

RESOLUTION

No. 2024, 08, 01

To the HONORABLE MARK DEWITTE, Chairman, and Members of the Hawkins County Board of Commission in Regular Session, met this 26th day of August, 2024.

RESOLUTION IN REF: **APPROVAL TO SURPLUS VEHICLES AND EQUIPMENT FROM HAWKINS COUNTY SHERIFF'S OFFICE**

WHEREAS, Hawkins County Sheriff's Office has vehicles and equipment no longer utilized due to exhausted lifespan, deterioration or technological advances; and

WHEREAS, a list of vehicles and equipment with identification numbers is attached; and

THEREFORE, BE IT RESOLVED approval be given to declare said items as surplus property and permission be given to dispose of said items by sale, destruction (recycle) or transfer with a report given to Hawkins County Mayor's Office of method and location of disposition.

Introduced By Esq. Jason Roach

Seconded By Esq. _____

Date Submitted August 9, 2024

County Clerk

ACTION: AYE NAY PASSED

Roll Call _____

Voice Vote _____

Absent _____

COMMITTEE ACTION

By: _____

Chairman _____

The following property is shown to be assets of Hawkins County Government. The Hawkins County Sheriff's Office would like to petition the Commissioner's Board to dispose of said property either by sale of or by destruction or transfer to a Hawkins County Entity or trade. If any proceeds are obtained the monies be deposited into the Drug Fund.

The surplus is as follows:

2008 Ford Crown Vic	Tag#GY 8873	Vin#2FAFP71V48X147837
2008 Ford Crown Vic	Tag#GY 8875	Vin#2FAFP71V58X147846
2008 Ford Crown Vic	Tag#GY 8878	Vin#2FAFP71V98X164276
2008 Ford Crown Vic	Tag#GY 8885	Vin#2FAFP71V48X164279
2008 Ford Crown Vic	Tag#GY 8886	Vin#2FAFP71VX8X158096
2008 Ford Crown Vic	Tag#GY 8887	Vin#2FAFP71V98X158115 (Parts Car)
2008 Ford Crown Vic	Tag#GY 8888	Vin#2FAFP71V98X147834
2008 Ford Crown Vic	Tag#GY 8890	Vin#2FAFP71V88X147842
2008 Ford Crown Vic	Tag#GY 8891	Vin#2FAFP71V78X147833
2008 Ford Crown Vic	Tag#GY 8892	Vin#2FAFP71V88X147839
2008 Ford Crown Vic	Tag#GY 8962	Vin#2FAFP71V58X147832 (Parts Car)
2008 Ford Crown Vic	Tag#GY 8963	Vin#2FAFP71VX8X147843

Kenwood TK790H Radios

70500265, 70500254, 70500238, B1B00042, 70500259, 70500236, 70500255, B1B00091, 70500262, 70500258, 70500235, B1B0071, B1B00051, 90700100, 70500251, B1B0041, 7050057, B1B00083, 70500237, 70500246, B1B00041, 70500268, A910142, 70500233, B1B00086, 70500233, 70570500245, B1B00092, 70500256, B32300153, B1B00040, B1B00042, B1B00076, B1B00085, 70500274, 90700098, B1B00001, 70500260, 70500240, 70500272, 70500248, 7050024, 70500267, 70500232, 70500231, 70500234, 70500263, 70500242, B1B00002, B1B00010, 70500250, 70500241, 90700098, 70500266, 70500261, 70500273, B1B00086, B3302879, B3404338, B3404343, B3404339, B3404335, B9510454, B3404342, B3302848, B3404354, B3404333, B9610402, B3404347, B9610403, B3302878, B3404334, B3404352, B3404351, B3404345, B340433, B3302880, B3404345, B3302849, B3404348, B9510455, B9510453, B3404331, B3302877, B3302876, B3404337, B1900595 - Including Brackets and power cables

Radars

MPH Radars

K52267001430, PVY00661443,

Kustom Radars

HH20466, HH22002, HH16853, HH22425, HH248878, HH24194, HH31440, HH16221, EE20047, HH31413, HH16080, EE9194

Kuston Antenna's

LA-7705, LA-7109, CC26716, CC16474, CC7573, CC10381, CC1933, CC7667, CC3963, X1838, 99002361, PYT315004214, CC31115, CC10131, CC19134, CC37717

Kenwood TK-7360 Mobiles Radios

B3404336 (Broken use for parts)

B3404332, B3404350, B9510452, B3404344, B3404349, B9610405, B3404340, B3510451

Kenwood TK-2180 Portables Radios to Surplus

90700474, 90700713, 90700712, 70301265, 70400619, B0200620, 70301269, 70301268
70301262, 70400617, 70301129, 90700717, 90700719, 70400613, 70301121, 70400611
70301267, 90700473, 90700715, 70301126, B0200621, 70400620, 90700472, 70400616
90700720, 70400614, 90700718, 70400615, 70301270, 70301263, 70301266, 70400612
90700714, 70301124, 70301264

Kenwood NX-5700-K Mobile Radios to be Surplus

B7A10446, B7A10449, B7A10448, B7A10447

Kenwood TK-5710H-K

B1500109, B1500108

RESOLUTION

No. 2024 08, 02

To the Mark DeWitte, Chairman, and Members of the Hawkins County Board of Commission in Regular Session, met this 26th day of August 2024.

RESOLUTION IN REF: APPOINTMENT TO THE HAWKINS COUNTY PLANNING COMMISSION

WHEREAS, the Hawkins County Planning commission has members whose term has expired; and

WHEREAS, each district is to have a representative. Therefore, the following people and term expiration are being recommended to fill said vacancies:

District 1	Garrett White	November 30, 2026
District 6	Charles Brooks	November 30, 2026
District 7	Mike Lacey	November 30, 2026
At Large Member	Donna Hipshire	November 30, 2026

Other commission members and term expirations are:

District 2	John Eidson	November 30, 2024
District 3	Thomas Hicks	November 30, 2024
District 4	Lynn Norris	November 30, 2025
District 5	Steve Nelson	November 30, 2025

Road Superintendent - term to correspond with respective term in office.

Non-Voting Members – terms to correspond with their respective terms in office.

- County Mayor
- Chief Executive Officer of the County Industrial Commission
- Stormwater Runoff Officer

THEREFORE, BE IT RESOLVED THAT the above reference persons be appointed to the Hawkins County Planning commission with terms ending as stated.

Introduced By Esq. Jason Roach, Chairman Public Buildings Comm.

ACTION: AYE NAY PASSED

Seconded By Esq. _____

Roll Call _____

Date Submitted 8-12-24

Voice Vote _____

Nancy J. Davis
County Clerk

Absent _____

COMMITTEE ACTION

By: _____

Chairman _____

RESOLUTION

No. 2024 / 08 / 03

To the HONORABLE Mark DeWitte, Chairman, and Members of the Hawkins County Board of Commissioners in Regular Session, met this 26th day of August 2024.

RESOLUTION IN REF: TO REDUCE POLLUTION BY REVISING STORMWATER, GRADING, VEGETATION, EROSION AND SEDIMENTATION CONTROL MEASURES

WHEREAS, according to the Census Bureau, portions of Hawkins County, Tennessee are part of the Kingsport Urbanized area. This means that Hawkins County is designated as a MS4 II Stormwater entity and must adopt and enforce stormwater regulations; and

WHEREAS, the attached resolution is necessary to update the MS4 processes mandated by the State of Tennessee Environment and Conservation Department; and

WHEREAS, uncontrolled stormwater drainage and discharge have a significant adverse impact on the health, safety and general welfare of the residents of Hawkins County, and an adverse impact on the natural environment by carrying pollutants into receiving waters within the county; and

WHEREAS, Hawkins County is required by federal law, particularly 33 U.S.C. 1342(p) and 40 CFR 122.46 to obtain a National Pollutant Discharge Elimination System (NPDES) permit through the Tennessee Department of Environment and Conservation (TDEC) to reduce stormwater flows and associated pollutants discharged into waterways through Hawkins County's stormwater system and drainage ways; and

WHEREAS, the NPDES permit requires the County to impose controls on future and existing development necessary to reduce the discharge of pollutants in stormwater to the maximum reasonable extent using best management practices, control techniques and system design and engineer methods, and such other provisions that are determined to be appropriate for the control of such pollutants.

THEREFORE, BE IT RESOLVED that approval of the attached resolution be given by the Board of Commissioners; and

FURTHER, BE IT RESOLVED that

1. All previous resolutions pertaining to stormwater will be rescinded.
2. The attached resolution will become the current Stormwater Regulation document for Hawkins County, TN.

Introduced By Esq. Jeff Barrett

Seconded By Esq. _____

Date Submitted 08-12-24
Nancy Paul
County Clerk

By: _____

Chairman _____

Mayor _____

ACTION: AYE NAY PASS

Roll Call _____

Voice Vote _____

Absent _____

COMMITTEE ACTION

MAYOR'S ACTION: Approved _____ Veto _____

APPENDIX A

HAWKINS COUNTY ENFORCEMENT RESPONSE PLAN (ERP) FOR STORMWATER MANAGEMENT

Introduction

The intent of this document is to provide guidance to County officials in enforcing the Stormwater Management Resolution. It should be used only as a guide while recognizing that each situation is unique. The provisions of this enforcement response plan are not mandatory. Actual enforcement procedures should consider any unusual aspects of a violation or condition, as well as special characteristics of an enforcement action, in determining the proper response.

While the purpose is to provide guidance for administration of the stormwater management resolution, it is not intended to limit the judgment and flexibility of the Stormwater Manager in determining an appropriate response.

Minor infractions may be resolved by a verbal notice, telephone call, or warning letter advising the owner/operator/person of the nature of the violation. If such action fails to generate an adequate response by the owner/operator/person, further enforcement actions as provided by the resolution may be taken.

Enforcement Responses

The order of precedence for enforcement responses outlined in this guide should not be construed to prevent the Stormwater Manager from taking a stronger action without first implementing less stringent steps, if in his opinion, a more forceful response is necessary.

Documented Phone Calls or Informal Discussions

In the case of the most minor violation of a permit or the resolution, a telephone call or informal meeting may be sufficient to obtain the desired compliance. Phone calls must be documented by contemporaneous notes. A copy of the notes should be placed in the owner's master file and another copy mailed to the owner.

Likewise, if an informal discussion is held, notes shall be kept summarizing the discussion. Copies of the notes should be distributed to all entities involved. Anyone wishing to take exception to the notes should be required to respond in writing.

Warning Letter

A warning letter is the lowest level of formal response to a violation. It is intended for minor violations which would not cause harm to the environment.

Notice of Violation

A notice of violation (NOV) is an official notification to inform a non-compliant owner of a violation of the stormwater management resolution. Within ten (10) days of receipt of this notice, a written explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the owner to the Stormwater Manager. Inspection to ensure performance of any corrective actions may be conducted by the Stormwater Manager at his discretion. Submission of this plan in no way relieves the owner of liability for any violations occurring before or after receipt of the notice of violation.

Administrative Orders

Administrative orders (AO) are enforcement documents which direct owners to perform, or to cease, specific activities. Administrative orders may also invoke a penalty. There are three (3) primary types of administrative orders: consent orders; compliance orders; and cease and desist orders.

Consent orders are entered into between the County and the owner to assure compliance as to specific actions to be taken by the owner to correct non-compliance within a specified time period. The Stormwater Manager may enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with any owner responsible for noncompliance. Such documents shall include specific action to be taken by the owner to correct the noncompliance within a time period specified in the document. Such documents shall have the same force and effect as orders issued pursuant to Section 42-111.

Compliance orders may be issued when the Stormwater Manager finds that an owner has violated, or continues to violate, the resolution or an order issued thereunder. It is similar to a consent order except that the consent of the owner is not implied in its issuance. When the Stormwater Manager finds that an owner has violated or continues to violate and section of this article, or a permit or order issued under this article, the Stormwater Manager may issue an order to the owner responsible for the violation directing that the owner come into compliance within a specified time, and such order may include assessment of a penalty to be paid if the owner does not come into compliance within the time provided. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged offsite. A compliance order does not relieve the owner of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against or a prerequisite for taking any other action against the owner.

