7.00%) ⁵	\$ 3,648,875
L. Administrative		Cost
1.	State Fire Marshall Review Fee	\$ 6,000
2.	Plan Review Fee	\$ 3,000
	Total Governmental Fees & Permits	\$ 9,000
M. Contingencies		Cost
1.	Owner Contingency (5%)	\$ 1,241,114
2.	BABAA cost impact (5%)	\$ 1,065,853
	Total Contingency	\$ 2,306,967
TOTAL PROJECT COST (Project Subtotal + J + L + M)		\$ 27,208,248

Notes:

1. No soil undercutting included.

2. Excludes off-site improvements.

3. Interest assumes Project Subtotal + Contingency x 7.00% for 2 years

4. These estimates will change as more information is known.

5. All allowances are projected estimates for planning purposes to be confirmed by the design team/owner further into project design.

Activity Name	Duration 1	Start Date	Finish Date	2024				2025												2026												2027					
				O	N	D	J	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
Notice to Proceed	0.00	11/7/24	11/7/24	●																																	
Schematic Design	2.00	11/7/24	1/13/25	●	■																																
100% Schematic Design	1.00	11/7/24	1/13/25	●	■																																
RFP/Geotech Report	1.00	11/7/24	12/3/24	●	■																																
Cost Estimate/QC	0.50	1/13/25	2/3/25	●	■																																
100% Schematic Design (owner approval)	0.25	2/3/25	2/3/25		●																																
Lakeland DRC	0.00	2/7/25	2/7/25		●																																
Design Development Phase	2.00	1/13/25	3/14/25	●	■																																
50% Design Development (owner approval)	1.50	1/13/25	2/28/25	●	■																																
100% Design Development with Preliminary Specs	0.50	2/28/25	3/14/25		●	■																															
Update Cost Estimate/QC	1.00	3/17/25	4/16/25		●	■																															
100% Design Development (owner approval)	0.25	3/14/25	3/21/25		●	■																															
Early Site Demolition Bid/Code Review	1.00	3/17/25	4/14/25		●	■																															
Early Site Demolition (Construction)	3.00	4/21/25	7/14/25		●	■																															
Construction Document Phase	3.00	3/17/25	6/16/25		●	■																															
50% Construction Documents	1.50	3/17/25	4/28/25		●	■																															
95% Construction Documents & 100% Specs	1.50	4/28/25	6/6/25			●	■																														
100% Construction Documents	0.50	6/6/25	6/16/25			●	■																														
100% Construction Documents (owner approval)	0.25	6/16/25	6/23/25			●	■																														
Bid/Code Review	1.50	6/17/25	7/29/25			●	■																														
Groundbreaking	0.00	8/15/25	8/15/25																																		
Construction Phase	20.00	8/15/25	4/18/27																																		
Opening Date	0.00	5/1/27	5/1/27																																		
				O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M		



October 31, 2024

Mr. Michael Winter, AIA, NCARB
Vice President, Principal
4F Design
5101 Wheelis Drive, Suite 215
Memphis, Tennessee 38117

RE: **LAKELAND COMMUNITY CENTER**
****BEVERLE RIVERA DRIVE – LAKELAND, TENNESSEE****
****CIVIL ENGINEERING DESIGN SERVICES AND PERMITTING SERVICES****

Mr. Winter

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “the Consultant”) is pleased to submit this letter agreement to the 4F Design (“the Client”) for Professional Civil Engineering and Permitting Services for a new Lakeland Community Center (the Project”) located on Beverle Rivera Drive in Lakeland, Tennessee.

PROJECT UNDERSTANDING



Figure 1: Scope Diagram. Conceptual Master Plan provided by 4F Design on October 29, 2024.

PROJECT ASSUMPTIONS

1. The project site area, as illustrated in Figure 1, is situated on two parcels that total approximately 5.9 acres. The largest of the two parcels is a ~4.91-acre parcel located Beverle Rivera Drive; the smallest of the two is a ~1.0-acre parcel located on Huff N Puff Road.
2. It is assumed that the project use is allowable by right, and any rezoning process is excluded from this scope of services.
3. The site is an unused and vacant parcel. Previously the parcel consisted of a ~25,000 square-foot motel structure, a parking lot, and a pool. These features are generally situated on the southern portion of the site. The northern portion of the site consists of mostly open grass area with a few small trees.
4. It is assumed that no platting will be required. If required, it is assumed the surveyor for the project, engaged by others, will complete the subdivision plat.
5. It is anticipated that stormwater detention facilities will be required.
6. It is assumed that public utilities including water, storm-sewer, electric, gas, cable/data are readily available at the site boundary. No off-site improvements other than those noted as part of this Scope of Services are anticipated and are not included in this Scope of Services.
7. No additional design or study of offsite improvements to roadway, water, sanitary sewer, or stormwater drainage infrastructure, is known at this time and is therefore excluded. Kimley-Horn will notify the Client if such a need is identified.
8. The site is greater than one acre in size, thus a National Pollutant Discharge Elimination System (NPDES) permit will be required prior to the start of construction.
9. The Client will engage with a qualified environmental engineer to provide all necessary environmental assessments and water jurisdictional delineations for the project.
10. The Client will engage with a qualified geotechnical engineer to provide all necessary geotechnical assessments for the project.
11. The Client, or others, will engage with a qualified surveyor to provide all necessary boundary, topographic and as-built information required for Kimley-Horn's design of the project.
12. This scope of services does not include construction documentation of aquatic components within the areas generally illustrated as Potential Expansion in Figure 1. However, grading, utility and infrastructure design and documentation will be provided to serve the aquatic area and will be complementary to the aquatic construction documentation.

TASK 1 - CIVIL ENGINEERING DESIGN SERVICES

Kimley-Horn will perform the following civil engineering design services.

Task 1.1 – Schematic Design (SD)

Kimley-Horn will provide the following Schematic Design services:

- Assist in the preparation of a Site Plan that refines the Conceptual Master Plan, shown in Figure 1, based upon the final development program and the findings of the topographic survey.
- Attend up to four design working sessions with the Client to develop a Site Plan that takes in to account development programming, adopted Town planning documents, adjacent properties, critical pedestrian thoroughfares, and overall aesthetics.
- Kimley-Horn will develop an initial Schematic Design package for the project area that consists of

the following items:

- Site Plan that illustrates the following elements:
 - Structure placement
 - Vehicular and Parking Infrastructure delineating various pavement types (standard- and heavy-duty asphalt, standard- and heavy-duty concrete)
 - Pedestrian Infrastructure delineating sidewalks, hardscape plazas, stairs, ramps, etc.
 - Pavement Markings illustrating parking lot layout, vehicular lane striping and turning movements.
 - Other Preliminary Site Elements such as parking lot islands, retaining walls, “pad ready sites”, etc.
- Utility Plan that illustrates routing for water and sanitary sewer.
- Grading and Drainage Plan that illustrates finished-floor-elevation, preliminary proposed contour lines, limited spot elevations, and stormwater management facilities.

DELIVERABLES

- Kimley-Horn will provide the Client with a 30”x42” Schematic Design Package in PDF format.

Task 1.2 – Design Development (DD)

Based on the plans developed during the Schematic Design phase and comments from the Client and Owner, Kimley-Horn will further refine plans to a Design Development level. Kimley-Horn will prepare the following Design Development Plans:

- Preliminary Site Plan that illustrates the following elements:
 - Building placement
 - Vehicular and Parking Infrastructure delineating various pavement types (standard- and heavy-duty asphalt, standard- and heavy-duty concrete)
 - Pedestrian Infrastructure delineating sidewalks, hardscape plazas, stairs, ramps, etc.
 - Pavement Markings illustrating parking lot layout, vehicular lane striping and turning movements.
 - Other Preliminary Site Elements such as parking lot islands, retaining walls, “pad ready sites”, etc.
- Kimley-Horn will prepare a utility plan showing proposed sanitary sewer line routing and sizes, and water line routing for both domestic and fire protection service (input required from fire protection consultant).
- Kimley-Horn will prepare a grading and drainage plan showing proposed grading contours in one-foot intervals and will provide preliminarily sized storm drain system and structure layout designed to convey site storm water runoff to the proposed stormwater management facilities. As part of the grading plan, Kimley-Horn will also provide finished-floor elevation and general spot elevations for site elements, such as retaining walls, stairs, ramps, and parking areas, if applicable.
- During the Design Development phase, Kimley-Horn will assist the Client with development of access and circulation.

- Kimley-Horn will provide coordination with the Client's MEP consultant to provide service utilities to the appropriate proposed building locations.

DELIVERABLES

- Kimley-Horn will provide the Client with a 30"x42" Design Development Package in PDF format.

Task 1.3 – Construction Documents (CD)

Kimley-Horn will prepare final civil construction drawings for site development for incorporation into the Architect's package for bid and construction. The construction documents prepared under this Scope of Services shall consist of the following:

- Cover Sheet(s) – This sheet will contain all relevant project/ contact information, as well as general notes and legends.
- General Notes – This sheet will consist of relevant construction notes pertaining to the project. A separate specifications book will not be provided.
- Site Layout and Staking Plan (Geometric Plan) – This plan will define proposed improvements including the building placement, curb and gutter, sidewalks, plazas, stairs, ramps, parking lot striping, drive aprons, vehicular circulation and parking layout, and the delineation of various pavement types (standard- and heavy-duty asphalt, standard- and heavy-duty concrete), and any other defined elements identified during the Design Development phase. Staking information and dimensions will be provided to assist the contractor in site layout and provide horizontal control of the proposed improvements. The plan will also indicate easements and any required buffers and setbacks.
- Grading and Drainage Plan – Spot elevations in critical areas, proposed contour lines in one-foot intervals, building pad finished floor elevation and limits of disturbance will be shown within the proposed grading plan. Details related to materials, patterns, or other visual components of the hardscape will be designed by the landscape architect. Storm drainage pipes will be sized and specified in accordance with City of Lakeland requirements.
- Water/Sanitary Sewer Utility Plan – Proposed domestic and fire protective water services, and sanitary sewer services to the proposed buildings will be shown on the utility plans and will be designed in accordance with published City of Lakeland and/or MLGW standards. Locations of the building water line(s) and sewer lateral(s) stubs will be provided by the project Mechanical and Plumbing Engineer (Client's consultant). No offsite utility design or extensions to the site are included in the basic services. Limited coordination with franchise utility companies shall be provided. Power demand/supply to the site is assumed to be coordinated by the Client and the project Electrical Engineer. Design recommendations from the fire protection engineer will be required.
- Three-Phase Erosion and Sediment Control Plan. Per state and county requirements, Kimley-Horn will develop three-phased erosion and sediment control plans. The location and identification of specific erosion and sediment control measures, or Best Management Practices (BMPs) will be delineated in the plans and will identify proposed grading and drainage improvements. These measures will be in accordance with City of Lakeland requirements and the design guidelines will be provided for the Contractor's guidance. Additional measures may be required during various phases of construction.
- Construction Details – Details for site work improvements, erosion and sediment control measures, and entrances onto the public right-of-way will be shown. These details will be in accordance with City of Lakeland standard details.

This task scope is predicated on the site/civil design being finalized in the Design Development phase of the project, and that no major changes affecting site layout, grading concept, drainage concept, and/or utility routing will occur once Final Construction Document design is initiated. The fee for this task includes one minor round of revisions due to Client or Owner changes.

Kimley-Horn assumes all required utility services are available at the property lines, immediately adjacent to the Project site, and have sufficient capacity to serve the development. Kimley-Horn will coordinate with the Client's MEP, the City of Lakeland, and Memphis Light, Gas and Water ("MLGW"), to determine if utility extensions are required to support the proposed development. Kimley-Horn will coordinate the relocation of onsite utilities and utility easements with MLGW, if necessary. Offsite utility extensions are not included in our scope of services.

Offsite improvements, limited to the repair and/or replacement of sidewalk and sidewalk ramps, curb and gutter, and driveway apron(s) along the property frontage, that are proposed or are not in compliance with the City of Lakeland, will be provided.

DELIVERABLES

- Kimley-Horn will provide the Client with a 30"x42" Design Development Package in PDF format.

TASK 2 – TRAFFIC IMPACT STUDY

Kimley-Horn will perform the following traffic planning services.

Task 3.1 – Data Collection

- Before beginning the traffic impact study, Kimley-Horn will conduct a methodology meeting with the City of Lakeland. The purpose of this meeting will be to discuss the methodology to be used for the study and obtain concurrence regarding the limits of the area and intersections to be included in the study. At this meeting, Kimley-Horn will propose a methodology that is consistent with the Institute of Transportation Engineers standards and City of Lakeland standards for a traffic impact study.
- For the purposes of this proposal, Kimley-Horn assumes that the study area will consist of the following intersections:
 - Canada Road at I-40 EB/WB On/Off Ramps
 - Canada Road at E Davies Plantation Road/Beverle Rivera Drive
 - Beverle Rivera Drive at Huff N Puff Road
 - Any proposed driveways identified on the site plan
- Kimley-Horn will obtain turning movement count data at the existing study intersections during the AM and PM peak hours. Kimley-Horn will obtain road segment Average Daily Traffic volumes from Tennessee Department of Transportation (TDOT) count stations in the vicinity of the project. Kimley-Horn will obtain the existing traffic signal timing data from the City of Memphis for each of the signalized intersections within the limits of the study area.

Task 3.2 – Traffic Impact Analysis

- For the purposes of this proposal, it is assumed that the proposed development will be constructed in a single phase. Kimley-Horn will perform a trip generation analysis using the Institute of Transportation Engineers (ITE) Trip Generation Manual, 11th Edition based on the land uses and intensities identified by the Client at the time of the execution of this agreement. Kimley-Horn will

- distribute trips to and from the site based on the adjacent street traffic and the existing traffic patterns within the vicinity of the project. Kimley-Horn will use this distribution of trips to assign new site traffic volumes onto the adjacent streets. Pass-by trips (trips that are already on the adjacent roads that will have a stop on this site) will be considered as a part of this analysis. Internal capture trips (trips generated internal to the development not utilizing the external road network) will not be considered as a part of this analysis. Kimley-Horn will use the TDOT historical Annual Average Daily Traffic volumes and knowledge of the project area to determine the anticipated background traffic growth rate for this area. The growth rate will be used to determine the background traffic growth for the build-out year as specified by the Client. To obtain total project build-out year traffic volumes, the new site volumes will be added to the existing traffic volumes plus the background traffic growth. Based upon these traffic volumes, a detailed traffic engineering capacity analysis will be prepared for the study intersections.
- The capacity analysis and level of service determinations for the intersections listed above will be conducted in accordance with the most current version of the Transportation Research Board Highway Capacity Manual. Kimley-Horn will conduct analyses for the existing conditions, the build-out year with background traffic, and the build-out year with background traffic plus site traffic. These three scenarios will demonstrate the direct impacts of the proposed development. Kimley-Horn will review the impacts of the additional traffic on the operation of these intersections and will determine what changes, if any, should be made at each intersection to accommodate this project. At the signalized intersections, the changes may include traffic signal timing or geometric changes. At the unsignalized intersections, if an acceptable level of service cannot be provided with geometric changes, Kimley-Horn will determine if the unsignalized intersections could meet the warrants for the installation of a traffic signal and if the installation of a traffic signal would result in an overall improvement in the operation of the intersection.
 - General recommendations for roadway and operational improvements will be developed for the existing road network affected by the proposed project and the intersections listed above due to the impacts generated by the development. These recommendations will be subject to the review and approval of the Client prior to finalization.