Cease and desist orders may be issued when the Stormwater Manager finds that an owner has violated, or continues to violate, the stormwater management resolution or order issued thereunder. The order shall require that the owner:

- (a) Comply forthwith; and

(b) Take such appropriate remedial or preventive action as may be needed or deemed necessary to properly address a continuing or threatened violation, including halting operations and terminating the discharge. Issuance of a cease and desist order shall not be a bar against or a prerequisite for taking any other action against the owner.

Administrative orders contain the following components:

1. Title - The title specifies the type of order being issued (see below), to whom it is being issued, summarizes the purpose of the order, and contains an identification number.

2. Legal Authority - The authority under which the order is issued (the stormwater management resolution).

3. The Finding of Noncompliance - All violations must be described including the dates, the specific permit and/or resolution provisions violated, and any damages known and attributable to the violation.

4. Required Activity - All orders should specify the required actions, such as installation of BMPs, additional inspections, appearance at show cause hearings, etc.

5. Milestone Dates for Corrective Actions - When compliance schedules are appropriate, all milestone dates must be established including due dates for required written reports.

6. Supplemental Clauses - The document should contain standard clauses providing that:

- (a) Compliance with the terms and conditions of the administrative order shall not be construed to relieve the owner of its obligation to comply with applicable state, federal or local law, or the permit;
- (b) Violation of the administrative order itself may subject the owner to additional penalties as set out in the stormwater management resolution;
- (c) No provision of the order shall be construed to limit the County's authority to issue supplementary or additional orders, or to take action deemed necessary to implement this program or resolution;
- (d) The order shall be binding upon the owner, its officers, Stormwater Managers, agents, employees, successors, assigns, and all persons, firms or corporations acting under, through or on behalf of the owner.

Administrative orders issued as a result of a violation of the stormwater management resolution shall contain a penalty as determined using Tables 'A' and "B" in this document. Administrative orders may also be used to advise an owner of the need to take, or cease, certain actions, and in such case, may or may not be associated with penalties as defined in the resolution or in this guide.

Civil Litigation

Pursuant to Section 42-115 of the stormwater management resolution, the Stormwater Manager may, through the County attorney, petition the appropriate court(s) for

issuance of preliminary or permanent injunctions to restrain or compel activities by an owner.

Penalties, Administrative or Civil

The stormwater management resolution authorizes assessment of penalties not to exceed \$5,000 per violation per day. Additionally, Section 42-111(b) of the resolution authorizes the Stormwater Manager to assess a civil penalty for actual damages incurred by the County. Before assessment of any administrative penalty, a show cause hearing must be held with the non-compliant owner.

If a violation results in conditions requiring the expenditure of public funds for mitigation of damages, a penalty shall be assessed in such amount as to offset the public funds so expended. This will in no way reduce or offset the liability of the owner with respect to damages incurred.

Explanation of Use of Tables

This guide is based primarily on the use of two tables; "A", and "B". Table "A" indicates how point values are assigned for each violation, considering the severity, duration, degree of harm, and compliance history of the owner. All possible violations may not be listed; however, this does not preclude an appropriate enforcement response.

In Table "A", three columns are associated with each listed violation – the "Initial Points" column, the "Repeat Value" column, and the "Cumulative" column. If no history of violations is noted, the value in the "Initial Points" column may be used in conjunction with Table "B" to assess a typical response to the violation.

If the user has a history of similar violations, the initial point value plus the product of the number of previous occurrences times the repeat value should be used as shown in the following formula: Total Point Value (TP) = P + (N x R), where:

P = Initial Point Value for a single violation
N = Number of previous occurrences
R = Repeat Value from Table "A"

Should more than one violation be noted at a time, the cumulative column should be consulted. If violations are cumulative in nature, the sum of the individual point values should be used to judge the response. If not, the greatest individual values should be used to judge response, with the documentation for that response, however, noting all violations.

Once a point value is determined, Table "B" should be consulted for recommended responses. Table "B" provides a schedule of appropriate responses based upon the number of "points" determined by Table "A".

Example

An owner violates the terms of the stormwater management resolution. This violation is considered significant and causes harm. Investigation reveals the owner has been

cited twice in the past for the same violation: Total Point Value (TP) = P + (N x R).
Therefore: TP = 3 + (2 x 1) = 5, where:

- 3 = Points charged for isolated but significant discharge from Table "A"
- 2 = Number of previous occurrences; and
- 1 = Repeat value from Table "A".

Resulting options: Civil injunction or administrative order with up to \$500.00 penalty.

TABLE "A"
Response Guide for Violation

<u>DESCRIPTION OF VIOLATION</u>	<u>INITIAL POINTS</u>	<u>REPEAT VALUE</u>	
<u>CUMULATIVE</u>			
EROSION PREVENTION AND SEDIMENT CONTROL			
Violation of a single requirement:			
Not significant	1	1	Yes
Significant, no harm	2	1	Yes
Significant, causes harm	2	1	Yes
Violation of more than one requirement:			
Not significant	2	1	Yes
Significant, no harm	3	1	Yes
Significant, causes harm	4	1	Yes
UNAUTHORIZED DISCHARGES			
Illicit Discharges:			
Owner unaware of requirement, no harm	1	N/A	No
Owner unaware of requirement, harm	2	N/A	No
Owner aware of requirement, no harm	2	1	Yes
Owner aware of requirement, harm	3	1	Yes
Illicit Connections:			
Owner unaware of requirement, no harm	1	N/A	No

Owner unaware of requirement, harm	2	N/A	No
Owner aware of requirement, no harm	2	1	Yes
Owner aware of requirement, harm	3	1	Yes

INSPECTION

Entry denied	2	2	Yes
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Inspection Records

Incomplete	1	2	No
Not available	1	2	No

MAINTENANCE

Failure to properly operate and maintain BMPs	1	1	Yes
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STORMWATER MANAGEMENT

Pre- Construction

Failure to obtain NOC	2	1	No
Failure to obtain grading permit	2	1	No
Failure to provide performance bond	2	1	No

Post Construction

Failure to provide water quality BMPs	2	2	No
Failure to provide channel protection	2	2	No
Failure to provide downstream impact Analysis	2	2	No
Failure to provide special pollution abatement plan	2	2	No

**TABLE "B"
VIOLATION RESPONSE GUIDE**

POINT TOTAL

ACTION

1

Written warning

- 2 Notice of Violation
- 3 Administrative Order with up to \$150 Penalty
- 4 Administrative Order with up to \$300 Penalty
- 5 Administrative Order with up to \$500 Penalty
- 6 Administrative Order with up to \$1000 Penalty
- 7 Administrative Order with up to \$2000 Penalty
- 8 Administrative Order with up to \$3000 Penalty
- 9 Administrative Order with up to \$4000 Penalty
- 10 Administrative Order with up to \$5000 Penalty

Cease and Desist Order

A civil injunction may be requested at any time, for any violation, if in the opinion of the Stormwater Manager in consultation with the County attorney, such action is justified, needed or appropriate.

Criminal Action

In cases where criminal acts are suspected by the Stormwater Manager, after consultation with the County attorney, information shall be gathered and forwarded to the district attorney of the appropriate county for action. Criminal prosecution, if pursued, shall be in addition to other actions authorized by resolution.

HAWKINS COUNTY
STORMWATER MANAGEMENT RESOLUTION

SECTION

- 101. General provisions.
- 102. Definitions.
- 103. Construction Stormwater Management
- 104. Permanent Stormwater management: design and construction inspection.
- 105. Permanent Stormwater Control Measure (SCM) maintenance and inspection.
- 106. Permanent SCM's: new development, existing locations and ongoing developments.
- 107. Illicit discharges.
- 108. Enforcement
- 109. Penalties.
- 110. Appeals.
- 111. Appendix A - Enforcement Response Plan (ERP)

101 General provisions

(1) Purpose. It is the purpose of this chapter to:

- a. Protect, maintain, and enhance the environment of the County and the public health, safety and the general welfare of the citizens of the County, by controlling discharges of pollutants to the County's stormwater system and to maintain and improve the quality of the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the County;
- b. Enable the County to comply with the National Pollution Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR § 122 as applicable for stormwater discharges;
- c. Allow the County to exercise the powers granted in Tennessee Code Annotated § 68-221-1105, which provides that, among other powers cities have with respect to stormwater facilities, is the power by ordinance or resolution to:

- i. Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the County, whether or not owned and operated by the County;
- ii. Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;
- iii. Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as may be necessary to protect water quality;
- iv. Review and approve plans and plats for stormwater management in proposed subdivisions or commercial developments;
- v. Issue permits for stormwater discharges, or for the construction, alteration, extension, or repair of stormwater facilities;
- vi. Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;
- vii. Regulate and prohibit discharges into stormwater facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and
- viii. Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private.

(2) Administering entity. The County shall administer the provisions of this Resolution.

(3) Stormwater Management Resolution. The intended purpose of this Resolution is to safeguard property and public welfare by regulating stormwater drainage and requiring temporary and permanent provisions for its control. It should be used as a planning and engineering tool for permit compliance and to facilitate the necessary control of stormwater.

102. Definitions. For the purpose of this Resolution, the following definitions shall apply:

Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

- 1. **Administrative or Civil Penalties** - Under the authority provided in Tennessee Code Annotated § 68-221-1106, the County declares that any person violating the provisions of this chapter may be assessed a civil penalty by the County of not less than fifty dollars (\$50.00) and not more than five thousand dollars

(\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation.

2. **Analytical monitoring**-Test Procedures for the Analysis of Pollutants - Test procedures for the analysis of pollutants shall conform to regulations published pursuant to Section 304 (h) of the Clean Water Act (the "Act"), as amended, under which such procedures may be required. Pollutant parameters shall be determined using sufficiently sensitive methods in Title 40 C.F.R. § 136, as amended, and promulgated pursuant to Section 304 (h) of the Act. The chosen methods must be sufficiently sensitive as required in state rule 0400-40-03-.05(8).
3. **Aquatic Resource Alteration Permit (ARAP)** physical alterations to properties of the waters of the state require an ARAP or a §401 Water Quality Certification (§401 certification). ARAP means a permit issued pursuant to T.C.A. § 69-3-108 of the Act, which authorizes the alteration of properties of waters of the state that result from activities other than discharges of wastewater through a pipe, ditch, or other conveyance.
4. **As built plans (record drawings)** mean drawings depicting conditions as they were actually constructed.
5. **Best Management Practices ("BMPs")** means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants to waters of the state. BMPs also include treatment requirements, operating procedures; and practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage. BMPs include source control practices (non-structural BMPs) and engineered structures designed to treat runoff.
 - Structural BMPs are facilities that help prevent pollutants in stormwater runoff from leaving the site.
 - Non-structural BMPs are techniques, activities and processes that reduce pollutants at the source.
6. **BMP Manual** provides technical guidance including additional policies, criteria, standards, specifications, constants, and information for the proper implementation of the requirements of the National Pollution Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR § 122 as applicable for stormwater discharges.
7. **Borrow Pit** is an excavation from which erodible material (typically soil) is removed to be fill for another site. There is no processing or separation of erodible material conducted at the site. Given the nature of activity and pollutants present at such excavation, a borrow pit is considered a construction activity.
8. **Buffer Zone or Water Quality Riparian Buffer** is a permanent strip of natural perennial vegetation, adjacent to a stream, river, wetland, pond, or lake that contains dense vegetation made up of grass, shrubs, and/or trees. The purpose of a water quality riparian buffer is to maintain existing water

quality by minimizing risk of any potential sediments, nutrients or other pollutants reaching adjacent surface waters and to further prevent negative water quality impacts by providing canopy over adjacent waters.

9. Channel means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.
10. **Clearing** refers to removal of vegetation and disturbance of soil prior to grading or excavation in anticipation of construction activities. Clearing may also refer to wide area land disturbance in anticipation of non-construction activities. Clearing, grading, and excavation do not refer to clearing of vegetation along existing or new roadways, highways, dams, or power lines for sight distance or other maintenance and/or safety concerns, or cold planing, milling, and/or removal of concrete and/or bituminous asphalt roadway pavement surfaces. The clearing of land for agricultural purposes is exempt from federal stormwater NPDES permitting in accordance with Section 401(1)(1) of the 1987 Water Quality Act and state stormwater NPDES permitting in accordance with the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 et seq.).
11. **Commencement of construction:** the initial disturbance of soils associated with clearing, grading, excavating or other construction activities.
12. **Common plan of development or sale** is broadly defined as any announcement or documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. A common plan of development or sale identifies a situation in which multiple areas of disturbance are occurring on contiguous areas. This applies because the activities may take place at different times, on different schedules, by different operators.
13. **Control measure** refers to any Best Management Practice (BMP) or other method used to prevent or reduce the discharge of pollutants to waters of the state.
14. **CWA** means the Clean Water Act of 1977 or the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.)
15. **Design storm** is a storm event as defined by Precipitation-Frequency Atlas of the United States. Atlas 14. Volume 2. Version 3.0. U.S. Department of Commerce. National Oceanic and Atmospheric Administration (NOAA), National Weather Service, Hydrometeorological Design Studies Center, Silver Springs, Maryland or its digital product equivalent. The estimated design rainfall amounts, for any return period interval (i.e., 1,-yr, 2-yr, 5-yr, 25-yr, etc..) in terms of either depths or intensities for any duration, can be found by accessing the data available at https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html .
16. **Discharge or discharge of a pollutant** refers to the addition of pollutants to waters from a source.
17. An **ecoregion** is a relatively homogeneous area defined by similarity of climate, landform, soil, potential natural vegetation, hydrology, or other ecologically relevant

variables. Ecoregions can be determined for specific stream segments by using Tennessee's Online Water Quality Assessment Data viewer <http://tdeconline.tn.gov/dwr>.

18. **Exceptional Tennessee Waters** are surface waters designated by the Tennessee Department of Environment and Conservation as having the characteristics set forth at Tennessee Rules, Chapter 0400-40-03-.06(4). Characteristics include waters within parks or refuges; scenic rivers; waters with threatened or endangered species; waters that provide specialized recreational opportunities; waters within areas designated as lands unsuitable for mining; waters with naturally reproducing trout; waters with exceptional biological diversity and other waters with outstanding ecological or recreational value.
19. **Hot spot** means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater. Examples might include operations producing concrete or asphalt, auto repair shops, auto supply shops, large commercial parking areas and restaurants.
20. **Improved sinkhole** is a natural surface depression that has been altered in order to direct fluids into the hole opening. Improved sinkhole is a type of injection well regulated under the Underground Injection Control (UIC) program of the Tennessee Department of Environment and Conservation. Underground injection constitutes an intentional disposal of waste waters in natural depressions, open fractures and crevices, such as those commonly associated with weathering of limestone. More information regarding an Underground Injection Control Permit can be found on TDEC's DWR webpage at <https://www.tn.gov/content/tn/environment/permit-permits/water-permits1/underground-injection-control-permit.html>
21. **Level 1** - Fundamentals of Erosion Prevention and Sediment Control training and certification program administered by University of Tennessee Water Resources Research Center (<https://tnepsc.org/index.asp>).
22. **Level 2** - Design Principles for Erosion Prevention and Sediment Control for Construction Sites training and certification program administered by University of Tennessee Water Resources Research Center (<https://tnepsc.org/index.asp>).
23. **Linear Project** is a land disturbing activity as conducted by an underground/overhead utility or highway department, including, but not limited to, any cable line or wire for the transmission of electrical energy; any conveyance pipeline for transportation of gaseous or liquid substance; any cable line or wire for communications; or any other energy resource transmission ROW or utility infrastructure, e.g., roads and highways. Activities include the construction and installation of these utilities within a corridor. Linear project activities also include the construction of access roads, staging areas and borrow/spoil sites associated with the linear project. Land disturbance specific to the development of residential and commercial subdivisions or high-rise structures is not considered a linear project.
24. **Monitoring** refers to tracking or measuring activities, progress, results, etc., and can refer to non-analytical monitoring for pollutants by means other than 40 C.F.R. § 136 (and other than state- or federally established protocols in the case of biological

monitoring and assessments), such as visually or by qualitative tools that provide comparative values or rough estimates.

25. **Municipality means any incorporated County or town, county, metropolitan or consolidated government, or special district of this state empowered to provide storm water facilities.**
26. Operator means any person who owns, leases, operates, controls, or supervises a source. Including, but not limited to, an owner or operator of any "facility or activity" subject to regulation under the NPDES program.
27. **Permanent Stabilization** means that all soil disturbing activities at the site have been completed and one of the three following criteria is met:
 - A perennial, preferably native, vegetative cover with a uniform (i.e., evenly distributed, without large bare areas) density of at least 70 percent has been established on all unpaved areas and areas not covered by permanent structures, and all slopes and channels have been permanently stabilized against erosion.
 - Equivalent permanent stabilization measures such as the use of riprap; permanent geotextiles; hardened surface materials including concrete, asphalt, gabion baskets or Reno mattresses have been employed.
 - For construction projects on land used for agricultural or silvicultural purposes, permanent stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural or silvicultural use.
28. **Point source** (or Outfall) means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include introduction of pollutants from non-point source agricultural and silvicultural activities, including stormwater runoff from orchards, cultivated crops, pastures, range lands, forest lands or return flows from irrigated agriculture or agricultural stormwater runoff. In short, outfall is a point where runoff leaves the site as a concentrated flow in a discrete conveyance.
29. **Pollutant** means sewage, industrial wastes, or other wastes.
30. Priority construction means those construction activities discharging directly into, or immediately upstream of, waters the state recognized as unavailable condition for siltation or Exceptional Tennessee Waters.
31. A **rainfall event** is defined as any occurrence of rain preceded by 10 hours without precipitation that results in an accumulation of 0.01 inches or more. Instances of rainfall occurring within 10 hours of each other will be considered a single rainfall event.
32. **Registered Engineer and Registered Landscape Architect** An engineer or landscape architect certified and registered by the State Board of Architectural and Engineer Examiners pursuant to Section 62-202, Tennessee Code Annotated, to practice in Tennessee.

33. **Runoff coefficient** means the fraction of total rainfall that will appear at the conveyance as runoff. Runoff coefficient is also defined as the ratio of the amount of water that is not absorbed by the surface to the total amount of water that falls during a rainstorm.
34. **Sediment** means solid material, both inorganic (mineral) and organic, that is in suspension, is being transported; or has been moved from the site of origin by wind, water, gravity or ice as a product of erosion.
35. **Sediment basin** A temporary basin consisting of an embankment constructed across a wet weather conveyance, an excavation that creates a basin or by a combination of both. A sediment basin typically consists of a forebay cell, , impoundment, permanent pool, primary spillway, secondary or emergency spillway and surface dewatering device. The size and shape of the basin depends on the location, size of drainage area, incoming runoff volume and peak flow, soil type and particle size, land cover, and receiving stream classification (i.e., waters with unavailable parameters, Exceptional TN Waters, or waters with available parameters).
36. **Sedimentation** means the action or process of forming or depositing sediment.
37. **Significant Contributor** is defined as a source of pollutants where the volume, concentration, or mass of a pollutant in a stormwater discharge can cause or threaten to cause pollution, contamination, or nuisance that adversely impact human health or the environment and cause or contribute to a violation of any applicable water quality standards for receiving water.
38. **Soil or Topsoil** means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of plants.
39. **Steep Slope or Steep Grade** means a natural or created slope of 35% grade or greater.
40. **Stormwater** means rainfall runoff, snow melt runoff, and surface runoff and drainage.
41. **Stormwater control measure or SCM** means permanent practices and measures designed to reduce the discharge of pollutants from new development projects or redevelopment projects.
42. **Stream** as defined by TCA 69-3-103(38) "stream" means a surface water that is not a wet weather conveyance.
43. **Stormwater associated with industrial activity** is defined in 40 C.F.R. 122.26(b)(14) and incorporated here by reference. Most relevant to the County is 40 C.F.R. 122.26(b)(14)(x), which relates to construction activity including clearing, grading, filling and excavation activities, including borrow pits containing erodible material. Disturbance of soil for the purpose of crop production is exempt from NPDES permit requirements, but stormwater discharges from agriculture-related activities that involve construction of structures (e.g., barn construction, road construction, pond construction) are considered associated with industrial (construction) activity. Maintenance to the original line and grade, hydraulic capacity; or to the original purpose of the facility (e.g., re-clearing, minor excavation performed around an existing structure necessary for maintenance or repair and repaving of an existing road) is not considered a construction activity.

44. Construction **Stormwater discharge-related activities** means activities that cause, contribute to or result in point source stormwater pollutant discharges. These activities may include excavation, site development, grading and other surface disturbance activities; and activities to control stormwater including the siting, construction and operation of best management practices (BMPs).
45. **Stormwater Pollution Prevention Plan (SWPPP)** is a written site-specific plan required by the Tennessee Construction General Permit (CGP) that includes a narrative pollution prevention plan and graphical erosion and sediment control plan. In its basic form, the plan contains a site map, a description of construction activities that could introduce pollutants to stormwater runoff, a description of measures or practices to control these pollutants, and erosion and sediment control plans and specifications. The SWPPP should be prepared in accordance with the Tennessee Erosion and Sediment Control Handbook (latest edition).
46. **Take of an endangered species** means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct.
47. **Tennessee Erosion and Sediment Control (TDESC) Handbook** is a guidance issued by the Division of Water Resources for the purpose of developing Stormwater Pollution Prevention Plans and Erosion and Sediment Control Plans required by the Construction General Permit CGP.
48. **Temporary stabilization** is achieved when vegetation or non-erodible surface has been established on the area of disturbance and construction activity has temporarily ceased. Under certain conditions, temporary stabilization is required when construction activities temporarily cease.
49. **Treatment chemicals** are polymers, flocculants or other chemicals used to reduce turbidity in stormwater discharges by chemically bonding to suspended silts and other soil materials and causing them to bind together and settle out. Common examples of anionic treatment chemicals are **polyacrylamide-chitosan (PAM-CS)**.
50. **Turbidity** is the cloudiness or haziness of a fluid caused by individual particles (suspended solids) that are generally invisible to the naked eye, similar to smoke in air.
51. **Waste site** is an area where material from a construction site is disposed of. When the material is erodible, such as soil, the site must be treated as a construction site.
52. **Waters (or waters of the state)** means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.
53. **Waters with unavailable parameters** means any segment of surface waters that has been identified by the TDEC as failing to support one or more classified uses. Unavailable parameters exist where water quality is at, or fails to meet, the levels specified in water quality criteria in Rule 0400-40-03-.03, even if caused by natural conditions. In the case of a criterion that is a single response variable or is derived from measurement of multiple response variables, the unavailable parameters shall be the

agents causing water quality to be at or failing to meet the levels specified in criteria. Resources to be used in making this determination include biennial compilations of impaired waters, databases of assessment information, updated GIS coverages (<https://tdeconline.tn.gov/dwr/>), and the results of recent field surveys. GIS coverages of the streams and lakes not meeting water quality standards, plus the biennial list of waters with unavailable parameters, can be found at <https://www.tn.gov/environment/program-areas/wr-water-resources/water-quality/water-quality-reports---publications.html>.

54. **Water quality riparian buffer** means a permanent strip of natural perennial vegetation adjacent to a stream, river, wetland, pond, or lake that contains dense vegetation made up of grass, shrubs, and/or trees. The purpose of a water quality riparian buffer is to maintain existing water quality by minimizing the risk of any potential sediments, nutrients, or other pollutants reaching adjacent surface waters and to further prevent negative water quality impacts by providing canopy over adjacent waters.
55. A **one-week period** is a synonym of a calendar-week; typically, a period from Sunday through Saturday
56. **Water quality treatment volume (WQTV)** is a portion of the runoff generated from impervious surfaces at a new development or redevelopment project by the 1-year 24-hour design storm. The WQTV is further determined by the type of treatment provided.
57. **Wet weather conveyances** are man-made or natural watercourses, including natural watercourses that have been modified by channelization, that meet the following:
 - The conveyance carries flow only in direct response to precipitation runoff in its immediate locality.
 - The conveyance's channels are at all times above the groundwater table.
 - The flow carried by the conveyance is not suitable for drinking water supplies.
 - Hydrological and biological analyses indicate that, due to naturally occurring ephemeral or low flow under normal weather conditions, there is not sufficient water to support fish or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two months. (Tennessee Rules, Chapter 0400-40-3-.04(3)).