Task 3.3 – Traffic Impact Study Report

- Kimley-Horn will prepare a Traffic Impact Study report in accordance with City of Lakeland requirements. This report will contain a summary of our methodology, findings, and recommendations. A draft of the report will be provided to the Client for review. Upon receipt of the Client's comments, Kimley-Horn will revise the report accordingly and prepare the final report for distribution to the Client and other parties, as determined by the Client. For budget purposes, it is assumed that no hard copies of the final report will be prepared for distribution and the report will be submitted electronically. This task includes one set of revisions to the report resulting from one review from the City. Responses or revisions to additional reviews and/or rounds of comments will be considered additional services and billed at our then current hourly rates.
- **Deliverables:**
 - Electronic copy of the draft report in PDF format to the Client

- Electronic copy of the final report in PDF format to the Client

Task 3.4 - Meetings

- Kimley-Horn will prepare for and attend meetings as directed by the Client. These meetings will consist of the following:
 - (1) City of Lakeland Methodology Meeting
 - (1) Analysis and Recommendations Review Meeting with Client
 - (1) City of Lakeland Planning Commission Meeting
 - (1) City of Lakeland Board of Commissioners Meeting
- Any additional meetings can be performed as additional services and billed at our then current hourly rates.

TASK 3 – PERMITTING SERVICES

Task 4.1 Site Plan Review

Kimley-Horn will prepare and submit a Site Plan Review application to the City of Lakeland in accordance with the current Land Development Regulations. This task will be coordinated with the project architect. This task consists of the following:

- Schedule and attend a Preapplication conference with City of Lakeland planning staff prior to applying for a Site Plan Review.
- Prepare and submit exhibits and documents required in accordance with the City of Lakeland Land Development Regulations.
 - Application Form and Fee (*paid by Client*)
 - Property Boundary and Existing Conditions Survey (*prepared by others*)
 - Site Plan
 - Architectural Elevations (*prepared by others*)
 - Tree Replacement and Protection Plan
 - Stormwater Management Plan
 - Traffic Impact Study
 - Traffic Circulation and Parking Plans
 - Landscape & Hardscape Plans
 - Lighting Plan
 - Utility Plan
 - Signage Plans and Elevations (*prepared by others*)
 - Soil Erosion and Sediment Control Plan
 - Statement of Intent
- Attend the Design Review Commission (“DRC”) hearing to present the site plan review case and answer questions from the DRC.
- Attend the Municipal Planning Commission (“MPC”) hearing to present the site plan review case and answer questions from the MPC.

- Attend two Board of Commissioners (“BOC”) hearings to present the site plan review case and answer questions from the BOC.

Task 4.2 Storm Water Pollution Prevention Plan (SWPPP)

Since total land disturbance for will be greater than one-acre in size, submittal to the Tennessee Department of Environmental Conservation (“TDEC”) for a stormwater construction permit is required. Kimley-Horn will prepare application documents for the National Pollutant Discharge Elimination System (“NPDES”) permit using the TDEC forms. This application will consist of the Notice of Intent (“NOI”) and the Storm Water Pollution Prevention Plan (“SWPPP”). Upon the Client’s execution of the NOI, Kimley-Horn will submit the application documents for the NPDES permit to TDEC for review and comment. Kimley-Horn will make up to one round of revisions to the submittal documents based upon the TDEC review comments. Additional revisions requested by TDEC will be provided by Kimley-Horn on an hourly basis according to our then-current rates.

All permit fees are to be paid by the Client, or Kimley-Horn can cut the check and invoice the fees at cost.

TASK 4 – CONSTRUCTION PHASE SERVICES

Kimley-Horn will provide the Construction Phase Services specifically stated below. If additional time is requested, Kimley-Horn will notify the Client for approval before proceeding.

- Site Visits and Construction Observation – Kimley-Horn will provide on-site construction observation services during the construction phase as requested by the Client. Such visits and observations by Kimley-Horn are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Kimley-Horn’s exercise of professional judgment. Based on information obtained during such visits and such observations, Kimley-Horn will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Kimley-Horn will keep Client informed of the general progress of the Work. Kimley-Horn will attend up to one one-year (from Substantial Completion) warranty walk on-site. The budget for Construction Phase Services assumes that Kimley-Horn will attend ten (1) Site Visits.

The purpose of Kimley-Horn’s site visits will be to enable Kimley-Horn to better carry out the duties and responsibilities specifically assigned in this Agreement to Kimley-Horn, and to provide Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents. Kimley-Horn shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Kimley-Horn have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Kimley-Horn neither guarantees the performance of any

Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

- Limitation of Responsibilities – Kimley-Horn shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Kimley-Horn shall not have the authority or responsibility to stop the work of any Contractor.
- Recommendations with Respect to Defective Work – Kimley-Horn will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if Consultant believes that such work will not produce a completed Project that generally conforms to the Contract Documents.
- Clarifications and Interpretations – Kimley-Horn will respond to reasonable and appropriate Contractor requests for information made in accordance with the Contract Documents and issue necessary clarifications and interpretations. Any orders authorizing variations from the Contract Documents will be made only by Client. The budget for Construction Phase Services assumes that Kimley-Horn will respond to ten (10) Requests for Information.
- Change Orders – Kimley-Horn may recommend Change Orders to the Client and will review and make recommendations related to Change Orders submitted or proposed by the Contractor. The budget for Construction Phase Services assumes that Kimley-Horn will recommend five (5) Change Orders.
- Shop Drawings and Samples – Kimley-Horn will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs. The budget for Construction Phase Services assumes that Kimley-Horn will review ten (10) shop drawings or products/material samples.
- Substantial Completion – Kimley-Horn will, promptly after notice from Contractor that it considers the entire Work ready for its intended use, in company with Client and Contractor, conduct one site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items except for those identified on a final punch list. If after considering any objections of Client, Kimley-Horn considers the Work substantially complete, Kimley-Horn will notify Client and Contractor.

SERVICES NOT INCLUDED

- Construction Documents for Aquatic Features and Aquatic Area
- Structural engineering
- Mechanical, Electrical, Plumbing engineering
- Boundary, topographic and As-built survey
- Subdivision platting
- Geotechnical assessments and engineering
- Environmental assessments and engineering
- Opinions of Probable Construction Cost
- More than one round of value engineering revisions

FEE SUMMARY

Kimley-Horn will perform the services in Tasks 1-3 for the total lump sum labor fee below. Individual task amounts are informational only. In addition to the labor fees, direct reimbursable expenses such as express delivery services, fees, travel, and other direct expenses will be billed at 1.10 times cost. All permitting, application, and similar project fees will be paid directly by the Client.

Kimley-Horn will perform the Services in Task 4 on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to our then-current rates. Based on current information, Kimley-Horn estimates that labor fees will be approximately as shown below. Fee estimates in this Agreement are for general budgeting purposes only. Actual fees may be less or more than the estimates. Kimley-Horn will not exceed the budgeted amount with prior authorization from the Client.

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

Reimbursable expenses will be invoiced based upon expenses incurred. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

TASK	SCOPE OF SERVICES		FEE TYPE
1	Civil Engineering Design Services	\$ 148,000.00	Lump Sum
2	Traffic Impact Study	\$ 27,000.00	Lump Sum
3	Permitting Services	\$ 3,000.00	Lump Sum
	TOTAL LUMP SUM	\$ 178,000.00	Lump Sum
4	Civil Engineering Construction Phase Services	\$ 25,000.00	Hourly Budget

INFORMATION PROVIDED BY CLIENT

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Executed copy of this Agreement, access to property, and Notice to Proceed.
- Survey and available geotechnical and environmental reports.

SCHEDULE

We will provide our services upon a mutually agreeable schedule with the Client.

CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to **Kimley-Horn and Associates, Inc.**, and "Client" shall refer to **4F Design**.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in a PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments.

Please provide the following information:

____ Please email all invoices to _____

____ Please copy _____

If you want us to proceed with the services, please have an authorized person sign this Agreement below and return to us. We will commence services only after we have received a fully executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,



Mike Hammond, PLA, ASLA
Associate



Jarmon Peregoy, PE
Vice President

Attachments: Standard Provisions

Agreed to this _____ day of _____, 2024.

(Signature)

(Date)

(Print or Type Name)

(Title)

(Email Address)

**KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS**

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. The Client will remit all payments electronically to:
Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
Account Number: 2073089159554
ABA#: 121000248
 - c. The Client will send the project number, invoice number and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.

- d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - e. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - f. If Kimley-Horn initiates legal proceedings to collect payment, it shall recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the deliverables prepared by Kimley-Horn, the hardcopy shall govern.
- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance

with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.

- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs, attorneys' fees, or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**

- a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
 - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

PROJECT ASSUMPTIONS

1. The project site area, as illustrated in Figure 1, is situated on two parcels that total approximately 5.9 acres. The largest of the two parcels is a ~4.91-acre parcel located Beverle Rivera Drive; the smallest of the two is a ~1.0-acre parcel located on Huff N Puff Road.
2. It is assumed that the project use is allowable by right, and any rezoning process is excluded from this scope of services.
3. The site is an unused and vacant parcel. Previously the parcel consisted of a ~25,000 square-foot motel structure, a parking lot, and a pool. These features are generally situated on the southern portion of the site. The northern portion of the site consists of mostly open grass area with a few small trees.
4. It is assumed that no platting will be required. If required, it is assumed the surveyor for the project, engaged by others, will complete the subdivision plat.
5. It is anticipated that stormwater detention facilities will be required.
6. It is assumed that public utilities including water, storm-sewer, electric, gas, cable/data are readily available at the site boundary. No off-site improvements other than those noted as part of this Scope of Services are anticipated and are not included in this Scope of Services.
7. No additional design or study of offsite improvements to roadway, water, sanitary sewer, or stormwater drainage infrastructure, is known at this time and is therefore excluded. Kimley-Horn will notify the Client if such a need is identified.
8. The site is greater than one acre in size, thus a National Pollutant Discharge Elimination System (NPDES) permit will be required prior to the start of construction.
9. The Client will engage with a qualified environmental engineer to provide all necessary environmental assessments and water jurisdictional delineations for the project.
10. The Client will engage with a qualified geotechnical engineer to provide all necessary geotechnical assessments for the project.
11. The Client, or others, will engage with a qualified surveyor to provide all necessary boundary, topographic and as-built information required for Kimley-Horn's design of the project.
12. This scope of services does not include construction documentation of aquatic components within the areas generally illustrated as Potential Expansion in Figure 1. However, grading, utility and infrastructure design and documentation will be provided to serve the aquatic area and will be complementary to the aquatic construction documentation.

SCOPE OF SERVICES

TASK 1 - LANDSCAPE ARCHITECTURE DESIGN SERVICES

Kimley-Horn will perform the following landscape architecture design services.

Task 1.1 – Schematic Design (SD)

The Schematic Design Phase will provide the Client with a Conceptual Design and Schematic Design Narratives for the landscape/hardscape spaces illustrated in Figure 1. The following professional Landscape Architectural services will be provided to develop Schematic Design level landscape and hardscape documents for each of the landscape/hardscape spaces. This task consists of:

- Perform one site visit to review above ground site conditions, observe and photograph the site and adjacent sites and develop a general understanding of the proposed development.
- Develop conceptual design for the landscape/hardscape spaces illustrated in Figure 1. Conceptual design will illustrate hardscape areas, hardscape elements, softscape areas, furnishings, lighting, and other pertinent elements to convey conceptual ideas.
- Develop a schematic design package which will consist of the following:
 - Rendered conceptual plans of the landscape/hardscape spaces
 - Applicable graphics
 - Spirit and visioning images
 - Hardscape material images
 - Landscape material images
 - Site furnishing images
 - Lighting images
 - Other applicable element images
 - Schematic Design Narratives describing elements of design so that an Opinion of Probable Construction Cost can be performed (by others)
- Present the conceptual design package to the Client and Owner for feedback. Upon receiving feedback, the conceptual design package will be updated once prior to progressing into the Design Development task.

DELIVERABLES

- Kimley-Horn will provide the Client with a 30"x42" Concept Design Package in a PDF booklet format.

Task 1.2 – Design Development (DD)

The following professional Landscape Architectural services will be provided to develop Design Development level landscape and hardscape documents, based upon the approved Schematic Design for each of the landscape/hardscape spaces.

This task consists of:

- Incorporate Client and Owner feedback into Design Development for each of the landscape/hardscape spaces.
- Develop landscape and hardscape design documents to consist of site plans and Design Development level technical drawings. These drawings consist of:
 - Material Tracker
 - Hardscape Plan
 - Dimension Control Plan
 - Fine Grading Plan
 - Hardscape Details
 - Site Furnishing Plan
 - Site Furnishing Cut Sheets

- Lighting Plan
- Lighting Cut Sheets
- Planting Plan
- Irrigation Plan
- Review the Design Development site grading to identify ADA access points and routes from the public rights-of-way to the building entrances. Grade conflicts will be coordinated directly with the Client and Kimley-Horn's civil engineering team.
- Coordinate with the Client, Civil Engineer, MEP Engineer, and Structural Engineer with regards to the utilities, layout, grading and site elements.

DELIVERABLES

- Kimley-Horn will provide the Client with a 30"x42" Technical Design Development Package in a PDF technical drawing format.

Task 1.3 – Construction Documents (CD)

After Client approval of the Design Development plans, Kimley-Horn will prepare the Construction Documents for the project that would provide documents sufficient for the Client to bid the project and a Contractor to use in constructing the site components and features and consist of the specific information noted below.

The construction drawings and written specifications for landscape architecture are intended to be submitted to review authorities and for incorporation into the Civil Engineer's and/or Architect's package for bid and construction after permit approval. Kimley-Horn will coordinate the landscape architecture documents with documents prepared by the Civil Engineer, Architect and other consultants (provided to the Consultant by the Architect) as required for the proper project implementation. This task consists of:

- General Construction Notes – This sheet will consist of relevant construction notes pertaining to the project.
- Material Legend – This sheet will consist of a material legend spreadsheet listing materials found within the construction documents. Information for each material will be listed and will consist of manufacturer, color, finish, notes, and manufacturer contact information.
- Hardscape Plan - The plan will identify final hardscape elements such as materials, patterns, and elements. Hardscape notes will be provided, as well as detail callouts directing the contractor to specific hardscape details.
- Dimension Control Plan – The plan will identify critical points-of-beginning, centerlines, dimensions, radii, and angles.
- Fine Grading and Surface Drainage Plans – This plan will provide a coordinated detailed fine grading plan for ground plane surfaces. The fine grading plan will show proposed spot elevations and maximum/minimum slopes. Proposed landscape area drains, slot drains and trench drains located on the ground plane will be shown with rim elevations.
- Hardscape Details - This plan will provide details on proposed hardscapes with material callouts, specifications, identification of manufacturer, and local sourcing contacts. Construction details at

various scales will be shown to assist in the Client’s bidding and construction of the hardscape elements shown.