103. Construction Stormwater Management

1. MS4 Stormwater Construction BMP Manual.
 - a. Adoption. The County adopts as its MS4 stormwater construction Best Practices Manual(s) the following publication(s), which are incorporated by reference in this Resolution as if fully set out herein:
 - i. TDEC Erosion Prevention and Sediment Control Handbook;XXX BMP manual) (most current edition)

- ii. Tennessee Permanent Stormwater Management and Design Guidance Manual; (most current edition)
 - iii. Tennessee Guide to the Selection and Design of Stormwater Best Management Practices (BMPs)
 - iv. A collection of MS4 approved BMP's developed or collected by the MS4 that comply with the goals of the MS4 permit and/or the CGP.
 - b. Requirements for design storm for all waters as well as special conditions for unavailable parameters waters or exceptional Tennessee waters must be consistent with those of the current Tennessee Construction General Permit (TNR100000).
 - c. The County has adopted, for use in designing Stormwater Control Measures, construction design storm events. The construction design storm events adopted by the County are set forth herein in Section 104.3.
2. The municipality has adopted, for use in designing EPSC measures, the design storm requirements from the current Tennessee Construction General Permit for all waters as well as special conditions for unavailable parameters or Exceptional Tennessee Waters.
 3. Waste Control Construction site operators are required to minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater.
 4. Priority Construction
 - a. Priority in construction shall be, at a minimum, those construction activities discharging directly into, or immediately upstream of, waters the state recognized as unavailable condition for siltation or Exceptional Tennessee Waters.
 - b. Requirements for all priority construction activities must include preconstruction meetings with construction site operators for priority construction activities.
 5. Land development permit
 - a.
 - i. This section shall be applicable to all land development, including, but not limited to, site plan applications, subdivision applications, land disturbance applications and grading applications. These standards apply to qualifying new development or redevelopment site(s), When required. Every person will be required to obtain a land disturbance permit from the County in the following cases- One (1) acre or more;
 - ii. New development that involves land development activities of one (1) acre or more;

- iii. Redevelopment that involves other land development activity of one (1) acre or more;
- b. Projects of less than one acre of total land disturbance may also be required to obtain authorization under this ordinance if:
- i. the County has determined that the stormwater discharge from a site is causing, contributing to, or is likely to contribute to a violation of a state water quality standard; or is likely to be a significant contributor of pollutants to water of the state,
 - ii. Changes in state or federal rules require sites of less than one acre that are not part of a larger common plan of development or sale to obtain a stormwater permit;
 - iii. Any new development or redevelopment, regardless of size, that is defined by the County to be a hot spot land use; or
 - iv. The minimum applicability criteria set forth in item (a) above if such activities are part of a larger common plan of development, (see "common plan of development" definition).
 - v. The creation and use of borrow pits, that are not permitted under the Tennessee Multi Sector Permit (TMSP), where material is excavated and relocated offsite, and fill sites where materials or earth is deposited by mechanized methods resulting in an increased elevation or grade.
 - vi. As determined by the County for single or duplex residential lots of any size, lots that have karst features, adjoining lakes or streams, slopes exceeding fifteen percent (15%), floodplains or streams to cross are required to submit an erosion control and stormwater management plan. Depending on site specific conditions the requirement that the plan be developed by a qualified licensed professional engineer or landscape architect may be waived by the County
 - vii. Minimal plan requirements shall include pre- and post-stormwater runoff directions, construction access, erosion/sediment control measures, roof downspout direction and termination, swales and temporary and/or permanent soil stabilization.
 - viii. Land disturbance activities in a County Floodway Zoning Districts require a permit and shall provide evidence of obtaining appropriate licenses/permits that may be required by federal or state laws and regulations or written waiver from such permits and licenses prior to the issuance of a land disturbance permit by the County.
 - ix. If unpermitted construction activity is on-going, the County will issue and immediate stop-work order. If, in addition to the County's permit, a TDEC permit was required but was not obtained, the violator will also be reported to TDEC.

6. Land disturbance/Grading/Stormwater Construction Permit- Persons seeking the issuance of any land disturbance permit must provide proof of coverage under the Tennessee Construction General Permit (CGP) (if applicable) when requested; and a copy of the Stormwater Pollution Prevention Plan (SWPPP) to the County when requested.
7. Building Permit. No building permit shall be issued until the applicant has first obtained a land disturbance permit where required by this ordinance.
8. Construction site operators are required to implement appropriate erosion prevention and sediment control measures and best management practices. EPSC requirements shall meet the Tennessee's CGP design storm(s), be consistent with the TDEC ESC Handbook best management practices and with the requirements of this ordinance.
9. Where site assessments are required by the CGP, the operator shall provide a copy of the assessment to the County.
10. Twice-Weekly inspections of the site and the BMP's/SCM's must be performed by an individual who has either received certification under the Level I Fundamentals of Erosion Prevention and Sediment Control course or has other credentials identified as equivalent within this ordinance.
11. Landscaping and stabilization requirements.
 - a. Any area of land from which the natural vegetative cover has been either partially or wholly cleared by development activities shall be stabilized. Stabilization measures shall be initiated as soon as possible in portions of the site where construction activities have temporarily or permanently ceased. Temporary or permanent soil stabilization at the construction site (or a phase of the project) must be completed not later than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. In the following situations, temporary stabilization measures are not required:
 - i. where the initiation of stabilization measures is precluded by snow cover or frozen ground conditions or adverse soggy ground conditions, stabilization measures shall be initiated as soon as practicable; or
 - ii. where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 14 days.
 - b. for steep slopes of 35% or more i stabilization measures shall be initiated t within 7 days Construction buffer zones. Construction buffer zones shall be those water quality buffers and buffer zones as defined in 14-502 above and shall meet the requirements in this ordinance and, where appropriate in the TN CGP. The criteria for the width of the construction buffer zone can be established on an average width basis at a project, as long as the minimum width of the buffer zone is more than the required minimum width at any measured location. If the new development or redevelopment site encompasses both sides of a stream, buffer averaging can be applied to both sides, but must be applied independently. Water quality riparian buffer widths are measured from the top of bank also referred to as the "ordinary high-water mark." Construction buffers are not

primary sediment control measures and shall not be relied on as such. Stormwater discharges must enter the water quality riparian buffer zone as sheet flow, not as concentrated flow, where site conditions allow. The designer/operator must comply with the vegetation requirements and the permissible land uses set forth for buffers in the TN CGP. Where it is not practicable to maintain a construction water quality riparian buffer, BMPs providing equivalent protection to a receiving stream as a natural water quality riparian buffer must be used.

- c. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures such as properly anchored mulch, soil binders or matting must be employed.
12. Notice of Termination (NOT) the operator shall provide the County with a copy of the NOT when it is issued by TDEC.
 13. As built plans (record drawings). All applicants are required to submit actual as built plans certified by the design engineer for any structures located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be sealed by a registered professional engineer licensed to practice in Tennessee. A certification by the design engineer certifying that SCM's will function within original design parameters as constructed shall be included. A final inspection by the County is required before any performance security or performance bond will be released. The County shall have the discretion to adopt provisions for a partial pro-rata release of the performance security or performance bond on the completion of various stages of development. In addition, occupation permits shall not be granted until corrections to all BMP's/SCM's have been made and accepted by the County. No bonds or securities shall be released by the County until the (stormwater manager) has accepted the as built plans. The warranty period for any infrastructure to be accepted by the County for maintenance shall not commence until the County has accepted the as built plans.
 14. Equipment manufacturer startups. No bonds or securities shall be released until any equipment to be maintained by the County passes any specified manufacturer startup procedure. The warranty period shall not commence prior to the equipment passing any specified manufacturer startup procedure.

104. Permanent stormwater management: design and construction inspection.

- (1) In order to comply with the County's permanent stormwater standards for new development and redevelopment projects, design and install SCMs as established by Tennessee Rule 0400-40-10-.04 and comply with other requirements of Tennessee Rule 0400-40-10-.04. Note that for design purposes, total suspended solids (TSS) may be used as the indicator for the reduction of pollutants.
- (2) SCMs must be designed to provide full treatment capacity within 72 hours following the end of the preceding rain event for the life of the new development or redevelopment

project. The designer may select from the most appropriate alternatives listed in the County's BMP Manual.

(3) Designs shall be based on the 24-hour design storm adopted by the County:

The County has adopted, for use in designing water quality SCMs, the design storm requirements as established in Tennessee Rule 0400-40-10-.04. The Post Construction/Permanent water quality design storm is a 1-year, 24 storm event for water quality SCMs. See definition of Design Storm Event for the municipality's rainfall amounts for each return period interval.

<u>Return Interval</u>	<u>Depth (inches)</u>	<u>Intensity (inches/hours)</u>
1 year	2.28	0.095
2 year	2.71	0.113
5 year	3.22	0.134
10 year	3.63	0.151
25 year	4.17	0.174
50 year	4.59	0.191
100 year	5.01	0.209

(4) Water Quality Riparian Buffers. Post Construction/Permanent water quality riparian buffers shall be those buffers defined in 14-502 above and shall meet the requirements described in this ordinance. The criteria for the width of the post construction/permanent buffer zone can be established on an average width basis at a project, as long as the minimum width of the buffer zone is more than the required minimum width at any measured location. If the new development or redevelopment site encompasses both sides of a stream, buffer averaging can be applied to both sides, but must be applied independently. Water quality riparian buffer widths are measured from the top of bank also referred to as the "ordinary high-water mark." Stormwater discharges should enter the post construction/permanent water quality riparian buffer as sheet flow, not as concentrated flow, where site conditions allow.

Post Construction/Permanent buffers for waters with available parameters for siltation or habitat alteration or unassessed waters:

- a. Average buffer width: 30 feet.
- b. Minimum buffer width: 15 feet

Post Construction/Permanent buffers for Exceptional Tennessee Waters or waters with unavailable parameters for siltation or habitat alteration:

- a. Average buffer width: 60 feet.
- b. Minimum buffer width: 30 feet

The designer/operator must comply with the vegetation requirements and the permissible land uses set forth for buffers in the MS4 permit.

105. Permanent SCM maintenance and inspection.

- (1) As built plans. All applicants are required to submit actual as built plans for any structures located on-site within 90 days after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be sealed by either a registered professional engineer or landscape architect licensed to practice in Tennessee. A sealed certification by the design engineer that all SCM's will function within design parameters as constructed shall accompany the as built plans. A final inspection by the County is required before any performance security or performance bond will be released. The County shall have the discretion to adopt provisions for a partial pro-rata release of the performance security or performance bond on the completion of various stages of development. In addition, occupation permits shall not be granted until corrections to all stormwater management facilities have been made and accepted by the County.
- (2) In addition to the certified as built drawings, the County shall be provided with a permanent stormwater management plan for the site and all stormwater management facilities (e.g., SCM's). Occupation permits shall not be granted until the permanent stormwater management plan has been approved and accepted by the County.
- (3) Inspection of stormwater management facilities. Periodic inspections of facilities shall be performed, documented, and reported in accordance with this chapter, as detailed in §14-506.
- (4) Records of installation and maintenance activities. Parties responsible for the operation and maintenance of a stormwater management facility shall make records of the installation of the stormwater facility, and of all maintenance and repairs to the facility, and shall retain the records for at least three (3) years. These records shall be made available to the County during inspection of the facility and at other reasonable times upon request.
- (5) Failure to meet or maintain design or maintenance standards. If a responsible party fails or refuses to meet the design or maintenance standards required for stormwater facilities under this chapter, the County, after notice as specified in the Enforcement Response Plan, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the stormwater management facility becomes a danger to public safety or public health, the County shall notify in writing the party responsible for maintenance of the stormwater management facility. Upon receipt of that notice, the responsible person shall have thirty (30) days to effect maintenance and repair of the facility in an approved manner. In the event that corrective action is not undertaken within that time, the County may take necessary corrective action. The cost of any action by the County under this section shall be charged to the responsible party.