- Planting Plan - The planting plan will define the proposed quantity, location and species of plants, minimum sizes at installation and root conditions/container type. A plant schedule will also be provided.
- Planting Details - The final planting details will illustrate proper planting techniques, spacing standards, tree staking details, landscape edging details, and general landscape installation notes defining soil preparation and landscape installation requirements.
- Irrigation Plan and Details – The Irrigation Plan and Details will define main line locations and sizes, lateral line locations and sizes, spray head manufacturer, locations and types, drip irrigation system manufacturer, location and types (if applicable), irrigation sleeve locations, controller manufacturer and location, and backflow preventer size, manufacturer and location(s) for each of the landscape/hardscape spaces. Kimley-Horn will determine recommended water meter locations and will coordinate with the project architect and MEP regarding controller and backflow preventer location.
- Site Furnishing Plan – The furnishing plan will define proposed site furnishing types within each of the landscape/hardscape spaces such as benches, tables and chairs, waste/recycling receptacles, bicycle racks, charging stations, play elements, planters, shade structures, and outdoor games. The plan will specify the manufacturer and specifics regarding the furnishings, such as materials, colors, finishes, and installation techniques.
- Lighting Plan – The lighting plan will define the location, proposed quantity, and manufacturers options for pedestrian-level lighting, landscape lighting, and area lighting for each of the landscape/hardscape spaces. The plan is to be used for design intent and reference only. Kimley-Horn is not responsible for electrical engineering. Kimley-Horn will coordinate with the electrical engineer (hired by others). A lighting schedule will also be provided for reference.

DELIVERABLES

- Kimley-Horn will provide the Client with a 30”x42” Construction Document Package in a PDF technical drawing format.

TASK 2 – PERMITTING SERVICES

Task 2.1 Site Plan Review

Kimley-Horn will provide plans as necessary in accordance with the current City of Lakeland Land Development Regulations for a Site Plan Review application.

- Schedule and attend a Preapplication conference with City of Lakeland planning staff prior to applying for a Site Plan Review.
- Prepare and submit exhibits and documents required in accordance with the City of Lakeland Land Development Regulations.
 - Application Form and Fee (*paid by Client*)

- Property Boundary and Existing Conditions Survey (*prepared by others*)
- Site Plan
- Architectural Elevations (*prepared by others*)
- Tree Replacement and Protection Plan
- Stormwater Management Plan
- Traffic Impact Study
- Traffic Circulation and Parking Plans
- Landscape & Hardscape Plans
- Lighting Plan
- Utility Plan
- Signage Plans and Elevations (*prepared by others*)
- Soil Erosion and Sediment Control Plan
- Statement of Intent

In addition, the following meetings will be attended:

- Attend the Design Review Commission (“DRC”) hearing to present the site plan review case and answer questions from the DRC.
- Attend the Municipal Planning Commission (“MPC”) hearing to present the site plan review case and answer questions from the MPC.
- Attend two Board of Commissioners (“BOC”) hearings to present the site plan review case and answer questions from the BOC.

TASK 3 – CONSTRUCTION PHASE SERVICES

Kimley-Horn will provide the Construction Phase Services specifically stated below. If additional time is requested, Kimley-Horn will notify the Client for approval before proceeding.

- Site Visits and Construction Observation – Kimley-Horn will provide on-site construction observation services during the construction phase as requested by the Client. Such visits and observations by Kimley-Horn are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Kimley-Horn’s exercise of professional judgment. Based on information obtained during such visits and such observations, Kimley-Horn will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Kimley-Horn will keep Client informed of the general progress of the Work. Kimley-Horn will attend up to one one-year (from Substantial Completion) warranty walk on-site. The budget for Construction Phase Services assumes that Kimley-Horn will attend ten (10) Site Visits.
The purpose of Kimley-Horn’s site visits will be to enable Kimley-Horn to better carry out the duties and responsibilities specifically assigned in this Agreement to Kimley-Horn, and to provide Client a greater degree of confidence that the completed Work will conform in general to the

Contract Documents. Kimley-Horn shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Kimley-Horn have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Kimley-Horn neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

- Limitation of Responsibilities – Kimley-Horn shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Kimley-Horn shall not have the authority or responsibility to stop the work of any Contractor.
- Recommendations with Respect to Defective Work – Kimley-Horn will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if Consultant believes that such work will not produce a completed Project that generally conforms to the Contract Documents.
- Clarifications and Interpretations – Kimley-Horn will respond to reasonable and appropriate Contractor requests for information made in accordance with the Contract Documents and issue necessary clarifications and interpretations. Any orders authorizing variations from the Contract Documents will be made only by Client. The budget for Construction Phase Services assumes that Kimley-Horn will respond to ten (10) Requests for Information.
- Change Orders – Kimley-Horn may recommend Change Orders to the Client and will review and make recommendations related to Change Orders submitted or proposed by the Contractor. The budget for Construction Phase Services assumes that Kimley-Horn will recommend five (5) Change Orders.
- Shop Drawings and Samples – Kimley-Horn will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs. The budget for Construction Phase Services assumes that Kimley-Horn will review ten (10) shop drawings or products/material samples.
- Tree Tagging – Kimley-Horn will tag trees at up to two tree farms or plant nurseries within the 100 miles of the Kimley-Horn Memphis office. If trees are to be tagged at additional tree farms or plant nurseries and a Kimley-Horn representative is to attend, these services can be provided in accordance with the additional services clause of this Agreement. Trees may also be approved by a Kimley-Horn representative via submitted tree nursery photos that will serve as the minimum standard for the quality and size of the reviewed species of tree.
- Substantial Completion – Kimley-Horn will, promptly after notice from Contractor that it considers the entire Work ready for its intended use, in company with Client and Contractor,

conduct one site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items except for those identified on a final punch list. If after considering any objections of Client, Kimley-Horn considers the Work substantially complete, Kimley-Horn will notify Client and Contractor.

SERVICES NOT INCLUDED

- Construction Documents for Aquatic Potential Expansion Areas
- Structural engineering
- Mechanical, Electrical, Plumbing engineering
- Boundary, topographic and As-built survey
- Subdivision platting
- Geotechnical assessments and engineering
- Environmental assessments and engineering
- Opinions of Probable Construction Cost
- More than one round of value engineering revisions

FEE SUMMARY

Kimley-Horn will perform the services in Tasks 1-2 for the total lump sum labor fee below. Individual task amounts are informational only. In addition to the labor fees, direct reimbursable expenses such as express delivery services, fees, travel, and other direct expenses will be billed at 1.10 times cost. All permitting, application, and similar project fees will be paid directly by the Client.

Kimley-Horn will perform the Services in Task 3 on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to our then-current rates. Based on current information, Kimley-Horn estimates that labor fees will be approximately as shown below. Fee estimates in this Agreement are for general budgeting purposes only. Actual fees may be less or more than the estimates. Kimley-Horn will not exceed the budgeted amount with prior authorization from the Client.

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

Reimbursable expenses will be invoiced based upon expenses incurred. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

TASK	SCOPE OF SERVICES		FEE TYPE
1	Landscape Architecture Design Services	\$ 48,500.00	Lump Sum
2	Permitting	\$ 9,500.00	Lump Sum
	TOTAL LUMP SUM	\$ 58,000.00	Lump Sum
4	Landscape Architecture – Construction Phase Services	\$ 25,000.00	Hourly Budget

**KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS**

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. The Client will remit all payments electronically to:
Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
Account Number: 2073089159554
ABA#: 121000248
 - c. The Client will send the project number, invoice number and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.

- d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - e. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - f. If Kimley-Horn initiates legal proceedings to collect payment, it shall recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the deliverables prepared by Kimley-Horn, the hardcopy shall govern.
- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance

with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.

- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs, attorneys' fees, or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**

- a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
 - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

INFORMATION PROVIDED BY CLIENT

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Executed copy of this Agreement, access to property, and Notice to Proceed.
- Survey and available geotechnical and environmental reports.

SCHEDULE

We will provide our services upon a mutually agreeable schedule with the Client.

CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to **Kimley-Horn and Associates, Inc.**, and "Client" shall refer to **4F Design**.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in a PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments.

Please provide the following information:

____ Please email all invoices to _____

____ Please copy _____

If you want us to proceed with the services, please have an authorized person sign this Agreement below and return to us. We will commence services only after we have received a fully executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,



Mike Hammond, PLA, ASLA
Associate



Jarmon Peregoy, PE
Vice President

Attachments: Standard Provisions

Agreed to this _____ day of _____, 2024.

(Signature)

(Date)

(Print or Type Name)

(Title)

(Email Address)



SCHEDULE OF HOURLY RATES
Updated June 2024

PRESIDENT, SR. PRINCIPAL <i>Scott Fleming</i>	\$ 350.00
VICE PRESIDENT, PRINCIPAL <i>Curt Pierce</i> <i>Steve Landwehr</i> <i>Michael Winter</i>	\$ 295.00
SENIOR PROJECT MANAGER <i>Tamara Redburn</i> <i>Richard Wiggs</i>	\$ 200.00
SENIOR ARCHITECT/QUALITY ASSURANCE <i>Ellen Wadley</i>	\$ 200.00
PROJECT MANAGER <i>Kari Conrad</i> <i>Tre Yancy</i> <i>Jo Picha</i> <i>Matthew Lewis</i>	\$ 175.00
ARCHITECTURAL ASSOCIATE <i>Matt Pate</i> <i>Matthew Churchill</i> <i>Lily Montague</i>	\$ 140.00
SENIOR INTERIOR DESIGN PROJECT MANAGER <i>Veronica Tansey</i> <i>Julie Gasaway</i>	\$ 200.00
INTERIOR DESIGN PROJECT MANAGER <i>Sam Campbell</i>	\$ 150.00
INTERIOR DESIGN ASSOCIATE	\$ 140.00
TECH STAFF <i>Carol O'Daniel</i>	\$ 150.00
SUMMER ASSOCIATE	\$ 110.00
CONSTRUCTION ADMINISTRATOR <i>Gary Gibson</i>	\$ 135.00
SENIOR CONSTRUCTION ADMINISTRATION COORDINATOR <i>Katrina Terrett</i>	\$ 140.00
CONSTRUCTION ADMINISTRATION COORDINATOR <i>Alyssa Rowan</i>	\$ 130.00
MARKETING COORDINATOR <i>Krissie Mahr</i>	\$ 140.00
OFFICE MANAGER <i>Theresa Hughes</i>	\$ 140.00
CONTROLLER <i>Katrina Terrett</i>	\$ 140.00
ADMINISTRATIVE ASSISTANT	\$ 85.00

Meeting Cycle: Thursday, November 7, 2024

Subject: **Resolution** - approving a professional service agreement with Kimley-Horn and Associates, Inc. for the design of Seed Tick Road and Memphis-Arlington Road intersection improvements.

Staff Contact: Emily Harrell, City Engineer

STAFF RECOMMENDATION

City staff recommends the Board of Commissioners approve resolution R-145-2024.

BUDGET IMPACT

This expenditure is appropriated in the Fiscal Year 2025 Annual Budget for the General Fund, which includes grant revenues for 80% of the total cost of the project.

DISCUSSION

On July 18th, 2024, the Board of Commissioners approved an agreement with the Tennessee Department of Transportation ("TDOT") for the Memphis Arlington Road and Seed Tick Road Intersection Improvements project. The NEPA and design are funded by a Surface Transportation Block Grant ("STBG") and Carbon Reduction Program ("CR") grant in the amount of \$240,000.00. The total cost of the NEPA and design is \$258,105.00, which includes lighting and landscaping. The consultant also included the cost for Technical Studies related to noise and bat presence/absence, which may be required. The City will apply for additional grant funds through the MPO to cover the difference in funding.

A Request for Qualifications was issued for professional engineering services on July 1st, 2024. Eight proposals were received and reviewed by the Consultant Selection Committee. Kimley-Horn and Associates, Inc. was selected based on their qualifications and experience with intersection improvements and TDOT Local Programs projects.

During the October 17 BOC meeting, concern was raised about the widening of Seed Tick Road specifically referencing Resolution 2000/07-36 which designates Seed Tick Road as a two-lane roadway from Memphis Arlington Road to Beverle Rivera Road. This project proposes intersection improvements at Seed Tick Road and Memphis Arlington to improve the safety of the intersection. The project does not include widening Seed Tick Road. Furthermore, the recently adopted Transportation Plan Update reflects Seed Tick Road as a two-lane scenic corridor with a 50-foot buffer on each side of the roadway. The resolution and updated

transportation plan map of scenic corridors are included for reference.

RESOLUTION R-145-2024

APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR THE DESIGN OF SEED TICK ROAD AND MEMPHIS-ARLINGTON ROAD INTERSECTION IMPROVEMENTS

WHEREAS, the City of Lakeland, Tennessee (the “City”) desires to hire a firm for professional services related to the Seed Tick Road and Memphis-Arlington Road intersection; and,

WHEREAS, Kimley-Horn and Associates, Inc. submitted a proposal for professional services on the Seed Tick Road and Memphis Arlington Road intersection; and,

WHEREAS, Kimley-Horn and Associates, Inc. was selected by the consultant selection committee based on their qualifications to perform the work; and,

WHEREAS, funding is appropriated in the Fiscal Year 2025 Annual Budget for the General Fund:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland Tennessee, that the City Manager is authorized to execute, and the City Recorder attest, a professional service agreement with Kimley-Horn and Associates, Inc in the amount of Two Hundred Fifty-Eight Thousand One Hundred Five Dollars (\$258,105.00) for the design of Seed Tick Road and Memphis-Arlington Road intersection.

BE IT FURTHER RESOLVED, that the Board of Commissioners of the City of Lakeland authorize an additional Thirty-Three Thousand Five Hundred Dollars (\$33,500.00) for a contingency fund to be used to pay for technical studies related to noise and/or bat presence/absence and that the City Manager is hereby authorized to make verified partial payments when necessary throughout the project to a total fixed cost amount of Two Hundred Ninety-One Thousand Six Hundred Five Dollars (\$291,605.00).

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee on this 7th day of November 2024, the public welfare requiring it.

ATTEST:

Josh Roman
Mayor

Cheyenne Carter
City Recorder

CONTRACT
BETWEEN CITY OF LAKE LAND
AND
KIMLEY-HORN AND ASSOCIATES, INC.

This agreement (the “Contract”) entered into this ____ day of _____, 2024 by and between the CITY OF LAKE LAND, hereinafter referred to as “CITY” and Kimley-Horn and Associates, Inc. hereinafter to as “CONSULTANT”.

WITNESSETH

WHEREAS, the CITY desires to employ the CONSULTANT to provide the CITY with professional engineering services for the Seed Tick Roundabout Project, herein referred to as the “Project”; and

WHEREAS, the CONSULTANT was chosen by the Consultant Evaluation Panel on August 15, 2024.

WHEREAS, the CONSULTANT has the knowledge and expertise to provide such services; and

WHEREAS, the parties are desirous of entering into a contract setting forth the terms and conditions under which the CONSULTANT will provide said services.

NOW THEREFORE, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

I. SCOPE OF WORK

1. The Project will consist of the scope of work outlined in the attached document dated October 9, 2024. and labeled as “Attachment A – Scope of Services”.

2. The CONSULTANT shall provide the services as outlined above, which will be attached and incorporated herein by reference as if stated verbatim (the “Services”).

II. TERMS AND COMPENSATION

1. The CITY agrees to compensate the CONSULTANT for the provision of the Services in an amount not to exceed Two Hundred Fifty-Eight Thousand One Hundred and Five Dollars (\$258,105) (the “Fee”) during the term of this Contract. However, if additional Technical Studies related to Noise and/or Bat Presence/Absence are needed the CITY agrees to compensate the CONSULTANT in an amount not to exceed Thirty-Three Thousand Five Hundred DOLLARS (\$33,500) (the “Fee”) during the term of this Contract as outlined in “Attachment B – Compensation for Services”.

2. The CONSULTANT shall submit monthly statements for services rendered as outlined on the attached Exhibits. The statements will be based upon CONSULTANT’S estimate and the CITY’S concurrence of the proportion of the total services actually completed at the time of billing. The CITY will make monthly payments in response to the CONSULTANT’S monthly statements.

3. The CONSULTANT shall submit invoices to the CITY on a monthly basis for SERVICES performed during the preceding month. Invoices shall be submitted in duplicate to the address set forth in Paragraph 30 of this Contract to the attention of Mrs. Emily Harrell, P.E. City Engineer. The CITY shall pay such invoices within forty-five (45) days of its receipt and approval of said invoices. The CITY is not obligated to pay, and will withhold from payment, any amounts the CITY has dispute with the CONSULTANT solely based on CONSULTANT’S non-performance or negligent performance of any of the Services under this Contract.

III. GENERAL CONDITIONS

The parties further agree as follows:

1. CONTROL

All Services by the CONSULTANT will be performed in a manner reasonably satisfactory to the CITY, and in accordance with the generally accepted business practices and procedures of the CONSULTANT.

2. CONSULTANT’S PERSONNEL

The CONSULTANT certifies that it presently has adequate qualified personnel to perform all services required under this Contract. All work performed during the Term of this Contract will be supervised by the CONSULTANT. The CONSULTANT further certifies that all of its employees assigned to serve the CITY have such knowledge and experience as required to perform the duties assigned to them. Any employee of the CONSULTANT who, in the opinion of the

CITY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

3. INDEPENDENT STATUS

a. Nothing in this Contract shall be deemed to represent that the CONSULTANT, or any of the CONSULTANT'S employees or agents, are the agents, representatives, or employees of the CITY. The CONSULTANT will be an independent Contractor over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the CITY the right to direct the CONSULTANT as to the details of the performance of the Services under this Contract or to exercise a measure of control over the CONSULTANT is solely for purposes of compliance with local, state and federal regulations and means that the CONSULTANT will follow the desires of the CITY only as to the intended results of the scope of this Contract.

b. It is further expressly agreed and understood by CONSULTANT that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the CITY; that CONSULTANT has been retained by the CITY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered to fees for the Services performed (not wages) and that invoices submitted to the CITY by CONSULTANT for the Services performed shall be on the CONSULTANT'S letterhead.

4. TERMINATION OR ABANDONMENT

It shall be cause for the immediate termination of this Contract if, after its execution, the CITY determines that:

Either the CONSULTANT or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or

CONSULTANT subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the CITY'S consent or approval; or

CONSULTANT has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of CONSULTANT assets.

a. The CITY may terminate the Contract upon five (5) days written notice by the CITY or its authorized agent to the CONSULTANT for CONSULTANT'S material breach for the failure to provide the Services specified under this Contract.

b. This Contract may be terminated by either party "with or without cause" by giving a thirty (30) day written notice to the other, before the effective date of termination (the "Termination Date"). In the event of such termination, the CONSULTANT shall be paid for all Services rendered prior to the Termination Date, provided the CONSULTANT shall have delivered to CITY such statements, accounts, reports, and other materials as required under this Contract; however, CONSULTANT shall not be compensated for any anticipatory profits that have not been earned as of the Termination Date. All Services completed by CONSULTANT prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the CITY prior to payment for the Services rendered.

c. Notwithstanding the above or any section herein to the contrary, CONSULTANT shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the Contract by CONSULTANT and the CITY may withhold any payments to CONSULTANT for the purpose of setoff until such time as the exact amount of damages due the CITY from CONSULTANT is determined. However, in no event shall CONSULTANT be liable to the CITY for any consequential damages.

5. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to CONSULTANT pursuant to this Contract for any CONSULTANT'S Services performed by the CONSULTANT in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the CONSULTANT to properly fulfill any of his obligations as set forth in this Contract.

6. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the CONSULTANT from performance of the Services under this Contract. The CITY shall not be responsible for the fulfillment of the CONSULTANT'S obligations to its transferors or subcontractors.

b. Upon request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

7. CONFLICT OF INTEREST

The CONSULTANT covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The CONSULTANT warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the CITY or State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor or consultant to the CONSULTANT in connection with any work contemplated or performed relative to this Contract.

8. LOBBYING

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

a. No federally appropriated funds have been paid or will be paid, by or on behalf of the 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.

b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The CONSULTANT 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 sub-recipients 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*.

9. PUBLIC NOTICE

All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the CONSULTANT shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the CONSULTANT shall be approved by the CITY and State of Tennessee.

10. CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the CITY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

11. EMPLOYMENT OF CITY WORKERS

The CONSULTANT will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the CITY.

12. ACCESS TO RECORDS

During the work and Services to be provided hereunder, CONSULTANT agrees to permit duly authorized agents and employees of the CITY, State of Tennessee, and the Comptroller of the Treasury to enter CONSULTANT'S offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The CONSULTANT will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for seven (7) years from the date of final project closeout for inspection by the CITY, State of Tennessee, Comptroller of the Treasury, or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished upon request.

13. ARBITRATION

Claims, disputes and other matters in question between the parties that are not resolved shall be decided in a court of law in the jurisdiction of the claim unless the CITY elects to proceed into arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect.

14. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

The CONSULTANT, agrees to the fullest extent permitted by law, to indemnify and hold harmless the CITY, its elected officials, officers, agents and employees, assigns and instrumentalities from damages and losses – including but not limited to Title VII and 42 USC 1983 prohibited acts arising from the negligent acts, errors or omissions of the CONSULTANT or its subcontractors, employees, or assigns in the performance of professional services under this Contract, to the extent that the CONSULTANT is responsible for such damages and losses on a comparative basis of fault and responsibility between CONSULTANT and the CITY. The CONSULTANT is not obligated to indemnify the CITY for the CITY'S own negligence. This indemnification shall survive the termination or conclusion of this Contract.

15. GENERAL COMPLIANCE WITH LAWS

a. The CONSULTANT certifies that it is qualified or will take necessary steps to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.

b. The CONSULTANT is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but not be limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).

c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the CONSULTANT agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

16. NON-DISCRIMINATION

The CONSULTANT hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the CONSULTANT on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classifications protected by federal, Tennessee State Constitutional or statutory law. The CONSULTANT shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

17. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, whether oral or written.

18. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

19. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

20. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other

provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

21. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

22. SUBJECT TO FUNDING

This Contract is subject to funding by the State of Tennessee Department of Transportation to the CITY. In the event sufficient funds for this Contract are not appropriated to the CITY for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

23. TRAVEL EXPENSES

All travel expenses payable under this Contract shall be approved in advance in a purchase order issued by the CITY and shall be in accordance with the CITY'S Travel Policy then in effect. All receipts documenting such expenses shall be submitted with the invoice for payment.

24. NON-LIABILITY FOR CONSULTANT EMPLOYEE TAXES

Neither CONSULTANT nor its personnel are the CITY'S employees, and the CITY shall not take any action or provide CONSULTANT'S personnel with any benefits and shall have no liability for the following:

- a. The CITY will not withhold FICA (Social Security) from CONSULTANT'S payments;
- b. The CITY will not make state or federal unemployment insurance contributions on behalf of CONSULTANT or its personnel;
- c. The CITY will not withhold state and federal income tax from payment to CONSULTANT;
- d. The CITY will not make disability insurance contributions on behalf of CONSULTANT;

e. The CITY will not obtain workers' compensation insurance on behalf of CONSULTANT or CONSULTANT'S personnel.

25. INCORPORATION OF OTHER DOCUMENTS

a. CONSULTANT shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the CITY's Request for Qualifications as well as the response of CONSULTANT thereto, all of which are maintained on file within the CITY and incorporated herein by reference.

b. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Qualifications or the response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

26. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESS

The CONSULTANT shall take affirmative action to assure that Locally Owned Small Business that have been certified by the CITY are utilized when possible as sources of supplies and equipment, construction and services.

27. RIGHT TO REQUEST REMOVAL OF CONSULTANT'S EMPLOYEES

The CITY may interview the personnel CONSULTANT assigns to CITY'S work. The CITY shall have the right, at any time, to request removal of any employee(s) of the CONSULTANT whom the CITY deems to be unsatisfactory for any reason. Upon such request, the CONSULTANT shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

28. INCORPORATE OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

29. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to the CITY by the CONSULTANT, CONSULTANT understands and acknowledges that the CITY is a governmental entity subject to the laws of the State of Tennessee and that any

reports, data or other information supplied to the CITY by the CONSULTANT due to Services performed pursuant to this Contract is subject to being divulged as a public record in accordance with the laws of the State of Tennessee.

30. ORGANIZATION STATUS AND AUTHORITY

a. CONSULTANT represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the State of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

b. The execution, delivery and performance of this Contract by the CONSULTANT has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of CONSULTANT, any provision of any indenture, agreement or other instrument to which CONSULTANT is a party, or by which CONSULTANT'S respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

31. INSURANCE REQUIREMENTS

a. The CONSULTANT shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the CITY from claims which may arise out of or result from the CONSULTANT'S operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the CONSULTANT or subcontractor may be liable.

b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. The CONSULTANT will maintain insurance, throughout the life of this Contract, through insurers rated A- or better by A.M. Best, with the following minimum requirements:

i. Errors and Omissions Liability Coverage with limits of \$1,000,000.00 per occurrence / \$2,000,000.00 annual aggregate for this Contract.

ii. Commercial General Liability Coverage with minimum limits of \$1,000,000.00 per occurrence / \$2,000,000.00 annual aggregate premises/ operations coverage,

\$2,000,000.00 annual aggregate products/completed operations. The City of Lakeland, its elected officials, appointees and employees will be named as additional insured.

iii. Workers Compensation Coverage, including coverage for sole proprietors, partners, and officers, regardless of requirement by Tennessee State Statute.

iv. Commercial Auto Liability with minimum limit of \$1,000,000.00 for all owned, hired and non-owned automobiles.

c. CONSULTANT shall provide CITY with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

CITY OF LAKE LAND
10001 U.S. Highway 70
Lakeland, TN 38002

Upon termination or cancellation of insurance currently in effect under this Contract, the CONSULTANT shall purchase an extended reporting endorsement and furnish evidence of same to the CITY.

32. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the CITY'S authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

CITY: City of Lakeland Engineering Department
Attn: Emily Harrell, P.E. City Engineer
10001 U.S. Highway 70
Lakeland, TN 38002
(901) 867-2717

CONSULTANT: Kimley-Horn and Associates, INC.
Attn: Drake Danley, PE
6750 Poplar Avenue, Suite 600
Memphis, TN 38138
(901) 374-9109

33. OWNERSHIP OF DOCUMENTS AND OTHER PROPRIETARY INTERESTS

a. The CONSULTANT agrees that the CITY will own exclusively all right, title and interest in and to materials and information created or supplied by CONSULTANT for the performance of the Services under this Contract and for which Fees have been received by CONSULTANT (“Work Product”) whether or not the same is accepted or rejected by the CITY. The Work Product shall remain the property of the CITY and shall not be used or published by the CONSULTANT or any other party without the express prior consent of the CITY. Work Product will be deemed a “work made for hire” as that term is used in the Copyright Act. In implementing the foregoing, the CONSULTANT hereby grants and assigns to CITY all rights and claims of whatever nature and whether now or hereafter arising in and to any and all of such Work Product and shall cooperate fully with the CITY in any steps the CITY may take to obtain copyrights, trademark or like protections with respect thereto. The signing of this Contract shall constitute a complete transfer of ownership, intellectual property and copyright all documents from CONSULTANT to CITY upon completion of the Work Product. The CONSULTANT shall not construe such transfer as a grant for usage nor can the CONSULTANT revoke it.

b. All information owned, possessed or used by the CONSULTANT which is communicated to, learned, developed or otherwise acquired by the CONSULTANT in the performance of the Services for the CITY, which is not generally known to the public, shall be confidential and CONSULTANT shall not, beginning on the date of first association or communication between the CITY and the CONSULTANT and continuing through the term of this Contract and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for CONSULTANT’S own benefit or the benefit of another, any such confidential information unless required by law. Except when defined as part of the Services, CONSULTANT shall not make any press releases, public statement, or advertisement referring to the Work Product or the engagement of CONSULTANT as an independent contractor of the CITY in connection with the Work Product, or release any information relative to the Work Product for publications, advertisement or any other purpose without the prior written approval of the CITY.

c. The CONSULTANT shall obtain assurances similar to those contained in this subsection from persons, contractors and subcontractors retained by the CONSULTANT. CONSULTANT acknowledges and agrees that a breach by CONSULTANT of the provisions of this section will cause CITY irreparable injury and damage. CONSULTANT, therefore, expressly agrees that the CITY shall be entitled to injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Contract.

34. CHANGES

The CITY may, from time to time, request changes in the scope of the services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONSULTANT'S compensation, which are mutually agreed upon between the CITY and the CONSULTANT, shall be incorporated in written amendments to this Contract. There shall be no increase in the amount of CONSULTANT'S compensation, as set forth above, unless approved by Resolution adopted by the City of Lakeland.

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

APPROVED TO AS FORM:

CITY OF LAKELAND

Kimley-Horn and Associates, Inc.

Michael Walker, City Manager

Drake Danley, PE

ATTEST:

ATTEST:

Cheyenne Carter, City Recorder

Title:



October 9, 2024

Mr. Luis A. Camarillo Hernandez
City of Lakeland
10001 Hwy 70
Lakeland, TN 38002

Re: Letter Agreement for Professional Services for
Seed Tick Road Roundabout, Lakeland, TN

Dear Mr. Camarillo Hernandez:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") submits this Letter Agreement ("Agreement") to the City of Lakeland ("Client" or "City") for providing professional engineering and environmental planning services related to the Seed Tick Road Roundabout project in Lakeland, TN ("Project").

Project Understanding

The City of Lakeland desires to improve the existing 4-way stop controlled intersection of Seed Tick Road and Memphis-Arlington Road to correct several deficiencies, including sight distance and capacity. Conversion of the existing intersection into a roundabout was previously studied by the City and Kimley-Horn and it was selected as the preferred alternative for intersection improvements. The project will be developed following the Tennessee Department of Transportation's (TDOT) Local Programs process.

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

Task 1 – Project Management

This task will consist of the following project management activities:

- Project Coordination –coordination with the City and TDOT to provide updates, coordinate project reviews, and other activities to help keep the City and other project stakeholders generally informed of the progress of the project.
- Monthly Project Review Meetings – consists of scheduling, setting the agenda, and producing meeting minutes for project meetings as defined in the tasks below. It is assumed that monthly project meetings will be held in an online format, and that only milestone review meetings will be held in person.
- Project Administration – administrative and accounting activities related to the day-to-day management of this project.

Kimley-Horn Deliverables:

1. *Meeting Minutes for project meetings (1 electronic copy each, Adobe PDF format) to City and all meeting attendees.*

Task 2 – PE-NEPA Phase Services

Task 2.1 – Data Collection and Field Surveys

Kimley-Horn will perform a field visit of the Seed Tick Road corridor to review existing site conditions. During this field visit, Kimley-Horn will collect digital photography along the corridor to assist with NEPA documentation, public involvement, and design efforts in later tasks.

Kimley-Horn will request copies of available utility mapping from utility owners known to have facilities within the project corridor, and will incorporate the information received, if any, into the project base mapping.