- (6) In the event that the stormwater management facility becomes a danger to public health/public safety-the County may take such immediate corrective action as deemed necessary.

106. Permanent SCM's: new development, existing locations, and ongoing developments.

(1) On-site stormwater management facilities inspection and maintenance agreement¹

- a. Where the stormwater facility is located on property that is subject to a development agreement, and the development agreement provides for a permanent stormwater maintenance agreement that runs with the land, the owners of property must execute an inspection and maintenance agreement that shall operate as a deed restriction binding on the current property owners and all subsequent property owners and their lessees and assigns, including but not limited to, homeowner associations or other groups or entities.
 - b. The maintenance agreement shall:
 - i. Assign responsibility for the maintenance and repair of the stormwater facility to the owners of the property upon which the facility is located and be recorded as such on the plat for the property by appropriate notation.
 - ii. Provide for a periodic inspection by the property owners in accordance with the requirements of subsection (5) below for the purpose of documenting maintenance and repair needs and to ensure compliance with the requirements of this ordinance. The property owners will arrange for this inspection to be conducted by individual(s) approved by the County who will submit a signed written report of the inspection to the County. It shall also grant permission to the County to enter the property at reasonable times and to inspect the stormwater facility to ensure that it is being properly maintained.
 - c. Provide that the minimum maintenance and repair needs include but are not limited to: the removal of silt, litter and other debris, the cutting of grass, cutting and vegetation removal, and the replacement of landscape vegetation, in detention and retention basins, and inlets and drainage pipes and any other stormwater facilities. It shall also provide that the property owners shall be responsible for additional maintenance and repair needed to meet the intended design specification of the stormwater facility.
 - d. Provide that maintenance needs must be addressed in a timely manner, on a schedule to be determined by the County.
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- e. Provide that if the property is not maintained or repaired within the prescribed schedule, the County shall perform the maintenance and repair at its expense and bill the same to the property owner. The maintenance agreement shall also provide that the County's cost of performing the maintenance shall be a lien against the property.

(2) Existing problem locations – no maintenance agreement

- a. The County shall in writing notify the owners of existing locations and developments of specific drainage, erosion or sediment problems affecting or caused by such locations and developments, and the specific actions required to correct those problems. The notice shall also specify a reasonable time for compliance. Discharges from existing SCM's that have not been maintained and/or inspected in accordance with this ordinance shall be regarded as non-compliant discharges.

- b. Inspection of existing facilities. The County may, to the extent authorized by state and federal law, enter and inspect private property for the purpose of determining if there are illicit non-stormwater discharges, and to establish inspection programs to verify that all stormwater management facilities are functioning within design limits. These inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of the County's NPDES MS4 stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other SCM's.

(3) Owner/Operator Inspections. The owners and/or operators of the SCMs shall:

- a. Perform routine inspections to ensure that all SCM's are properly functioning. These inspections shall be conducted on an annual basis, at a minimum. These inspections shall be conducted by a person familiar with control measures implemented at a site. Owners or operators shall maintain documentation of these inspections. The County may require submittal of this documentation.

- b. Perform comprehensive inspection of all stormwater management facilities and practices. These inspections shall be conducted once every five years, at a minimum. Such inspections must be conducted by individual(s) approved by the County. Complete inspection reports for these five-year inspections shall include:

- i. Facility type,
 - ii. Inspection date,
 - iii. Latitude and longitude and nearest street address,
 - iv. BMP owner information (e.g. name, address, phone number, fax, and email),
 - v. A description of BMP condition including: vegetation and soils; inlet and outlet channels and structures; embankments, slopes, and safety benches; spillways, weirs, and other control structures; and any sediment and debris accumulation,
 - vi. Photographic documentation of BMP's, and
 - vii. Specific maintenance items or violations that need to be corrected by the BMP owner along with deadlines and reinspection dates.
- c. Owners or operators shall maintain documentation of these inspections. The County may require submittal of this documentation.

(4) Requirements for all existing locations and ongoing developments. The following requirements shall apply to all locations and developments at which land disturbing activities have occurred previous to the enactment of this ordinance:

- a. Denuded areas must be vegetated or covered under the standards and guidelines specified in the BMP Manual and on a schedule acceptable to the County.
- b. Cuts and slopes must be properly covered with appropriate vegetation and/or retaining walls constructed.
- c. Drainage ways shall be appropriately stabilized.
- d. Trash, junk, rubbish, etc. shall be cleared from drainage ways.
- e. Stormwater runoff shall, at the discretion of the County be treated to the maximum extent practicable to prevent its pollution. Such control measures may include, but are not limited to, the following:
 - i. Ponds
 - 1. Detention pond
 - 2. Extended detention pond
 - 3. Wet pond
 - 4. Alternative storage measures
 - ii. Constructed wetlands
 - iii. Infiltration systems

1. Infiltration/percolation trench
2. Infiltration basin
3. Drainage/recharge well
4. Porous pavement
- iv. Filtering systems
 1. Media Filter
 2. Sand filter
 3. Filter/absorption bed
 4. Filter and buffer strips
- v. Open channel
 1. Swale

(5) Corrections of problems subject to appeal. Corrective measures imposed by the County under this section are subject to appeal under section 14-510 of this chapter.

107. Illicit discharges.

This section shall apply to all water generated on developed or undeveloped land entering the County's separate storm sewer system.

(1) Prohibition of illicit discharges. No person shall introduce or cause to be introduced into the municipal separate storm sewer system any discharge that is not composed entirely of stormwater. No person shall allow discharges that flow from a stormwater facility that is not inspected in accordance with section 14-506. Non-stormwater discharges shall include, but shall not be limited to, sanitary wastewater, car wash wastewater, radiator flushing disposal, spills from roadway accidents, carpet cleaning wastewater, effluent from septic tanks, improper oil disposal, laundry wastewater/gray water, improper disposal of auto and household toxics. The commencement, conduct or continuance of any non-stormwater discharge to the municipal separate storm sewer system is prohibited except as described as follows:

- a. Water line flushing
- b. Landscape irrigation
- c. Diverted stream flows
- d. Rising ground waters
- e. Uncontaminated ground water infiltration (Infiltration is defined as water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as

defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.)

- f. Uncontaminated pumped ground water
- g. Discharges from potable water sources
- h. Air conditioning condensation
- i. Irrigation water
- j. Springs
- k. Water from crawl space pumps
- l. Footing (foundation) drains
- m. Lawn watering
- n. Individual residential car washing
- o. Flows from riparian habitats and wetlands
- p. Dechlorinated swimming pool discharges
- q. Street wash water with no soaps or solvents
- r. Discharges or flows from firefighting activities

Unless the County determines they are significant contributors of pollutants to the MS4.

(2) Prohibition of illicit connections. The construction, use, maintenance or continued existence of illicit connections to the municipal separate storm sewer system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. This prohibition expressly includes SCM's connected to the system not properly inspected and maintained in accordance with this ordinance.

- a. Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at the person's expense, the BMP's necessary to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. Discharges from existing SCM's that have not been maintained and/or inspected in accordance with this ordinance shall be prohibited.

(3) Notification of spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants discharging into,

the municipal separate storm sewer system, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, the person shall notify the County in person or by telephone, fax, or email, no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the County within three (3) business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

- (4) No illegal dumping allowed. No person shall dump or otherwise deposit outside an authorized landfill, convenience center or other authorized garbage or trash collection point, any trash or garbage of any kind or description on any private or public property, occupied or unoccupied, inside the County. Such illegal activity exposes runoff to contamination, generating an illicit discharge. Therefore, any individual or corporation guilty of illegal dumping may have committed a violation of this ordinance.

108. Enforcement.

(1) Enforcement authority. The County shall have the authority to issue notices of violation and citations, and to impose civil penalties to anyone that violates this chapter, who violates the provisions of any permit issued pursuant to this chapter, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the County. In addition to the following, the County's enforcement authority includes, but is not limited to, the authority set forth in the County's Enforcement Response Plan (ERP) attached hereto and incorporated herein as Appendix A.

- (a) Verbal Warnings – At a minimum, verbal warnings must specify the nature of the violation and required corrective action.

- (b) Written Notices – Written notices must stipulate the nature of the violation and the required corrective action, with deadlines for taking such action.

- (c) Citations with Administrative Penalties – The County has the authority to assess monetary penalties, which may include civil and administrative penalties.

- (d) Stop Work Orders – Stop work orders that require construction activities to be halted, except for those activities directed at cleaning up, abating discharge, and installing appropriate control measures.

(e) **Withholding of Plan Approvals or Other Authorizations** – Where a facility is in noncompliance, the County's own approval process affecting the facility's ability to discharge to the MS4 can be used to abate the violation.

(f) **Additional Measures** – The County may also use other escalated measures provided under local legal authorities. The County may perform work necessary to improve erosion control measures and collect the funds from the responsible party in an appropriate manner, such as collecting against the project's bond or directly billing the responsible party to pay for work and materials.

(2) **Notification of violation:**

(a) **Verbal warning.** Verbal warning may be given at the discretion of the inspector when it appears the condition can be corrected by the violator within a reasonable time, which time shall be approved by the inspector.

(b) **Written notice.** Whenever the County finds that any permittee or any other person discharging stormwater has violated or is violating this ordinance or a permit or order issued hereunder, the County may serve upon such person written notice of the violation. Within ten (10) days of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the County. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.

(c) **Consent orders.** The County is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to paragraphs (d) and (e) below.

(d) **Show cause hearing.** The County may order any person who violates this chapter or permit, or order issued hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing.

(e) Compliance order. When the County finds that any person has violated or continues to violate this chapter or a permit or order issued thereunder, he may issue an order to the violator directing that, following a specific time period, adequate structures or devices be installed and/or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring, and management practices.

(f) Cease and desist and stop work orders. When the County finds that any person has violated or continues to violate this chapter or any permit or order issued hereunder, the County may issue a stop work order or an order to cease and desist all such violations and direct those persons in noncompliance to:

(i) Comply forthwith; or

(ii) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation; including halting operations except for terminating the discharge and installing appropriate control measures.

(a) Suspension, revocation or modification of permit. The County may suspend, revoke or modify the permit authorizing the land development project or any other project of the applicant or other responsible person within the County. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated upon such conditions as the County may deem necessary to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

(b) Conflicting standards. Whenever there is a conflict between any standard contained in this chapter and in the BMP manual(s) adopted by the County under this ordinance, the strictest standard shall prevail.

109. Penalties. Violations. Any person who shall commit any act declared unlawful under this chapter, who violates any provision of this chapter, who violates the provisions of any permit issued pursuant to this chapter, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the County, shall be guilty of a civil offense.

(1) Penalties. Under the authority provided in Tennessee Code Annotated § 68-221-1106, the County declares that any person violating the provisions of this chapter may be assessed a civil penalty by the County of not less than fifty dollars (\$50.00) and not more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation.

- (2) Measuring civil penalties. In assessing a civil penalty, the County shall consider:
- (a) The harm done to the public health or the environment;
 - (b) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
 - (c) The economic benefit gained by the violator;
 - (d) The amount of effort put forth by the violator to remedy this violation;
 - (e) Any unusual or extraordinary enforcement costs incurred by the County; The amount of penalty established by ordinance or resolution for specific categories of violations; and
 - (f) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- (3) Recovery of damages and costs. In addition to the civil penalty in subsection (2) above, the County may recover:
- (a) All damages proximately caused by the violator to the County, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this chapter, or any other actual damages caused by the violation.
 - (b) The costs of the County's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by this chapter.
- (4) Referral to TDEC. In accordance with the County's Enforcement Response Plan and the NPDES Permit requirements, the County may also notify TDEC of violations.
- (5) Other remedies. The County may bring legal action to enjoin the continuing violation of this chapter, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.
- (6) Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted.

110. Appeals. Pursuant to Tennessee Code Annotated § 68-221-1106(d), any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this chapter may appeal said penalty or damage assessment to the County's governing body.