Kimley-Horn will perform a topographic field survey conducted to TDOT Survey standards in Open Roads Designer file format, tied to the Tennessee State Plane Coordinate System and referencing local vertical benchmarks. The survey area will be as shown in **Figure 1** below. The topographic survey will consist of the following:

- The survey shall be tied to the Tennessee State Plane Coordinate System NAD83 by VRS RTK GPS methods by using the Tennessee Department of Transportation GNSS Network.
- The survey shall be tied to NAVD88 by VRS RTK GPS methods by using the Tennessee Department of Transportation GNSS Network.
- This survey shall be tied to a recent project for the City of Lakeland at the intersection of Highway 70 and Seed Tick Road for intersection improvements.
- Topographic survey in accordance with the technical standards of the State of Tennessee at the time the survey is performed.
- The survey shall be made in accordance with the Tennessee Department of Transportation Survey Manual published in 2023.
- The survey limits are shown by the shaded area on the attached Exhibit A.
- Property lines shall be shown as per the record documents and found property monuments. Full boundary surveys will not be performed on the properties within the survey limits.
- Only easements shown on the record documents shall be shown on the survey.
- Above ground, visible utilities shall be shown on the survey.
- Only those underground utility marks by the utility owners based upon a Tennessee One Call locate request and utility maps obtained from local utility companies shall be shown.
- Sewer and drainage invert information within the survey area within the survey area shall be shown on the survey.
- The contour interval for this survey will be 1-foot contours, with key spot elevations noted as determined during the survey.
- Individual trees will not be shown. Groups of trees will be shown as tree lines or groups of trees.

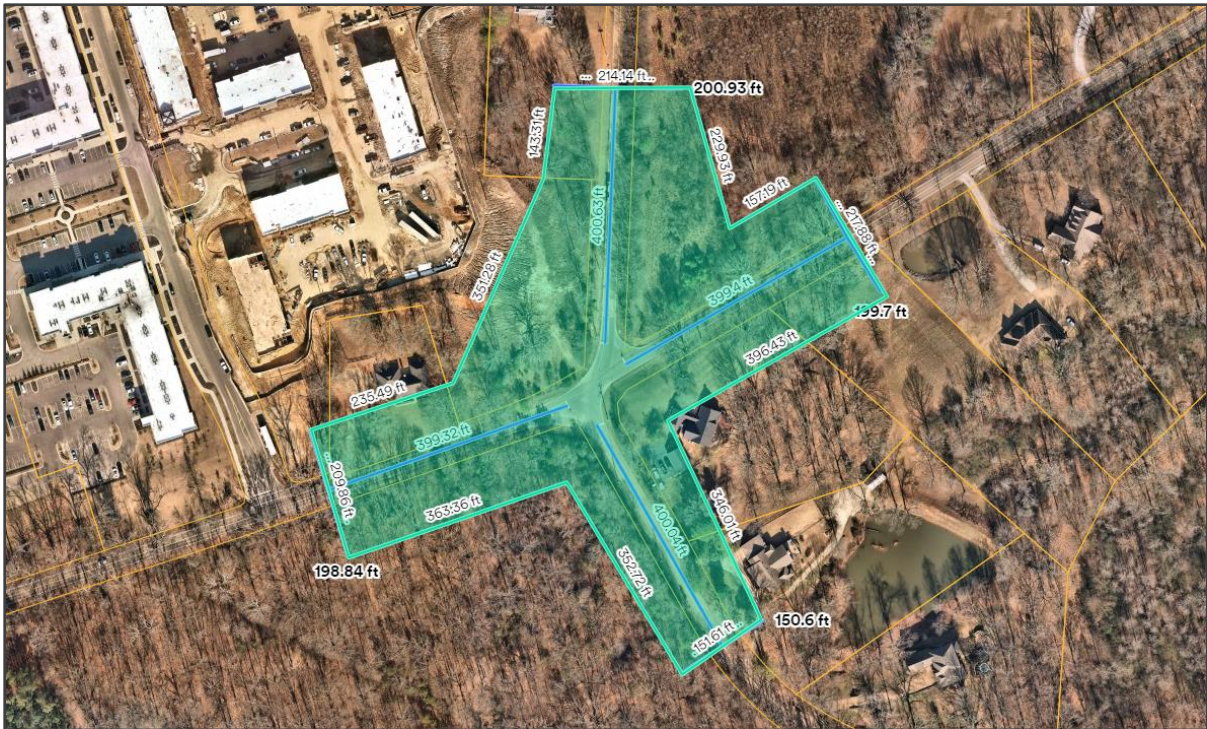


Figure 1 – Seed Tick Road Roundabout Project Area

Task 2.2 – Initial Studies Plans Development

Kimley-Horn will prepare Initial Studies Plans for the project based on current standards as shown in TDOT's *Roadway Design Guidelines*, *Roadway Design Checklists*, *Roadway Standard Drawings*, and *Standard Specifications for Road and Bridge Construction, 2021 Edition*. The Initial Studies plan set will consist of the following series of plan sheets as needed:

- Preliminary Title Sheet
- Typical Sections
- Property Maps and Acquisition Tables
- Present Layouts
- Proposed Layouts
- R.O.W. Detail Sheets
- Proposed Profiles
- Sideroad Profiles
- Drainage Maps
- Roadway Cross Sections
- Side Road Cross Sections

Kimley-Horn will provide an Initial Studies plans submittal to TDOT Local Programs for distribution to TDOT internal departments. No review meetings or plans revisions are associated with this submittal beyond the continued development of Line and Grade Plans described under Task 3.1.

Kimley-Horn Deliverables:

1. *Initial Studies Plan Submittal (1 electronic copy, Adobe PDF format) to the City and to TDOT*
2. *Initial Studies File Submittal Package (1 compressed ZIP file containing all necessary Bentley Open Roads Designer files used to create the plan sheets) to TDOT*

Kimley-Horn will perform Internal Quality Assurance reviews prior to submission of all deliverables.

Task 2.3 National Environmental Policy Act (NEPA) Documentation

Given the nature of the proposed project and the assumptions that: 1) federal funding will be utilized for the proposed project, and 2) more than one acre of right-of-way and/or easements (permanent or temporary) will be required, and no relocations will be warranted, the NEPA document is a likely candidate for classification as a C-List Categorical Exclusion (C-List CE), but would exceed the threshold for “minor amount” of acquisitions within the latest (2024) *Programmatic Agreement between the Federal Highway Administration (FHWA) and the Tennessee Department of Transportation (TDOT) Regarding the Processing of Actions Classified as Categorical Exclusions for Federal-Aid Highway Projects*. Therefore, FHWA review and approval is likely warranted. This determination can only be made, however, by TDOT in cooperation with the FHWA. If a higher level of NEPA document is required by TDOT and/or FHWA other than the preparation of a C-List CE with FHWA approval, this effort will be considered Additional Services beyond this scope of services.

One Build Alternative and the No-Build Alternative will be studied. The NEPA document will be based on functional plans or on preliminary plans (20-30 percent complete) as defined in TDOT's *Local Government Guidelines for the Management of Federal and State-Funded Transportation Projects* (June 2023).

Task 2.3.1 – NEPA Project Management and Coordination

The purpose of this task is to plan, organize, and implement the tasks associated with the delivery of the NEPA review and documentation in a timely manner. In this task, Kimley-Horn will:

- maintain direct contact and function as a liaison with the designated representative of the TDOT Environmental Division's NEPA Programs Office, Local Programs Representatives;
- provide periodic (up to bi-weekly) updates to the Consultant Project Manager; and
- assist, as needed, in the development of invoices and progress reports.

Task 2.3.2 – Agency Coordination

All coordination with agency officials (federal, state, or local agencies) will be completed by TDOT staff. No agency coordination efforts will be conducted by the Consultant as part of this scope of services. If agency coordination is deemed necessary by TDOT, this effort will be considered Additional Services beyond this scope of services. The Consultant will prepare and send an initial studies coordination packet on TDOT's preferred template, including associated project mapping and plans, to TDOT for TDOT's use in coordination with the following federal and state agencies:

- U.S. Fish and Wildlife Service (USFWS)
- Tennessee Wildlife Resources Agency (TWRA)
- Tennessee Department of Environment and Conservation (TDEC)

- Tennessee State Historic Preservation Office (TN-SHPO)

Task 2.3.3 – Public Involvement

It is assumed that no public involvement activities will be required for the proposed project. If any public involvement activities are deemed necessary, this effort will be considered Additional Services beyond this scope of services.

Task 2.3.4 – Environmental Technical Studies

As part of the preparation of the C-List CE, the TDOT will prepare and distribute the Environmental Studies Request (ESR). The ESR responses from TDOT's Environmental Division will be summarized by the Consultant within C-List CE and attached to the C-List CE. If necessary, the technical studies will be prepared utilizing the methodology outlined in the subsections below:

Task 2.3.4.1 - Noise

Given the current scope of work and the potential for the project to halve the distance between the roadway and the closest receptor when comparing the existing condition to the future build condition, the proposed project may be classified as a Type I project under FHWA and TDOT guidelines. In the event that the project is confirmed to be a Type I project, based on coordination with TDOT, Kimley-Horn will provide an assessment of the possible noise impacts within approximately 500-feet of the proposed project termini. Specifically, a Noise Technical Report (NTR) will be prepared in accordance with the FHWA noise regulation, *Procedures for Abatement of Highway Traffic and Construction Noise*, 23 CFR 772, the Tennessee Department of Transportation's *Policy on Highway Traffic Noise Abatement* (TDOT's noise policy, July 2011), as well as Section 5.3.4 (Noise) of the *Tennessee Environmental Procedures Manual*, and will consist of the following tasks:

- *Identification of noise-sensitive land uses*: Identification of existing land uses within approximately 500 feet of the project termini that are sensitive to highway traffic noise;
- *Data Collection*: The Consultant will be responsible for all data collection, included but not limited to design data and traffic data. Contour information can be obtained from the project plans (post-survey) and from USGS. Elevations from Google Earth should not be used.
- *Determination of existing sound levels*: Measurement of existing sound levels at sensitive land uses (i.e., Method 1) to characterize the existing noise environment in the project area (up to two short-term measurement locations of 15-minute durations are anticipated);
- *Determination of design year sound levels*: Prediction of future, design year, worst-hour sound levels for the No-Build and Build Alternatives;
- *Determination of traffic noise impacts*: Determination of noise impacts based on the increase in existing sound levels, as well as design year sound levels. Locations should be identified as impacted if 1) the predicted worst hour noise level approaches or exceeds the NAC (defined by TDOT as 66 dBA for Category B land uses), or 2) the project causes a substantial increase in existing noise levels.

- *Noise abatement evaluation:* Based on the project area and surrounding noise sensitive land uses, traffic noise impacts are not anticipated for the Build Alternative in the design year. Thus, noise abatement measures will not be evaluated, in accordance with TDOT's noise policy, as it is anticipated that noise abatement measures would not be feasible and reasonable. If traffic noise impacts are predicted for the Build Alternative in the design year, evaluation of noise abatement for areas determined to be impacted by the proposed project can be completed but will be considered Additional Services.
- *Report Preparation:* The results shall be presented in a detailed report and meet the requirements of Section 5.3.4, Noise, in the *Tennessee Environmental Procedures Manual* (TDOT, June 2011). The Consultant will submit a draft Noise Technical Report to TDOT for review and comment. Following TDOT's review, the Consultant will revise the Noise Technical Report per TDOT's comments and recommendations and submit a final version for review and approval.
- *KMZ Preparation:* The Consultant will prepare a KMZ file, in accordance with TDOT's KMZ guidelines, that illustrates the receptors and potential impacts associated with the Noise Technical Report described above. The Consultant will submit the draft KMZ file to TDOT for review and comment. Following TDOT's review, the Consultant will revise the KMZ file per TDOT's comments and recommendations and submit a final KMZ file for review and approval.

Deliverables:

- Draft Noise Technical Report (1 electronic copy, 1 Word Document, 1 Adobe PDF format)
- Final Noise Technical Report (1 electronic copy, 1 Word Document, 1 Adobe PDF format)
- KMZ File
- TNM2.5 runs files

Assumptions:

- It is assumed that no public involvement activities related to noise abatement measures are anticipated. If required, these services can be provided and will be considered Additional Services.

Task 2.3.4.2 - Ecology

As warranted, based on coordination with TDOT, the Consultant's subconsultant, Tioga Environmental Consultants, Inc. (Tioga), will provide an Environmental Boundaries Report (EBR), a desktop endangered species review in accordance with TDOT standards, and/or a presence/absence survey for bat species. Tioga will perform these tasks as outlined below.

Jurisdictional Waters Determination

As part of the preparation of the EBR, if warranted, Tioga will provide a Waters of the U.S. Determination (i.e., streams and wetlands) for the project area. In performing the jurisdictional determinations, the 1987 *Corps of Engineers Wetlands Delineation*

Manual and the 2010 *Regional Supplement: Atlantic & Gulf Coastal Plain Region*, Version 2.0, will be closely followed to establish a description of the soils, plants and hydrologic conditions of the project area. Tioga will perform the following tasks:

- Tioga will perform a desktop and field review of the Project area in order to locate potentially jurisdictional waters (wetlands, streams or conveyances) of the US / State.
- The proposed alignments will be assessed including up to 50 feet of width beyond the right-of-way.
- Onsite channels will be assessed using the State of Tennessee's hydrologic determination criteria to establish whether each channel is considered a stream or wet weather conveyance. Potential wetland areas will be evaluated using the U.S. Army Corps of Engineers (USACE) criteria, specific to the Corps' Atlantic and Gulf Coast regional supplement.
- Approximate locations of any identified jurisdictional features will be field mapped using GAAS-enabled Global Positioning System (GPS) handheld units with approximate 1-meter accuracy.
- The Client will be supplied with the Environmental Boundaries Survey Report, including features identified, their classification, field data forms, and mapping. Endangered Species Review

Once Tioga completes the EBR and the Endangered Species Review, the Consultant will submit the draft reports to TDOT for review and comment. TDOT will submit these reports to relevant regulatory agencies for review, as warranted. Upon receipt of an ESR and copies of any agency coordination correspondence from TDOT, the Consultant will incorporate the results directly into the NEPA document.

Task 2.3.4.3 - Threatened and Endangered Species Review

If warranted, based on coordination with TDOT, Tioga will conduct a desktop and field review of the project area to assess the site for the potential presence of listed threatened and / or endangered species or critical habitat. For this effort, Tioga will consult with the USFWS, Tennessee Natural Heritage Program and Tennessee Wildlife Resources Agency to obtain species lists and to provide input on any effects determination. Tioga will draft and provide letter report detailing any findings and providing a recommended effects determination for the project.

Additionally, if warranted, based on coordination with TDOT, Tioga will provide an appropriate presence/absence survey for bat species, such as acoustic monitoring, mist netting, etc. Tioga will complete this effort in coordination with the USFWS and according to USFWS current guidance. Tioga will draft and provide letter report detailing any findings and providing a recommended effects determination for the project.

Task 2.3.4.4 - Floodplains

The Consultant will identify floodplains and floodways in the project area only through the review of National Flood Insurance Rate Maps (FIRMs). The Consultant will compile all FIRMs specific to the project area and will provide the relevant floodplains and floodways information as part of the NEPA document.

Task 2.3.4.5 - Recreational Resources

It is not anticipated that the proposed project will require any right-of-way or easements from a Section 4(f) recreational resource or from a resource funded by Land and Water Conservation Funds (Section 6(f)). Two potential recreational resources are within the general vicinity of the proposed project (a t-ball field at City Hall Park, located approximately 1,000 linear feet to the east of the project location, and a planned sports complex east of the intersection of Canada Road and Memphis Arlington Road, located approximately 1,000 linear feet west of the project area); however, the project will not require acquisition of right-of-way or easements from either resource nor will the project impede access to either resource. The Consultant will complete a review of the proposed improvements near the above identified potential Section 4(f) resources to confirm whether any coordination related to Section 4(f) is required.

If any Section 4(f) documentation or coordination (e.g., exception, evaluation, or de minimis determination) or any Section 6(f) documentation or coordination is deemed necessary by TDOT or another agency, these services can be provided by the Consultant in accordance with the Additional Services clause of this agreement.

Task 2.3.4.6 - Cultural Resources

Section 106 – Historic Preservation

TN-SHPO online survey data indicates that the area of potential effects contains no previously surveyed resources but does contain two dwellings over 50 years of age. The Consultant's subconsultant, Richard Grubb & Associates (RGA), will prepare a Section 106 Historic Architecture Resources Survey to document and evaluate potential project effects to all National Register of Historic Places (NRHP)-listed and NRHP-eligible historic architecture resources in the area of potential effect (APE) per the criteria of adverse effects set forth in Section 106 regulations. Additionally, measures to avoid, minimize, or mitigate unavoidable adverse effects will be evaluated.

Once RGA completes the Section 106 Historic Architecture Resources Survey, the Consultant will submit the draft report to TDOT for review and comment. TDOT will submit this report to the Tennessee State Historic Preservation Office (TN-SHPO) for review. Upon receipt of an ESR and copies of any agency coordination correspondence, Consultant will incorporate the results directly into the NEPA document.

Assumptions:

- If additional coordination the TN-SHPO is required or if additional historic architecture documentation is needed past the preparation of the Section 106 Historic Architecture Resources Survey previously mentioned, this work can be completed by RGA, but will be considered Additional Services beyond this scope of services.

Section 106 – Archaeology

The Consultant's subconsultant, RGA, will prepare a Phase 1 Archaeological Survey to identify historic and prehistoric archaeological sites within the project's anticipated APE. RGA will present the results of the Phase I Archaeological Survey will be presented in a report that meets the Secretary of the Interior's *Standards and*

Guidelines for Archaeology and Historic Preservation (1983) and complies with the Tennessee SHPO *Standards and Guidelines for Archaeological Resource Management Studies* (October 2018) and the TDOT Phase I Archaeological Survey Scope of Work (2021), if applicable. RGA will perform this work pursuant to Section 106 of the National Historic Preservation Act (NHPA), as amended.

Once RGA completes the Phase 1 Archaeological Survey, the Consultant will submit the draft report to TDOT for review and comment. TDOT will submit this report to the Tennessee State Historic Preservation Office (TN-SHPO) for review. Upon receipt of an ESR and copies of any agency coordination correspondence, Consultant will incorporate the results directly into the NEPA document.

Assumptions:

- No Phase II Testing – If required, this work can be completed in accordance with the Additional Services clause of this agreement.
- If a Memorandum of Agreement is needed to confirm agreed upon mitigation measures for the Build Alternative, it will be conducted in accordance with the Additional Services clause of this agreement.
- If Phase III work, data recovery is necessary, it can be included in accordance with the Additional Services clause of this agreement.

Task 2.3.4.7 - Environmental Justice

The Consultant will complete an Environmental Justice (EJ) analysis, in conformance with Executive Order 12898 and FHWA Order 6640.23 (December 2, 1998). The analysis will evaluate block group-level census data within the project area, to determine whether minority and/or low-income populations are present in the area affected by the proposed project, and if so whether there may be disproportionately high and adverse human health or environmental effects on minority and low-income populations. Potential areas of EJ populations will be displayed on GIS mapping. The EJ analysis will be limited to desktop research only and will be incorporated directly into the NEPA document. No fieldwork will be completed.

If EJ populations are identified, the Consultant will complete an Environmental Justice Memorandum for TDOT Environmental Division use in coordinating with TDOT's Civil Rights Division. The resulting coordination with the Civil Rights Division will be incorporated into the NEPA document.

If a disproportionately high and adverse effect on a low-income population or minority population is revealed, the analysis will show how the effects are distributed within the affected community. If potential mitigation measures or potential community outreach efforts are identified by TDOT or FHWA, these services can be provided, but will be considered Additional Services beyond this scope of services.

Assumptions:

- No fieldwork will be required.

Task 2.3.4.8 - Farmland

The project is in a designated urbanized area as indicated on the U.S. Census Bureau Urban Area Reference Map. Therefore, the project is not subject to the Farmland Protection Policy Act.

Task 2.3.4.9 - Hazardous Materials

The Consultant will complete a desktop review of hazardous materials databases available through TDEC and the Environmental Protection Agency (EPA) to determine whether the proposed project area has the potential to contain hazardous materials that may be impacted by the project. This information along with all relevant TDEC and EPA database mapping for the project area will be presented in a memorandum, or TDOT preferred format, for the TDOT Hazardous Materials Section to review and provide further recommendations as to whether additional studies may be necessary.

Upon receipt of an ESR, Consultant will incorporate the results of this effort into the NEPA document.

Assumptions:

- It is assumed that no Phase I Environmental Site Assessment (ESA), Phase II ESA, or Asbestos Containing Materials (ACM) surveys will be conducted as part of this proposed scope of services and cost estimate. If the Client, TDOT, or another state and/or federal agency requests additional hazardous materials studies, these services can be provided, but will be considered Additional Services beyond this scope of services.

Environmental Technical Information to be provided by TDOT

The TDOT Environmental Division will be responsible for providing the following environmental technical information:

- Native American Consultation
- Air Quality

Following receipt of the above listed environmental technical information from the TDOT Environmental Division, the Consultant will review and incorporate the information/data into the NEPA document.

Additional Services – Environmental Technical Studies

The following environmental technical studies can be completed but will be considered Additional Services beyond this scope of services:

- Public involvement activities
- Conceptual Stage Relocation Plan
- Detailed Floodplain Analysis
- Traffic Analysis
- Farmland Coordination and Farmland Analysis
- Section 4(f) Documentation beyond what is specifically outlined herein
- Section 6(f) Documentation
- Detailed Environmental Justice Analysis
- Phase II Archaeological Surveys and/or Phase III Testing

- Phase I or Phase II Environmental Site Assessments and Asbestos Containing Materials Surveys

Task 2.3.5 – Document Preparation and Approval

The purpose of this task is to develop the CE documentation, consistent with the requirements of the FHWA guidance as outlined in FHWA Technical Advisory T6640.8A, *Guidance for Preparing and Processing Environmental and Section 4(f) Documents* as well as the *Tennessee Environmental Procedures Manual* (June 2011 edition).

Following completion of the document, the Consultant will submit the NEPA document to TDOT's Environmental Division for review and comment. The Consultant will then revise the NEPA document based on TDOT comments and resubmit the NEPA document to TDOT for final review and approval.

Kimley-Horn Deliverables:

1. *(If warranted) Draft and Final Noise Technical Report (electronic copy in Word and in Adobe PDF format)*
2. *(If warranted) Noise TNM2.5 runs files and KMZ*
3. *Environmental Boundaries Report (electronic copy in Adobe PDF format)*
4. *(If warranted) Species Review (electronic copy in Adobe PDF format)*
5. *(If warranted) Bat Species Review (electronic copy in Adobe PDF format)*
6. *Historic Architecture Survey (electronic copy in Adobe PDF format)*
7. *Phase I Archaeological Survey (electronic copy in Adobe PDF format)*
8. *(If warranted) Environmental Justice Memorandum (electronic copy in Adobe PDF format)*
9. *Draft Categorical Exclusion document (electronic copy in Adobe PDF format)*
10. *Final Categorical Exclusion document (electronic copy in Adobe PDF format)*

Task 3 – PE-DESIGN Phase Services

Task 3.1 – Line and Grade Plans Development

Kimley-Horn will prepare Line and Grade (Preliminary) Review Plans for the project based on current standards as shown in TDOT's Roadway Design Guidelines, Roadway Design Checklists, Roadway Standard Drawings, and the *Standard Specifications for Road and Bridge Construction, 2021 Edition*. The Line and Grade plan set will consist of the following series of plan sheets as needed:

- Line and Grade Title Sheet
- Typical Sections
- Detail Sheets
- Right-of-Way Notes
- Property Maps and Acquisition Tables
- Present Layouts
- Proposed Layouts
- R.O.W. Detail Sheets
- Proposed Profiles
- Sideroad Profiles
- Private Driveway Profiles
- Drainage Maps

- Culvert Sections
- Roadway Cross Sections
- Side Road Cross Sections
- Traffic Control Plans (Working Drawings Only)
- Photometric Lighting Plans
- Preliminary Planting Plans

Kimley-Horn will provide a Line and Grade Review submittal to TDOT Local Programs for distribution to TDOT internal departments and external stakeholders. The TDOT Local Programs Project Monitor will distribute all comments received from the internal and external reviews to Kimley-Horn. Revisions will be made based on the comments and a brief memorandum prepared outlining the comments received.

Kimley-Horn Deliverables:

1. *Line and Grade Plan Submittal (1 electronic copy, Adobe PDF format) to TDOT Local Programs*
2. *Memorandum summarizing TDOT comments (1 electronic copy each, Adobe PDF format) to the City.*

Kimley-Horn will perform Internal Quality Assurance reviews prior to submission of all deliverables.

Task 3.2 Early Utility Coordination

Kimley-Horn will submit early coordination letters to utility companies in Shelby County. The submittal to each utility owner will consist of a letter by certified mail or email when available requesting that the utility company review the potential impacts of the proposed project to their facilities. The letter will request a written response from each utility. If no response is made within 60 days, a follow up letter by certified mail or email will be submitted giving 10 days to respond. All documentation will be used for Utility Certification in later tasks.

Task 3.3 – Functional Plans Development

Kimley-Horn will prepare Functional (Right-of-Way) Plans for the project based on current standards as shown in TDOT's Roadway Design Guidelines, Roadway Design Checklists, Roadway Standard Drawings, and the *Standard Specifications for Road and Bridge Construction, 2021 Edition*. The Functional plan set will consist of the following series of plan sheets as needed:

- Functional Title Sheet
- Project Commitments Sheet (as required)
- Estimated Quantities (Info Only)
- Typical Sections and Pavement Schedule
- Environmental Notes
- Tabulated Quantities
- Detail Sheets
- Right-of-Way Notes
- Property Maps and Acquisition Tables
- Present Layouts
- Proposed Layouts
- R.O.W. Detail Sheets

- Proposed Profiles
- Sideroad Profiles
- Private Driveway Profiles
- Drainage Maps
- Culvert Sections (as required)
- EPSC Plans
- Environmental Mitigation Plans (as required)
- Signing and Pavement Marking Plans
- Sign Schedule Sheets
- Traffic Control Plans (Info Only)
- Revised Photometric Lighting Plans
- Lighting Layout Plans
- Revised Planting Plans and Details
- Roadway Cross Sections
- Side Road Cross Sections

Kimley-Horn will prepare a project construction estimate corresponding to the current Functional plans. The construction estimate will consist of preliminary quantities calculated and entered into the TDOT Estimated Quantities spreadsheet as well as on Sheet 2A within Field Review Plans only. Pay items that cannot be quantified at submittal will be listed. Descriptions will be given for open-ended item numbers.

Kimley-Horn Deliverables:

1. *Functional Field Review Plan Submittal (1 electronic copy, Adobe PDF format) to TDOT Local Programs*
2. *Functional Field Review Project Folder Submittal (1 compressed file per TDOT Guidelines) to TDOT Local Programs*
3. *Draft Transportation Management Plan, including draft traffic control Plan (1 electronic copy, Adobe PDF format) to TDOT Local Programs*
4. *Final Functional Plan Submittal (sealed) (1 electronic copy, Adobe PDF format) to TDOT Local Programs*
5. *Final Right-of-Way Project Folder Submittal (1 compressed file per TDOT Guidelines) to TDOT*
6. *Functional Construction Estimate (1 electronic copy, Excel format)*

Kimley-Horn will perform Internal Quality Assurance reviews prior to submission of all deliverables.

Task 3.4 – Plan-In-Hand Plans Development

Kimley-Horn will prepare Plan-In-Hand (Construction) Plans for the project based on current standards as shown in TDOT's Roadway Design Guidelines, Roadway Design Checklists, Roadway Standard Drawings, and the *Standard Specifications for Road and Bridge Construction, 2021 Edition*. The Plan-In-Hand plan set will consist of the following series of plan sheets as needed:

- Plan-In-Hand Title Sheet
- Project Commitments Sheet (as required)
- Estimated Quantities
- Typical Sections and Pavement Schedule`
- General Notes

- Special Notes
- Environmental Notes
- Tabulated Quantities
- Detail Sheets
- Right-of-Way Notes
- Property Maps and Acquisition Tables
- Present Layouts
- Proposed Layouts
- R.O.W. Detail Sheets
- Proposed Profiles
- Sideroad Profiles
- Private Driveway Profiles
- Drainage Maps
- Culvert Sections (as required)
- EPSC Plans
- Environmental Mitigation Plans (as required)
- Signing and Pavement Marking Plans
- Sign Schedule Sheets
- Traffic Control Plans
- Lighting Layout and Electrical Design Plans
- Planting Plans and Details
- Roadway Cross Sections
- Side Road Cross Sections

Kimley-Horn will prepare a project construction estimate corresponding to the current Plan-In Hand plans.

Task 3.5 Final Utility Coordination

Kimley-Horn will submit draft construction plans to utility companies known to have facilities within the project limits (identified in Task 3.2). The submittal to each utility owner will consist of an electronic set of plan drawings (PDF format) and a letter requesting that the utility company review the potential impacts of the proposed project to their facilities. The letter will request a written response from each utility and will also request that the utility company identify any private utility easements that fall within the project limits but are not shown on the construction plans.

Task 3.6 Bid Document Services

Task 3.6.1 – Advertisement

Kimley-Horn will prepare the draft advertisement using the TDOT Local Programs Advertisement Template. Kimley-Horn will submit the draft advertisement to the City and TDOT Office of Local Programs for review and approval.

Task 3.6.2 - DBE Goal Setting

Given the construction budget for this project, the City of Lakeland will be required to set goals for DBE participation in the construction contract as defined in federal regulation 49 CFR 23/26.

Kimley-Horn will work with personnel at the TDOT Civil Rights Office to set an appropriate and realistic DBE goal for the project based on the type and quantity of work being performed and the local availability of qualified DBE contractors. Kimley-Horn will prepare a DBE Goal Worksheet for submittal to the City and TDOT for review and approval.

Task 3.6.3 Proposal Contract Preparation

Kimley-Horn will prepare a proposal contract in accordance with TDOT Office of Local Programs standards. Kimley-Horn will prepare technical specifications for those items that are not covered by the TDOT and City of Lakeland specifications. The remainder of the technical specifications will be based upon TDOT's Standard Specifications for Road and Bridge Construction or will be documented in the construction plans. The proposal contract will contain the Request for Proposals, the contract documents, bid forms, disadvantaged business enterprise (DBE) requirements, specifications, required special provisions, and an 11 by 17 inch plan set. The proposal contract will be submitted to the TDOT Office of Local Programs for approval and authorization for the City to proceed with bidding the project.