- (1) Appeals to be in writing. The appeal shall be in writing and filed with the municipal recorder or clerk within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.

- (2) Public hearing. Upon receipt of an appeal, the County's governing body, or other appeals board established by the County's governing body shall hold a public hearing within thirty (30) days. Ten (10) days prior notice of the time, date, and location of said hearing shall be published in a daily newspaper of general circulation. Ten (10) days' notice by registered mail shall also be provided to the aggrieved party, such notice to be sent to the address provided by the aggrieved party at the time of appeal. The decision of the governing body of the County shall be final.

- (3) Appealing decisions of the County's governing body. Any alleged violator may appeal a decision of the County's governing body pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8.

RESOLUTION

No. 2024/08/ 04

To the HONORABLE MAYOR MARK DEWITTE, Chairman, and Members of the Hawkins County Board of Commission in Regular Session, met this 26th day of August 2024.

RESOLUTION IN REF: AUTHORIZING HAWKINS COUNTY TO ALLOW THE TERRY LAW FIRM TO ENTER INTO LITIGATION ON ITS BEHALF AGAINST HOLSTON CONNECT IN REFERENCE TO FRANCHISE FEES NOT BEING PAID

WHEREAS, HolstonConnect operates a high speed fiber service which provides internet, telephone, and television to its subscribers in Hawkins County; and

WHEREAS, Video Service Providers are required to pay a 5% of gross revenues franchise fee to the municipalities and counties where they operate; and

WHEREAS, HolstonConnect has thus far refused to pay the franchise fee and because of this Hawkins County has lost a significant amount of revenue; and

WHEREAS, The Terry Law Firm from Morristown, Tennessee, is willing to represent Hawkins County in a contingency fee arrangement where Hawkins County would not pay any money unless the Terry Law Firm is successful in the litigation; and

WHEREAS, As detailed in the attached letter and contract, should the litigation be successful, Hawkins County would pay 25% of the total recovery plus expenses. The expenses would be divided pro rata with the Town of Bulls Gap and any other party represented by The Terry Law Firm; and

WHEREAS, the county attorney has reviewed the attached and is in agreement with it;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COMMISSION OF HAWKINS COUNTY, TENNESSEE, that County Mayor Mark DeWitte is authorized to execute the attached contract and any other necessary documents to participate in the litigation as detailed in the attached.

Introduced By Esq. Robbie Palmer

ACTION: AYE NAY PASSED

Seconded By Esq _____

Roll Call _____

Date Submitted 8-12-24

Voice Vote _____

County Clerk

COMMITTEE ACTION

By: [Signature]

Mayor: _____

Attorneys

Charles R. Terry
1933 - 2009

Denise S. Terry
F. Braxton Terry
Jacquelyn G. Jones
T. Dillon Parker
Gabriel C. Stapleton

Legal Assistant:
Chuck Terry

Also admitted in S.C.



THE
TERRY LAW FIRM

PERSONAL INJURY ATTORNEYS

*small town firm,
big city know how*

116 East Main Street
PO Box 724
Morristown, TN 37815

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800.518.3779

Fax: 423.587.4714

www.terry-lawfirm.com

August 7, 2024

Mr. Mark DeWitte
Hawkins County Mayor
150 E. Washington St.
Rogersville, TN 37857

Via-email: mark.dewitte@hawkinscountyttn.gov

RE: HolstonConnect Franchise Fees

Dear Mark:

This letter is in regard to our most recent discussion related to HolstonConnect and monies that are owed to Hawkins County. It is our belief that the amount of franchise fees currently owed by HolstonConnect to Hawkins County is substantial, potentially in the seven-figure range.

Other video service providers pay franchise fees to the municipalities and counties in which they operate. A "franchise fee" is a fee that all video service providers are required to pay under state law. The franchise fee is 5% of gross revenues earned by each video service provider. This means that 5% of all money that customers in unincorporated Hawkins County have paid to HolstonConnect since the time HolstonConnect began offering video services is owed to Hawkins County.

HolstonConnect has refused to pay the franchise fee. As a result, Hawkins County has lost a significant amount of revenue that it previously received from other video service providers, such as Comcast or Charter, based on the number of Hawkins Countians who switched from those providers (who do pay the franchise fees) to HolstonConnect (who does not pay the franchise fees).

As I explained, we have already filed one case against HolstonConnect on behalf of the Town of Bulls Gap. We are in the very early stages of litigation. This litigation will require time, money, effort, and a significant amount of legal experience to prosecute. We believe the case will likely be appealed after the initial verdict is rendered. We feel very comfortable in our position and believe we are highly likely to be successful.

We are willing to represent Hawkins County in a contingency fee arrangement where Hawkins County would not have to pay us any money unless we are successful. Our standard fee in cases like this is 33% of the amount recovered plus expenses; however,

based on the fact that we are representing Bulls Gap already, we are willing to enter into a contingency fee agreement with Hawkins County for 25% of whatever the total recovery is plus expenses. Again, we would not ask for any monies to be paid to The Terry Law Firm unless we recover money for Hawkins County. Put another way, if we are not successful, Hawkins County will owe us nothing.

Following a favorable verdict and final resolution of this case, Hawkins County would continue to receive franchise fee payments quarterly from HolstonConnect. The Terry Law Firm would not seek a fee for any franchise fees owed to Hawkins County that accrue in any quarter after this case is concluded. In other words, 100% of the franchise fees owed to Hawkins County that become due after this case is concluded will go to Hawkins County.

With kindest personal regards, I remain

Yours very truly,

A handwritten signature in black ink, appearing to be 'F. Braxton Terry', written over a horizontal line.

F. Braxton "Brack" Terry

FBT/dp

Enclosure: Contract of Employment

CONTRACT OF EMPLOYMENT

RE: Franchise Fee Litigation Against HolstonConnect, LLC and related parties

Hawkins County hereby retains **The Terry Law Firm, P.C.** as its attorneys in this case and any cases arising out of this case or directly related to this case.

The Terry Law Firm agrees to advance all necessary costs, including cost of investigation, court costs, court reporters, depositions, witness fees and any other costs necessary for the proper prosecution of the case. **Hawkins County** agrees that if **The Terry Law Firm** obtains a recovery in this matter on behalf of **Hawkins County**, that any costs related to pursuing the case shall be deducted from **Hawkins County's** share of the recovery. Should **Hawkins County** recover nothing, **Hawkins County** will not owe any money to **The Terry Law Firm** for their time, fees, costs, and other expenses which they advance on behalf of **Hawkins County**.

In consideration of **The Terry Law Firm** acting as **Hawkins County's** attorneys in this matter, **Hawkins County** agrees to pay **The Terry Law Firm** twenty-five percent (25%) of any and all monies recovered by **The Terry Law Firm** on behalf of **Hawkins County** as a fee. This includes any monies that HolstonConnect, LLC and related parties pays to Hawkins County for franchise fees accruing in any quarter prior to the date of the final judgment.

Hawkins County hereby grants a power of attorney to **The Terry Law Firm** to execute any complaints, notices, and any other documents necessary to properly present this case. **Hawkins County** grants to **The Terry Law Firm** a lien on its cause of action to enforce the matters herein stated.

This the ____ day of _____, 2024.

Mark DeWitte, County Mayor

F. Braxton Terry, Esq.
T. Dillon Parker, Esq.
The Terry Law Firm, P.C.
116 E. MAIN STREET
MORRISTOWN, TENNESSEE

CASE OVERVIEW

The litigation against HolstonConnect will seek a declaratory judgment that HolstonConnect is a “video service provider” as that term is defined under the Competitive Cable and Video Services Act of 2008 (“the Act”). See T.C.A. § 7–59–301, *et seq.*

“Video service” is defined as the “provision of video programming . . . through wireline facilities located, at least in part, in the public rights-of-way without regard to delivery technology, including internet protocol technology.”¹ “Video programming” is defined by the Act, in pertinent part, as “programming provided by, or generally considered comparable to programming provided by a television broadcast station[.]”²

Under the Act, a video service provider must obtain a “franchise” from either: (1) the State of Tennessee; or (2) the municipalities and counties in which it wishes to operate.³

A franchise “is an authorization from a government entity to construct or operate a cable system in the public rights-of-way.” City of Knoxville v. Netflix, Inc., 656 S.W.3d 106, 108 (Tenn. 2022). The justification for requiring a franchise is the “need to regulate and receive compensation for the use of public rights-of-way.” Netflix, 656 S.W.3d at 108 (internal citation omitted).

By obtaining a state-issued franchise, a video service provider is required, each quarter, to pay 5% of its gross revenues derived from: (1) subscribers located within a municipality or unincorporated area of a county;⁴ and (2) advertising revenue (the advertising revenue is paid to each municipality and county on a pro rata basis).⁵ This payment is required to be made directly to the counties and municipalities, not to the State of Tennessee.⁶ There is no mechanism whereby the State ensures that the franchise fee payments are made—it is up to each county and municipality to ensure payment is made.

Prior to 2017, electric cooperatives were not allowed to sell television service to their customers. In 2017, the General Assembly enacted legislation allowing electric cooperatives to provide broadband internet, telephone, and video service within a cooperative’s native service area.⁷ Part of that legislation specifically provides that electric cooperatives are *not* exempt from the requirement to obtain a franchise pursuant to the Competitive Cable and Video Services Act.⁸

In 2018, HolstonConnect applied for and obtained a franchise to provide video services from the State of Tennessee. Within its application, Holston Connect stated that it was “seek[ing] a state-issue[d] certificate of franchise authority ***to provide video***

¹ T.C.A. § 7-59-303(19)

² T.C.A. § 7-59-303(18)

³ T.C.A. § 7-59-304

⁴ T.C.A. § 7-59-306(a)

⁵ T.C.A. § 7-59-306(b)

⁶ T.C.A. § 7-59-306(c)(1)

⁷ 2017 Pub.Acts, c. 228, § 6, eff. April 24, 2017

⁸ T.C.A. § 65-25-102(3)

services within its electric service territory.”⁹ If HolstonConnect was *not* a video service provider, it would not have needed to apply for a franchise. HolstonConnect applied for a franchise because it was required to do so before it could legally sell television packages.

Even though HolstonConnect obtained a franchise, it refuses to pay the franchise fees it owes to the municipalities and counties in which it operates. HolstonConnect claims that it is not a video service provider.

If the Court enters a declaratory judgment that HolstonConnect is a “video service provider,” then HolstonConnect will be required to pay all franchise fees it should have been paying since it began offering services. It will also be required to pay franchise fees each quarter into the future.

⁹ See Application of HolstonConnect, LLC to the Tennessee Public Utilities Commission (a copy is available upon request)

RESOLUTION

No. 2024/08/ 05

To the HONORABLE MARK DEWITTE, Chairman, and Members of the Hawkins County Board of Commission in Regular Session met this 26th day of August 2024.

RESOLUTION IN REF: APPROVAL TO NAME A STANLEY VALLEY BRIDGE ON BRAY ROAD IN HONOR OF GALE W. CHRISTIAN

WHEREAS, from time to time requests are made to name a bridge after a celebrated citizen or veteran of the U.S. Armed Forces; and

WHEREAS, a request has been made to the Road Committee to name the bridge on Grray Road behind the Stanley Valley Volunteer Fire Department building; and

WHEREAS, the Roads Committee voted unanimously for this action at their meeting on July 24, 2024, the minutes of which are attached; and

WHEREAS, Gale W. Christian served honorably in the United States Army from 1967 through 1968, as part of the Company E Third Battalion and the 47th Infantry Division; and

THEREFORE, BE IT RESOLVED that the county bridge on Bray Road which crosses Big Creek be named in Mr. Christian's honor, and that the Highway Department be informed to place signs at each end of the bridge signifying the bridge name.

Introduced By Esq. Charles Thacker, Chair, Roads Committee, and Esq. Danny Alvis

ACTION: AYE NAY PASSED

Seconded By Esq. _____

Roll Call _____

Date Submitted 8-12-24

Voice Vote _____

Nancy J. Davis
County Clerk

Absent _____

Chairman _____

MINUTES

HAWKINS COUNTY

ROAD COMMITTEE

July 24, 2024

3:00 p.m.

Administration Building Meeting Room

MEMBERS PRESENT: Jeff Barrett, Larry Clonce, Jimmy Riley, Charles Thacker

MEMBERS ABSENT: Chad Britton, Jason Roach, Syble Trent

OTHERS PRESENT: Mark DeWitte, Mayor; Sarah Davis, County Mayor's Staff; Danny Jones, Road Superintendent, Allen Coup, County Attorney

CALL TO ORDER: Commissioner Thacker called the meeting to order. After roll call it was noted that four (4) members were present representing the appropriate number of members for a quorum.

APPROVAL OF MINTUES ROAD:

Commissioner Barrett made a **MOTION** to approve the May 16th, 2024, minutes, and Commissioner Riley seconded. The motion passed unanimously.

GLENDALE DRIVE:

Charles Thacker stated the tile under road and the area is not wide enough for two (2) cars. After further discussion, no action was taken.

BEAR HOLLOW ROAD:

A general discussion was done by the Committee. No action was taken.

TUNNELL HILL ROAD:

A "children at play" sign was requested by a citizen. After further discussion, no action was taken.

HYDER ROAD:

30-foot right-of-way goes to the Smith property line. Commissioner Clonce asked if this was the only access to this property, and Attorney Coup replied Chancellor rules it is a county right-of-way. Danny Jones asked if there was a statute that says if a road has not been maintained in 20 years it will go back to the property owners, and Attorney Coup replied not that I know of, and that he will get with Mr. Jones and get back to the Committee. No action was taken.

SANTA FE STREET:

Danny Jones, Highway Superintendent, was asked to take a look at the road. After further discussion, no action was taken.

NAME A BRIDGE BEHIND STANLEY VALLEY FIRE DEPARTMENT:

Commissioner Alvis requested a resolution to be turned in to name the bridge behind the Stanley Valley Fire Department "Gayle Williams Christian". Commissioner Clonce asked about the cost for signs to name bridges. Danny Jones replied around six hundred (\$600.00) dollars for both sides of the bridge. Commissioner Clonce recommended the committee establish procedure and guidelines to the name a bridge in the future. After further discussion, Commissioner Barrett made a **MOTION** to name the bridge on Bray Road the Gayle Williams Christian Bridge. Commissioner Riley seconded, and the motion passed unanimously.

Commissioner Barrett ask Jones to look at the bridge at Goshen Valley, and signs about the weight limit. Mayor DeWitte stated he would take care of that.

OTHER BUSINESS:

LONGS BEND ROAD:

Danny Jones stated Longs Bend Road septic wont perk, and Hugh Kyle Johnson is wanting to attach a sewer line to the bridge. After further discussion, Commissioner Barret made a **MOTION** to deny the request to attach a sewer system to the Surgoinsville bridge, and Commissioner Riley seconded. The motion passed unanimously.

ADJOURN:

There being no further discussion by the Committee, Commissioner Riley made a **MOTION** to adjourn. Commissioner Barrett seconded. The meeting adjourned at 4:07 p.m.

Minutes Prepared by:

Stephanie Testerman

THESE MINUTES RECORDED BY ELECTRONIC MEANS

RESOLUTION

No. 2024/08/ 06

To the Honorable Chairman, Mark DeWitte and Members of the Hawkins County Board of Commissioners in Regular Session, met this 26th day of August 2024.

RESOLUTION IN REF: APPROVAL TO ACCEPT A GRANT FROM THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR MAINTENANCE AT THE HAWKINS COUNTY AIRPORT.

WHEREAS, the State of Tennessee Department of transportation has offered Hawkins County a grant to provide assistance in the maintenance of the Hawkins County Airport, and

WHEREAS, the state provides these grants on an annual basis and is attached to this resolution, and

WHEREAS, the grant will be used as reimbursement for various maintenance projects at the airport; now

THEREFORE, BE IT RESOLVED THAT approval be given to accept said grant for Hawkins County Airport with authorization given to the County Mayor to sign any and all necessary documents for said grant

Introduced by Esq Jason Roach, Chair Budget Committee

ACTION: AYE NAY PASSED

Seconded By Esq. _____

Roll Call _____

Date Submitted 8-12-24

Voice Vote _____

Nancy Davis
COUNTY CLERK

Absent _____

BY _____

COMMITTEE

ACTION: _____

CHAIRMAN: _____



GOVERNMENTAL GRANT CONTRACT

(cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities)

Begin Date 07/1/2024	End Date 06/30/2025	Agency Tracking # 40100-51199	Edison ID 82899		
Grantee Legal Entity Name Hawkins County			Edison Vendor ID 2861		
Subrecipient or Recipient <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Recipient		Assistance Listing Number # N/A			
		Grantee's fiscal year end – June 30th			
Service Caption (one line only) FY25 Airport Maintenance					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Grant Contract Amount
2025	\$15,000.00	\$0.00		\$0.00	\$15,000.00
TOTAL:	\$15,000.00	\$0.00		\$0.00	\$15,000.00
Grantee Selection Process Summary					
<input checked="" type="checkbox"/> Competitive Selection			For every project, the airport owner, sponsor or educational program must submit a letter of request and an application to the Aeronautics Division. The Aeronautics Division staff reviews all project requests monthly. The review is based on the Division's established criteria and policies. The review results are presented to the Commissioner for approval. Grant award amounts will be based upon available funds and the amount requested, and such funding will be continued in order of application approval.		
<input type="checkbox"/> Non-competitive Selection			Describe the reasons for a non-competitive grantee selection process.		
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE - GG</i>	
Speed Chart (optional) TX		Account Code (optional) 71301			

VENDOR ADDRESS: 9

LOCATION CODE: ROGERS-003

**GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
HAWKINS COUNTY**

This grant contract ("Grant Contract"), by and between the State of Tennessee Department of Transportation, hereinafter referred to as the "State" or the "Grantor State Agency" and Grantee Hawkins County, hereinafter referred to as the "Grantee," is for the provision of maintenance, as further defined in the "SCOPE OF SERVICES AND DELIVERABLES."

Grantee Edison Vendor ID # 2861

A. SCOPE OF SERVICES AND DELIVERABLES:

- A.1. The Grantee shall provide the scope of services and deliverables ("Scope") as required, described, and detailed in this Grant Contract.
- A.2. The purpose of this grant shall be to provide financial assistance to a publicly owned airport. Pursuant to the provisions of Tennessee Code Annotated 42-2-203, assistance shall be for eligible maintenance work items or improvements as described but not limited to as shown in Attachment Reference. The Grantee shall provide a five percent (5%) participation of actual costs.
- A.3. Incorporation of Additional Documents. Each of the following documents is included as a part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Grantee's duties, responsibilities, and performance hereunder, these items shall govern in order of precedence below.
- a. this Grant Contract document with any attachments or exhibits (excluding the items listed at subsections b. and c., below);
 - b. the State grant proposal solicitation as may be amended, if any;
 - c. the Grantee's proposal (**Attachment One**) incorporated to elaborate supplementary scope of services specifications.

B. TERM OF CONTRACT:

- B.1. This Grant Contract shall be effective on **July 1st, 2024** ("Effective Date") and extend for a period of **twelve (12) months** after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed **Fifteen Thousand Dollars and Zero Cents (\$15,000.00)** ("Maximum Liability"). The Grant Budget, attached and incorporated as **Attachment Two** is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The Maximum Liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.

- C.3. Payment Methodology. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:

Department of Transportation – Aeronautics Division
<https://www.blackcataviation.com>

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice/Reference Number (assigned by the Grantee).
 - (2) Invoice Date.
 - (3) Invoice Period (to which the reimbursement request is applicable).
 - (4) Grant Contract Number (assigned by the State).
 - (5) Grantor: Department of Transportation – Aeronautics Division
 - (6) Grantor Number (assigned by the Grantee to the above-referenced Grantor).
 - (7) Grantee Name.
 - (8) Grantee Tennessee Edison Registration ID Number Referenced in Preamble of this Grant Contract.
 - (9) Grantee Remittance Address.
 - (10) Grantee Contact for Invoice Questions (name, phone, or fax).
 - (11) Itemization of Reimbursement Requested for the Invoice Period— it must detail, at minimum, all of the following:
 - i. The amount requested by Grant Budget line-item (including any travel expenditure reimbursement requested and for which documentation and receipts, as required by "State Comprehensive Travel Regulations," are attached to the invoice).
 - ii. The amount reimbursed by Grant Budget line-item to date.
 - iii. The total amount reimbursed under the Grant Contract to date.
 - iv. The total amount requested (all line-items) for the Invoice Period.
- b. The Grantee understands and agrees to all of the following.
- (1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.
 - (2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.
 - (3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
 - (4) An invoice under this Grant Contract shall be presented to the State within sixty (60) days after the end of the calendar month in which the subject costs were

incurred or services were rendered by the Grantee. An invoice submitted more than sixty (60) days after such date will NOT be paid. The State will not deem such Grantee costs to be allowable and reimbursable by the State unless, at the sole discretion of the State, the failure to submit a timely invoice is warranted. The Grantee shall submit a special, written request for reimbursement with any such untimely invoice. The request must detail the reason the invoice is untimely as well as the Grantee's plan for submitting future invoices as required, and it must be signed by a Grantee agent that would be authorized to sign this Grant Contract.

- C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may vary from a Grant Budget line-item amount by up to one percent (1%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Contract amount detailed by the Grant Budget. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Contract.
- C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date, in form and substance acceptable to the State.
- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the section C, payment terms and conditions of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit the refund with the final grant disbursement reconciliation report.
 - b. The State shall not be responsible for the payment of any invoice submitted to the State after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
 - c. The Grantee's failure to provide a final grant disbursement reconciliation report to the State as required by this Grant Contract shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the State pursuant to this Grant Contract.
 - d. The Grantee must close out its accounting records at the end of the Term in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect costs, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Grantee will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Central Procurement Office Policy Statement 2013-007 or any amendments or revisions made to this policy statement during the Term.

- C.10. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any reimbursement, invoice, or related matter. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Grantee shall be subject to reduction for amounts included in any invoice or payment that are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute unallowable costs.
- C.12. State's Right to Set Off. The State reserves the right to set off or deduct from amounts that are or shall become due and payable to the Grantee under this Grant Contract or under any other agreement between the Grantee and the State of Tennessee under which the Grantee has a right to receive payment from the State.
- C.13. Prerequisite Documentation. The Grantee shall not invoice the State under this Grant Contract until the State has received the following, properly completed documentation.
- a. The Grantee shall complete, sign, and return to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Grantee acknowledges and agrees that, once this form is received by the State, all payments to the Grantee under this or any other grant contract will be made by automated clearing house ("ACH").
 - b. The Grantee shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Grantee's Federal Employer Identification Number or Social Security Number referenced in the Grantee's Edison registration information.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this Grant Contract, the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Tennessee laws and regulations (the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of this Grant Contract by the State. The State shall give the Grantee at least thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service that has not been rendered. The final decision as to the amount for which the State is liable shall be determined by the State. The Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the State's exercise of its right to terminate for convenience.

- D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate this Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the exercise of the State's right to terminate this Grant Contract for cause, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.
- D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall remain responsible for all work performed.
- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.
- D.7. Lobbying. The Grantee 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 Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
 - c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- D.8. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective party as set out below:
The State:

Evan Rodgers
Transportation Program Monitor
TN Dept. of Transportation – Aeronautics Division
7335 Centennial Boulevard
Nashville, TN 37209
Telephone: 615-741-3208

The Grantee:

Mark DeWitte, County Mayor
Hawkins County
150 Washington Street
Rogersville, TN 37857
Email: mark.dewitte@hawkinscountyttn.gov
Telephone: 423-272-7359

A change to the above contact information requires written notice to the person designated by the other party to receive notice.

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- D.9. Subject to Funds Availability. This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Grant Contract upon written notice to the Grantee. The State's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.10. Nondiscrimination. The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Grantee shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.11. HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH) and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Grant Contract.
- a. The Grantee warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable HIPAA requirements in the course of this Grant Contract.
 - b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.