Kimley-Horn Deliverables:

1. *Plan-In-Hand Field Review Plan Submittal (1 electronic copy, Adobe PDF format) to TDOT Local Programs*
2. *Plan-In-Hand Field Review Project Folder Submittal (1 compressed file per TDOT Guidelines) to TDOT Local Programs*
3. *Final Transportation Management Plan, including draft traffic control Plan (1 electronic copy, Adobe PDF format) to TDOT Local Programs*
4. *Final Plan-In-Hand Plan Submittal (sealed) (1 electronic copy, Adobe PDF format) to TDOT Local Programs*
5. *Plan-In-Hand Construction Estimate (1 electronic copy, Excel format)*

Kimley-Horn will perform Internal Quality Assurance reviews prior to submission of all deliverables.

Services Not Included

The Scope of Services covered by this agreement end and with the submittal of final Plan-In-Hand Plans to the City of Lakeland and TDOT. Services provided after that activity are intended be fully defined in a future amendment to this contract. These services are anticipated to consist of:

- **Right-of-Way Phase Services**
 - Title Reports
 - Appraisals and Review Appraisals
 - ROW Agent/Negotiation Services
 - Property Closing Assistance
 - ROW Certification
- **Final Design Services**
 - Environmental Permitting

The additional services outlined above are planned to be an amendment due to the uncertain nature of the number of properties that will require Right-of-Way Phase Services and the uncertain timing for the completion of Right-of-Way Acquisition.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at Kimley-Horn's then-current hourly rates. Additional services Kimley-Horn can provide include, but are not limited to, the following:

- Utility relocation design

Information Provided By Client

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Plans for proposed adjacent developments (if available)
- Plans of existing adjacent developments (if available)
- Existing Roadway plans (if available)

Schedule

Kimley-Horn will perform the services as expeditiously as practicable with the goal of meeting a mutually agreed upon schedule. An initial schedule for project completion is provided in Attachment A. Kimley-Horn and the Client will revisit this schedule periodically as a part of the project's normal life cycle and will make adjustments as needed.

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1- 3 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

Task Number & Name		Base Fee	If Required*
Task 1 – Project Management			
	<i>Project Management</i>	-	-
Task 2 – PE NEPA Phase Services			
	<i>Data Collection and Field Surveys</i>	\$39,876	-
	<i>Initial Studies Plans Development</i>	\$10,500	-
	<i>NEPA Document Preparation</i>	\$20,500	-
	<i>Technical Studies – Ecology</i>	\$5,500	-
	<i>Technical Studies – Bat presence/absence Study</i>	-	\$6,000
	<i>Technical Studies – Historical and Archaeological</i>	\$21,979	-
	<i>Technical Studies – Noise</i>	-	\$27,500
Task 3 – PE DESIGN Phase Services			
	<i>Line and Grade Plans Development</i>	\$48,000	-
	<i>Functional Plans Development</i>	\$60,250	-
	<i>Plan-In-Hand Plans Development</i>	\$42,200	-
	<i>Final Utility Coordination</i>	\$2,500	-
	<i>Bid Document Services</i>	\$4,500	-
Sub Total		\$258,105	\$33,500
Grand Total		\$291,605	

* Items listed as “If Required” may not be necessary and will require a separate Notice to Proceed prior to any work being performed.

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard

Provisions, "Kimley-Horn" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the City of Lakeland, TN.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in a PDF. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

____ Please email all invoices to _____

____ Please copy _____

To proceed with the services, please have an authorized person sign this Agreement below and return to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services. Please contact me if you have any questions.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Signed: 

Printed Name: Drake Danley, PE

Title: Vice President

CITY OF LAKELAND, TN

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment – Project Schedule (NEPA and Design Only)

Attachment – Request for Information

Attachment – Standard Provisions

ATTACHMENT A
PROJECT SCHEDULE (NEPA AND DESIGN ONLY)

Seed Tick Road Roundabout

11/1/2024

Task Number	Task Description	Duration (Weeks)	Start	End	November 2024				December 2024				January 2025				February 2025				March 2025				April 2025				May 2025				June	
					01	08	15	22	01	08	15	22	01	08	15	22	01	08	15	22	01	08	15	22	01	08	15	22	01	08	15	22	01	08
1	Notice to Proceed	0	11/1/2024	11/1/2024																														
2	Project Management	57	11/1/2024	12/6/2025																														
3	PE-NEPA Phase	27	11/1/2024	5/10/2025																														
	Field Surveys	12	11/1/2024	1/24/2025																														
	Initial Studies Design in support of NEPA	4	12/1/2024	12/29/2024																														
	Regulatory Agency Coordination	12	12/29/2024	3/23/2025																														
	Perform required NEPA Technical Studies	8	2/1/2025	3/29/2025																														
	Prepare and submit NEPA Document for review and approval	4	3/15/2025	4/12/2025																														
	Agency Review	4	4/12/2025	5/10/2025																														
4	PE-Design Phase	24	5/10/2025	10/25/2025																														
	Early Utility Coordination	10	5/10/2025	7/19/2025																														
	Prepare Line and Grade Plans and Submit to TDOT	4	5/10/2025	6/7/2025																														
	Agency Review	4	6/7/2025	7/5/2025																														
	Prepare Functional Plans and Submit to TDOT	6	6/7/2025	7/19/2025																														
	Agency Review	4	7/19/2025	8/16/2025																														
	Prepare Plan-In-Hand Construction Plans	4	8/16/2025	9/13/2025																														
	Agency Review	4	9/13/2025	10/11/2025																														
	Revise CONST Plans per Comments and Submit Final	2	10/11/2025	10/25/2025																														
6	Bid Documents	6	10/25/2025	12/6/2025																														
	Prepare Bid Book, Draft Advertisement	1	10/25/2025	11/1/2025																														
	Finalize cost estimate and coordinate DBE goals with TDOT	1	11/1/2025	11/8/2025																														
	Agency Review	4	11/8/2025	12/6/2025																														

Seed Tick Road Roundabout

Task Number	Task Description	Duration (Weeks)	2025		July 2025				August 2025				September 2025				October 2025				November 2025				December 2025			
			15	22	01	08	15	22	01	08	15	22	01	08	15	22	01	08	15	22	01	08	15	22	01	08	15	22
1	Notice to Proceed	0																										
2	Project Management	57																										
3	PE-NEPA Phase	27																										
	Field Surveys	12																										
	Initial Studies Design in support of NEPA	4																										
	Regulatory Agency Coordination	12																										
	Perform required NEPA Technical Studies	8																										
	Prepare and submit NEPA Document for review and approval	4																										
	Agency Review	4																										
4	PE-Design Phase	24																										
	Early Utility Coordination	10																										
	Prepare Line and Grade Plans and Submit to TDOT	4																										
	Agency Review	4																										
	Prepare Functional Plans and Submit to TDOT	6																										
	Agency Review	4																										
	Prepare Plan-In-Hand Construction Plans	4																										
	Agency Review	4																										
	Revise CONST Plans per Comments and Submit Final	2																										
6	Bid Documents	6																										
	Prepare Bid Book, Draft Advertisement	1																										
	Finalize cost estimate and coordinate DBE goals with TDOT	1																										
	Agency Review	4																										

Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

Client Identification

Full, Legal Name of Client					
Mailing Address for Invoices					
Contact for Billing Inquiries					
Contact's Phone and e-mail					
Client is (check one)	Owner	☐	Agent for Owner	☐	Unrelated to Owner

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

Project Funding Identification – List Funding Sources for the Project

Attach additional sheets if there are more than 4 parcels or more than 4 owners

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. The Client will remit all payments electronically to:
Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
Account Number: 2073089159554
ABA#: 121000248
 - c. The Client will send the project number, invoice number and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.
 - d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - e. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - f. If Kimley-Horn initiates legal proceedings to collect payment, it shall recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings.

Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.

- g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the deliverables prepared by Kimley-Horn, the hardcopy shall govern.
- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims,

losses, costs, attorneys' fees, or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.

- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
 - a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
 - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance

of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

- 18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**RESOLUTION 2000/07-36
RECLASSIFICATION OF SEED TICK ROAD**

ORIGINAL

Resolved; that the Board of Commissioners has determined that it is in the best interest of the City and that the Board desires to restore the classification of Seed Tick Road to a two (2) lane roadway.

Resolved; that this change will allow the City to designate Seed Tick Road as a historical and rural roadway.

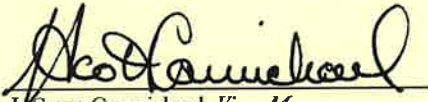
Resolved; that the City Manager shall inform the appropriate authorities that Seed Tick Road shall remain a two (2) lane roadway on the *Shelby County Major Road Plan* in perpetuity.

Resolved; that the City Manager is hereby instructed to develop a plan that ensures that Seed Tick Road is developed as a two (2) lane roadway from Memphis-Arlington Road to the point where Seed Tick Road merges with Huff N' Puff/Beverle Rivera Road.

Resolved; due to the road being classified as a historic roadway in perpetuity, only by those improvements required by the Shelby County Board of Education shall be implemented on school site.

Resolved; Resolution 2000/06-26 is hereby repealed.

Resolution duly passed: July 06, 2000.


J. Scott Carmichael, *Vice-Mayor*

ATTEST:

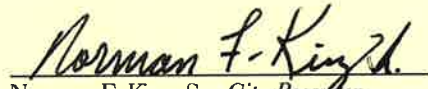

Norman F. King, Sr., *City Recorder*



FIGURE 21: RECOMMENDED
TRANSPORTATION PLAN

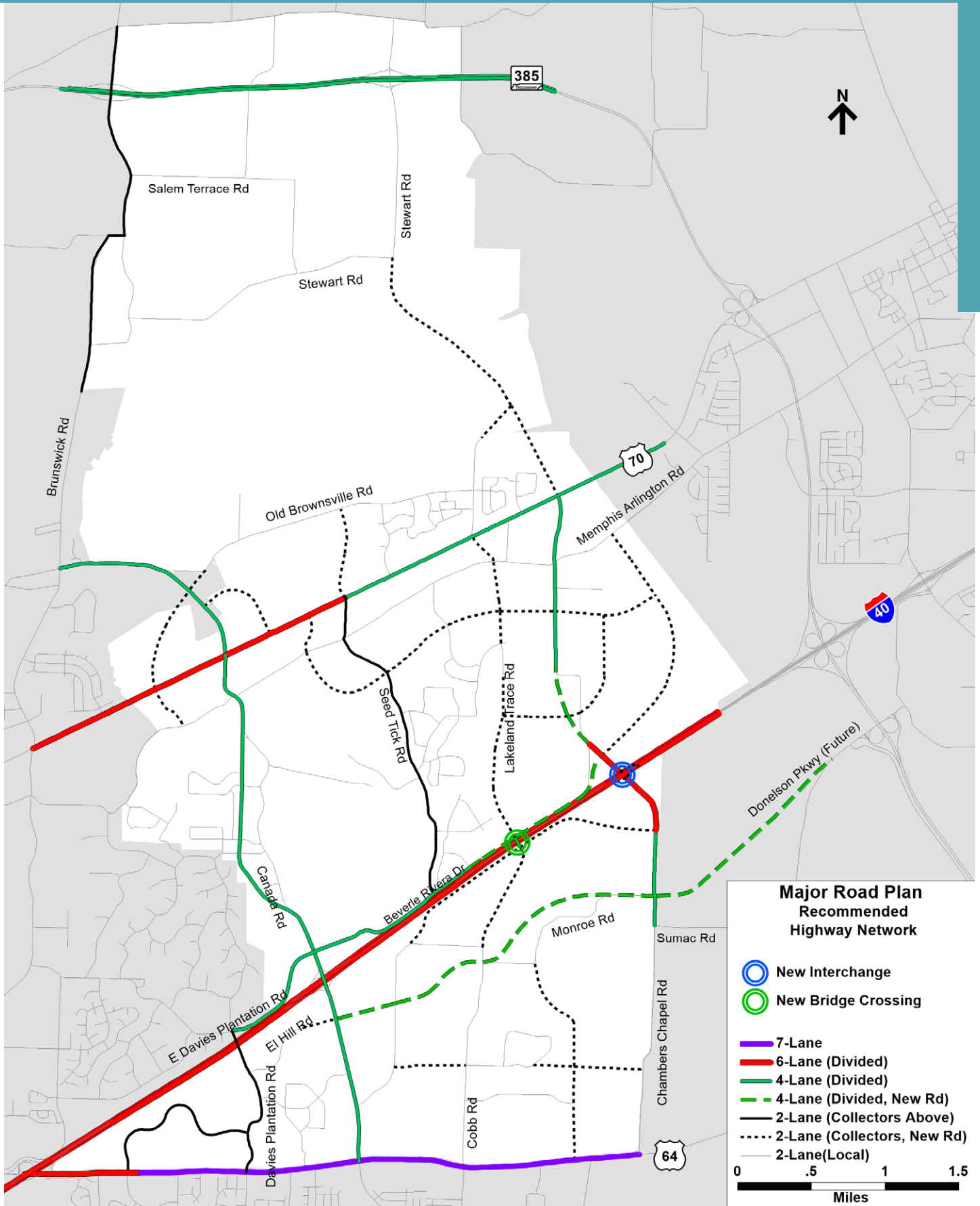
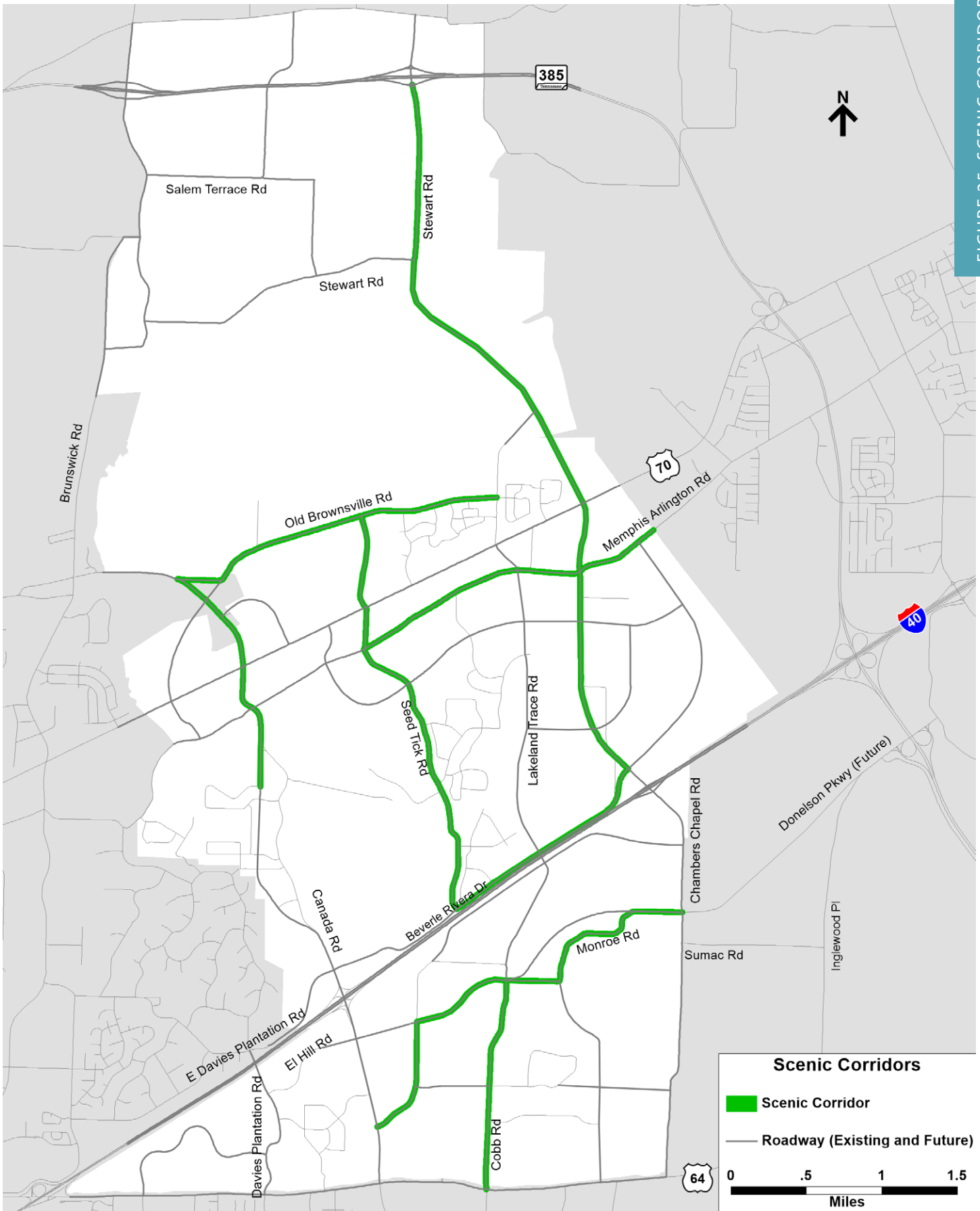


FIGURE 25: SCENIC CORRIDORS
MAP





Board of Commissioners

Meeting Cycle: Thursday, November 7, 2024

Subject: **Resolution** - accepting Lot 8 in the Lakeland Town Square development (formerly known as Lakeland Commons) and authorizing the City Manager and the City Attorney to execute necessary documents.

Staff Contact: Emily Harrell, City Engineer

STAFF RECOMMENDATION

City staff recommends the Board of Commissioners accept Resolution R-167-2024.

BUDGET IMPACT

There is no budgetary impact from this resolution.

DISCUSSION

The Lakeland Town Square Planned Development includes two civic lots, Lot 8 and Lot 9.

This resolution allows the Board of Commissioners to accept the dedication of Lot 8. Lot 9 will be considered for acceptance at a future meeting, as there are proposed site improvements by the developer.

RESOLUTION R-167-2024

ACCEPTING LOT 8 IN THE LAKELAND TOWN SQUARE DEVELOPMENT
(FORMERLY KNOWN AS LAKELAND COMMONS) AND AUTHORIZING THE CITY
MANAGER AND THE CITY ATTORNEY TO EXECUTE NECESSARY DOCUMENTS

WHEREAS, the Developer of the Lakeland Town Square project agreed to dedicate to the City of Lakeland, Tennessee (the "City") two parcels which were identified on the October 12, 2018 master plan for the Tax Increment Financing ("TIF") as Dedication Parcel A and Dedication Parcel B; and,

WHEREAS, Dedication Parcel A is also shown as Lot 8 on the General Development Plan for the project; and,

WHEREAS, the Board of Commissioners of the City of Lakeland, Tennessee (the "Board") recognizes the utility and benefits of accepting Lot 8 (formerly known as Dedication Parcel A); and,

WHEREAS, the Board hereby authorizes the City Manager and City Attorney to execute all necessary documents to accept the dedication of Lot 8 at no cost to the City:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the Board hereby authorizes the City Manager and City Attorney for the City of Lakeland, Tennessee, to execute all necessary documents to accept the dedication of Lot 8 at no cost to the City.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee this 7th day of November 2024, the public welfare requiring it.

ATTEST:

Josh Roman
Mayor

Cheyenne Carter
City Recorder

RESOLUTION R-160-2024

AUTHORIZING REAPPOINTMENT TO THE BOARD OF APPEALS / STORM WATER
BOARD OF APPEALS OF THE CITY OF LAKELAND, TENNESSEE

WHEREAS, the City of Lakeland Board of Appeals and Storm Water Board of Appeals (“BOA/SWBOA”) plays a vital role serving as a board of appeals on application of an aggrieved party for variances from the requirements of ordinances of the City of Lakeland; and,

WHEREAS, the BOA/SWBOA has one position with terms expiring on December 31, 2024; and,

WHEREAS, the Lakeland Board of Commissioners has the authority to appoint a new member to the BOA/SWBOA:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that Byron Ledbetter be reappointed to the Board of Appeals / Stormwater Board of Appeals for a one-year term expiring December 31, 2025 (to maintain compliance with bylaws).

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee this 7th day of November 2024, the public welfare requiring it.

ATTEST:

Josh Roman
Mayor

Cheyenne Carter
City Recorder

Meeting Cycle: Thursday, November 7, 2024

Subject: **Resolution** - authorizing reappointment to the Municipal Parks and Recreation / Natural Resources Advisory Board of the City of Lakeland, Tennessee. *Sponsored by Vice Mayor Dial*

Staff Contact: Andrew Fisher, Parks and Recreation Director

STAFF RECOMMENDATION

City staff recommends the Board of Commissioners approve resolution R-163-2024.

BUDGET IMPACT

There is no budgetary impact related to this item.

DISCUSSION

There are four (4) volunteer members of the PRB, in addition to the BOC liaison (Vice Mayor Dial). The PRB bylaws state that terms for membership are three years and the terms shall be staggered, with two or three members appointed each year. Currently, there are four volunteer members with terms expiring this year, four with terms expiring in 2025, and none in 2026. The solution presented is to reappoint three members' terms for the standard three years and extend the fourth member's term for one year. In 2025, there will now be five expiring members. Three positions will be appointed for three years and two positions for one year. In 2026, the two expiring positions will be appointed for three-year terms, at which point, there will be properly staggered terms in accordance with the PRB bylaws.

RESOLUTION R-163-2024

AUTHORIZING REAPPOINTMENTS TO THE MUNICIPAL PARKS AND
RECREATION / NATURAL RESOURCES ADVISORY BOARD OF THE CITY OF
LAKELAND, TENNESSEE

WHEREAS, the City of Lakeland Municipal Parks and Recreation / Natural Resources Advisory Board ("PRB") plays a vital role as the advisory body for the Parks and Recreation Department of the City of Lakeland; and,

WHEREAS, the PRB has four positions with terms expiring on December 31, 2024; and,

WHEREAS, the Lakeland Board of Commissioners has the authority to appoint members to the PRB:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that Mark Donley, Jessica Cannon, and Jenny Kiesel be reappointed to the Municipal Parks and Recreation / Natural Resources Advisory Board for a three-year term expiring December 31, 2027.

BE IT FURTHER RESOLVED that Stacy Monasky be reappointed to the Municipal Parks and Recreation / Natural Resources Advisory Board for a one-year term expiring December 31, 2025.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 7TH day of November 2024, the public welfare requiring it.

ATTEST:

Josh Roman
Mayor

Cheyenne Carter
City Recorder

Meeting Cycle: Thursday, November 7, 2024

Subject: **Resolution** - authorizing the City Manager and the City Attorney to execute a memorandum of understanding with the Lakeland School System for use of a video board located at Lakeland Preparatory School. *Sponsored by Mayor Roman*

Staff Contact: Michael Walker, City Manager

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve resolution R-168-2024.

BUDGET IMPACT

There is no direct budgetary impact related to this resolution. Ancillary to this agreement, any payments made to LSS due to the use of LSS staff for operation of the score board at LPS would be covered by existing appropriations in the General Fund's annual budget.

DISCUSSION

The attached MOU has been reviewed and developed collaboratively with the City Manager and the Superintendent of LSS, and reviewed by the City Attorney and the LSS Attorney.

This agreement provides for the use of the funding of the video board, outlines the ability of the City to show informational or promotional videos during all times when the video board is in use, and allows for the City to utilize the score board component under supervision and training and/or through contracting with LSS staff. The agreement lasts as long as the video board is in use and operational.

RESOLUTION R-168-2024

AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO EXECUTE A
MEMORANDUM OF UNDERSTANDING WITH THE LAKELAND SCHOOL SYSTEM
FOR USE OF A VIDEO BOARD LOCATED AT LAKELAND PREPARATORY SCHOOL

- WHEREAS,** the Board of Commissioners of the City of Lakeland, Tennessee (the “Board”) recognizes the utility and benefits of installing a Video Board in the Lakeland Preparatory Stadium; and,
- WHEREAS,** the City of Lakeland, Tennessee (the “City”) will fund the costs of the Video Board in exchange for displaying City content at various events; and,
- WHEREAS,** the City agrees to pay two hundred and fifty thousand dollars (\$250,000.00) towards the Video Board and will not be obligated to pay any maintenance costs required for the continued operation of the Video Board; and,
- WHEREAS,** in addition to using the Video Board, the City will also be permitted to access the Press Box to operate the Scoreboard and Sound System for the City’s Parks and Recreation games; and,
- WHEREAS,** the Board desires to enter into a Memorandum of Understanding, attached hereto as Exhibit A, with the Lakeland School System for the installation and use of a Video Board located at the Lakeland Preparatory School:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the Board hereby authorizes the City Manager and City Attorney for the City of Lakeland, Tennessee, to execute the attached Memorandum of Understanding with the Lakeland School System.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 7th day of November 2024, the public welfare requiring it.

ATTEST:

Josh Roman
Mayor

Cheyenne Carter
City Recorder

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LAKELAND,
TENNESSEE AND THE LAKELAND SCHOOL SYSTEM FOR USE OF VIDEO
BOARD LOCATED AT LAKELAND PREPARATORY SCHOOL**

This Memorandum of Understanding (“MOU”), dated this ____ day of November, 2024, is by and between the City of Lakeland, Tennessee (the “City”) and the Lakeland School System (the “School System”) (collectively the “Parties”).

WHEREAS, the City and the School System recognize the utility and benefits of installing a Video Board in the Lakeland Preparatory Stadium; and,

WHEREAS, the City and the School System desire to enter into this MOU relative to the installation, payment, use, and operation of a Video Board in the Lakeland Preparatory Stadium; and,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby confirmed, the Parties covenant and agree as follows:

1. Location and Description of Video Board. The Video Board shall be no smaller than twelve feet by twenty-five feet (12’ x 25’) and shall be installed in the Lakeland Preparatory Stadium (the “Stadium”) located on the campus of Lakeland Preparatory School. The precise location of the Video Board within the Stadium shall be determined by the School System in its sole discretion. The make, model and type of the Video Board, as well as the design of the top panel or truss of the Video Board, will be mutually agreed upon by the City and School System.

2. Payment. The City shall pay the School System the full costs of purchase, installation, engineering, design, support software, and training for the installation of the Video Board, the costs of a decorative top panel or truss featuring the City’s logo, and updates to the Stadium’s Sound System. The Parties agree that the total cost of the Video Board shall not exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00), including the purchase,

installation, engineering, design, support software, training, a decorative top panel or truss featuring the City's logo, Sound System updates, and other associated costs. Any cost more than Two Hundred and Fifty Thousand Dollars (\$250,000.00) shall be paid by the School System.

3. Time and Manner of Payment. The City shall pay the total costs, subject to the monetary limitation above, to the School System upon receipt of a Purchase Order or Purchase Orders from the School System for the costs associated with the Video Board. The Parties agree and acknowledge that there may be multiple purchase orders for various aspects of the Video Board project.

4. Ownership of Video Board. Upon completion of installation of the Video Board, all title and right of ownership of the Video Board shall belong to the School System.

5. Use of Video Board. The Video Board will only be used during School System events and will only be operated by trained School System staff or students.

6. Videos Shown for Benefit of City. In recognition of this donation, the School System agrees to play at least one (1) video, the length of which shall not exceed three (3) minutes, at every School System event during which the Video Board is utilized. The City agrees to only play videos communicating City information or promoting City-sponsored activities, events, and programs ("City Content"). No political advertisements will be permitted. The City will not have the right to sell any advertisements to be shown on the Video Board. To allow for production and scheduling, all video content must be provided to the School System superintendent or designee at least one (1) week in advance of any event at which the video is to be shown for School System approval, which approval shall not be unreasonably withheld

7. Access to Lakeland Preparatory Stadium Press Box and Use of Scoreboard and Sound System. The City may request to utilize the Lakeland Preparatory Stadium Press

Box to operate the digital Scoreboard (not including the Video Board) and Sound System for the City's Parks and Recreation games by request made at least two (2) weeks in advance. Only trained School System staff or trained City employees who have been approved by the School System superintendent or designee may enter the Press Box or operate the Scoreboard or Sound System. Non-School coaches, parents, or other volunteers will not be allowed access to the Press Box for any reason. Any violation of this section by the City will result in City's access to use the Scoreboard and/or Sound System to be terminated by the School System. The City will reimburse the School System for compensation of School System employees who run the Scoreboard and Sound System at the same per game rates at which the School System compensates its employees for operation of other score boards and/or sound systems on campus up to a maximum of two (2) employees per game. The City will also compensate any School System employee an additional \$30.00 for operation of the Scoreboard and/or Sound System on a weekend day. The City agrees that alcoholic beverages, narcotic drugs, tobacco products, vaping products, e-cigarettes, and other intoxicants of any kind are not permitted in the Press Box or otherwise on School System property.

8. Responsibility for Damage Occurring During City Events. The City shall be liable for any damage to the Press Box, Scoreboard and/or Sound System caused by or during City Events. The City agrees to return the Press Box, Scoreboard and/or Sound System to their normal condition and appearance after use by the City. The School System shall notify the City in writing of any damage to the Press Box, Scoreboard and/or Sound System caused by or during City Events. Should the City fail to pay for the damage within thirty (30) days of receipt of any such notice, the School System shall, at its sole discretion, have the right to terminate this MOU until such damage is fully paid for by the City.

9. Release of Liability. The City agrees to release the School System, including without limitation, its Board, employees, and agents from any damage, loss, or injury arising as a result of the City's use of the Press Box, Scoreboard and/or Sound System.

10. Term of MOU. The term of this MOU shall commence on the date of execution of this MOU and shall continue as long as the Video Board remains operable and in use by the School System. If the Video Board no longer functions for any reason, other than the School System failing to maintain the Video Board, if the vendor discontinues support for the Video Board, or if the School System or another organization replaces the Video Board for any reason, this MOU shall terminate.

11. Weather. The School System may decide, at its sole discretion, when weather conditions or any other safety or maintenance concerns prevent the Video Board, Scoreboard, Sound System and/or Press Box from being used.

12. Maintenance Costs of Video Board. The School System will be solely responsible for paying any maintenance costs required for the continued operation of the Video Board.

13. General Provisions.

A. This MOU is complete and contains the entire understanding between the Parties relating to the subject matter contained herein.

B. The Parties may only amend or terminate this MOU in writing signed by both Parties.

C. The Parties agree to operate in good faith to implement the objectives of this MOU.

D. This MOU shall be governed by and construed in accordance with the laws of the State of Tennessee.

IN WITNESS WHEREOF, the City of Lakeland, Tennessee and the Lakeland School System have executed this Memorandum of Understanding as of the first day above written.

CITY OF LAKELAND, TENNESSEE

Micheal Walker, *City Manager*
City of Lakeland, Tennessee

Josh Roman, *Mayor*
Board of Commissioners for the City of
Lakeland, Tennessee

LAKELAND SCHOOL SYSTEM

Dr. W. Edward Horrell, III, *Superintendent*
Lakeland School System

Laura Harrison, *Chairman*
Board of Education for
the Lakeland School System