- c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and the Grantee in compliance with the Privacy Rules. This provision shall not apply if information received by the State under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the State to receive such information without entering into a business associate agreement or signing another such document.

- D.12. Public Accountability. If the Grantee is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

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

The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.

- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.
- D.14. Licensure. The Grantee, its employees, and any approved subcontractor shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

- D.16. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.17. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.18. Annual and Final Reports. Grantee shall submit one of the following for Grant amounts greater than Two Thousand dollars (\$2,000.00) but less than Ten Thousand dollars (\$10,000.00): Grants with a term of only one (1) year – Grantee shall submit a final report within three (3) months of the Effective Date. Grants with a term more than one (1) year, the Grantee shall submit annual and final reports to the Grantor State Agency. At minimum, annual and final reports shall include: (a) the Grantee's name; (b) the Grant Contract's Edison identification number, Term, and total amount; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Grantee used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the Grantor State Agency. Annual and final report documents to be completed by the Grantee shall appear on the Grantor State Agency's website or as an attachment to the Grant Contract.
- D.19. Audit Report. The Grantee shall be audited in accordance with applicable Tennessee law. At least ninety (90) days before the end of its fiscal year, the Grantee shall complete the Information for Audit Purposes ("IAP") form online (accessible through the Edison Supplier portal) to notify the State whether or not Grantee is subject to an audit. The Grantee should submit only one, completed form online during the Grantee's fiscal year. Immediately after the fiscal year has ended, the Grantee shall fill out the End of Fiscal Year ("EOFY") (accessible through the Edison Supplier portal).

When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

- D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.317—200.326 when procuring property and services under a federal award.

The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.

For purposes of this Grant Contract, the term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000.00).

- D.21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Grant Contract is not a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties.
- D.22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- D.23. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Grant Contract. In no event will the State be liable to the Grantee or any other party for any lost revenues, lost profits, loss of business, loss of grant funding, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Grant Contract or otherwise. The State's total liability under this Grant Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability originally established in Section C.1 of this Grant Contract. This limitation of liability is cumulative and not per incident.
- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Grantee's representatives, suppliers, subcontractors, customers or business apart from this Grant Contract is not a Force Majeure Event under this Grant Contract. Grantee will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Grantee's performance longer than forty-eight (48) hours, the State may, upon notice to Grantee: (a) cease payment of the fees until Grantee resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Grantee will not increase its charges under this Grant Contract or charge the State any fees other than those provided for in this Grant Contract as the result of a Force Majeure Event.

- D.25. Tennessee Department of Revenue Registration. The Grantee shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.
- D.26. Reserved.
- D.27. No Acquisition of Equipment or Motor Vehicles. This Grant Contract does not involve the acquisition and disposition of equipment or motor vehicles acquired with funds provided under this Grant Contract.
- D.28. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract. The U.S. Office of Management and Budget's Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards is available here: http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-408.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions agreed to by the parties. This Grant Contract supersedes any and all prior understandings, representations, negotiations, or agreements between the parties, whether written or oral.
- D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions shall not be affected and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.
- D.33. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Grant Contract. The Grantee certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.34. Debarment and Suspension. The Grantee certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery,

falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Grantee shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.35. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Grantee by the State or acquired by the Grantee on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Grantee to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Grantee due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Grantee shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Grant Contract.

- D.36. State Sponsored Insurance Plan Enrollment. The Grantee warrants that it will not enroll or permit its employees, officials, or employees of contractors to enroll or participate in a state sponsored health insurance plan through their employment, official, or contractual relationship with Grantee unless Grantee first demonstrates to the satisfaction of the Department of Finance and Administration that it and any contract entity satisfies the definition of a governmental or quasigovernmental entity as defined by federal law applicable to ERISA.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract's other terms and conditions.
- E.2. Grantee Participation. Grantee Participation amounts detailed in the Grant Budget are intended as a goal for the total project, and the amount of actual Grantee Participation expenditures will not impact the maximum amounts reimbursable to the Grantee as detailed by the Grant Budget column, "Grant Contract."
- E.3. Reimbursements to Reflect Match/Share. Reimbursements to Grantee shall reflect the percentage of Grantee Match/Share detailed in the Grant Budget. Reimbursements are subject to the other provisions of this Grant Contract, including but not limited to, the maximum liability amount in Section C.1.
- E.4. Airport Operations. For all grants that total fifty thousand dollars (\$50,000.00) or more, as consideration for receiving this Grant from the State, the Grantee agrees to operate and maintain the Airport for a period of twenty (20) years from the effective date of this Grant Contract.

- E.5. No Retainage Allowed. The Grantee may not withhold retainage on progress payments from the prime contractor and the prime contractor may not withhold retainage from their subcontractors.
- E.6. Printing Authorization. The Grantee agrees that no printing/publication shall be printed pursuant to this Grant Agreement without the prior authorization of the State even if printing costs are included in the budget line items, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement. The Grantee and its employees may publish the results of the research in whole or in part as they deem appropriate without authorization by the State if it is at no cost to the Grantor State Agency.

IN WITNESS WHEREOF,

HAWKINS COUNTY:

37-555-0741-25

GRANTEE SIGNATURE

DATE

MARK DEWITTE, COUNTY MAYOR

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

TENNESSEE DEPARTMENT OF TRANSPORTATION:

HOWARD H. ELEY, DEPUTY GOVERNOR AND COMMISSIONER

DATE

APPROVED AS TO FORM AND LEGALITY:

LESLIE SOUTH, GENERAL COUNSEL

DATE

This grant is intended to assist airports with expenses related to the maintenance and upkeep of airport facilities and grounds that are not of sufficient size to request a stand-alone project.

The following are examples of eligible and ineligible items for use with your Airport Maintenance grant. This is not an all-inclusive list. If you have questions about the eligibility of an expense contact TDOT Aeronautics Division.

Eligible Uses:

1. Preventive maintenance, repair or replacement of maintenance buildings, equipment, navigational aids, lighting systems, pavements and other property or facilities necessary for the safe and efficient functioning of the airport
2. Purchase of mowing equipment
3. Maintenance services such as mowing, landscaping or other related work on airport property (i.e. services contracted by airport sponsor, county/city grounds service – journal vouchered for the time worked on airport maintenance only)
4. Unicom and other radio equipment
5. Airport signage, including airfield signage, entrance signs, road signs, and directory signs
6. Fire extinguishers including inspection fees
7. Installation and subscription to an aviation flight planning satellite weather system (i.e. D.T.N., W.S.I. or Pan Am Weather Systems)
8. Testing or inspection of underground fuel storage tanks, and associated fees (as necessary to comply with federal and/or state regulations)
9. Sales tax on eligible items
10. QTPod Fuel Services for upgrade to self-service stations from the 3000 series to 4000 series.

Ineligible Uses:

1. Food or drink
2. Fuel for any purpose
3. Uniforms or Uniform Services
4. Cleaning supplies, cleaning service including waste removal
5. Items that would only be used/worn by one individual. (i.e. boots, clothing, gloves, etc.)
6. Utility or telephone bills (including cellular / "land line")
7. Maintenance of facilities or equipment not owned or located on the airport property
8. Purchase or maintenance of aircraft, automobiles, pickup trucks, tugs or any passenger vehicle including club cars (golf carts).
9. Services performed by a Fixed Based Operator (FBO), by anyone employed or contracted by the FBO, or employees of the airport sponsor, for any type of airport operational duties or functions that would normally be required of their job.
10. Insurance of any type
11. Computers, computer software, computer peripherals, or Internet Service (unless otherwise noted above)
12. Office supplies, including toner and copy paper
13. Furniture (including cabinetry of any type)
14. Television/Cable
15. Office Equipment (unless otherwise noted above)
16. Repairs of office equipment
17. Registration, travel or expenses for conferences or seminars
18. Purchase (or repair) of appliances
19. Firearms/Weapons
20. Local matching funds for Projects

TDOT Aeronautics will determine the eligibility for reimbursement for all items on a case by case basis regardless of the item's inclusion in the lists above.

**ATTACHMENT TWO
PAGE ONE**

GRANT BUDGET				
Hawkins County: Fiscal Year 2025 Airport Maintenance Grant			AERM-25-153-00	
The Grant Budget line-item amounts below shall be applicable only to expense incurred during the following				
Applicable Period:				
BEGIN: 07/01/2024		END: 06/30/2025		
POLICY 03 Object Line-Item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
1. 2	Salaries, Benefits & Taxes	0.00	0.00	0.00
4. 15	Professional Fee, Grant & Award ²	\$15,000.00	\$789.47	\$15,789.47
5. 6. 7. 8. 9. 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications	0.00	0.00	0.00
11. 12	Travel, Conferences & Meetings	0.00	0.00	0.00
13	Interest ²	0.00	0.00	0.00
14	Insurance	0.00	0.00	0.00
16	Specific Assistance To Individuals	0.00	0.00	0.00
17	Depreciation ²	0.00	0.00	0.00
18	Other Non-Personnel ²	0.00	0.00	0.00
20	Capital Purchase ²	0.00	0.00	0.00
22	Indirect Cost	0.00	0.00	0.00
24	In-Kind Expense	0.00	0.00	0.00
25	GRAND TOTAL	\$15,000.00	\$789.47	\$15,789.47

¹ Each expense object line-item is defined by the U.S. OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E Cost Principles (posted on the Internet at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-E>) and CPO Policy 2013-007 (posted online at <https://www.tn.gov/generalservices/procurement/central-procurement-office-cpo-library.html>).

² Applicable detail follows this page if line-item is funded.

**ATTACHMENT TWO
PAGE TWO**

GRANT BUDGET LINE-ITEM DETAIL:

PROFESSIONAL FEE, GRANT & AWARD	AMOUNT
Fiscal Year 2025 Airport Maintenance	\$15,000.00
TOTAL	\$15,000.00

TAD Project # 37-555-0741-25

Project Breakdown:

TX	\$15,000.00	95% State
	<u>\$ 789.47</u>	5% Local Participation
Grant Total:	\$15,789.47	
Reimbursable Amount:	\$15,000.00	

Notwithstanding any provision contained herein, grantee agrees to participate (fund) at least five (5%) of the total project cost.

RESOLUTION

No.2024/08/ 07

To the HONORABLE MARK DEWITTE, Chairman, and Members of the Hawkins County Board of Commission in Regular Session met this 26th day of August 2024.

RESOLUTION IN REF: APPROVAL TO AWARD A FIVE-YEAR ENGINEERING CONTRACT FOR PROFESSIONAL AIRPORT SERVICES TO HOLT CONSULTING

WHEREAS, Pursuant to T.C.A. § 62-2-107, "If a public works project is expected to cost more than \$50,000 and involves architecture, engineering or landscape architecture, the plans, specifications and estimates for the project must be prepared by a registered architect, engineer, or landscape architect,;" and

WHEREAS, a request for qualifications was solicited for services to provide general consulting, funding procurement and grant administration, planning and programming, engineering design, architectural design, analysis and studies of which three were received; and

WHEREAS, all responses were graded by the required committee with Holt Consulting Company LLC of Knoxville, Tennessee scoring highest, the summary sheet of the grading is attached; and

WHEREAS, attached to this resolution is the contract and fee schedule from Holt Consulting Company LLC; now

THEREFORE, BE IT RESOLVED that County Mayor, Mark DeWitte, is authorized to sign the agreement and any and all documents for said contract with Holt Consulting Company LLC.

Introduced By Esq. Nancy Barker, Airport Committee Chairman

Seconded By Esq. _____

Date Submitted 8-12-24

Nancy Barker
County Clerk

ACTION: AYE NAY PASSED

Roll Call _____

Voice Vote _____

Absent _____

COMMITTEE ACTION

By: _____

Chairman _____

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
HAWKINS COUNTY
AND
HOLT CONSULTING COMPANY, LLC**

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**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
HAWKINS COUNTY
AND
HOLT CONSULTING COMPANY, LLC**

THIS **AGREEMENT** is made and entered into this _____ day of _____, 2024 by and between the **HAWKINS COUNTY**, located at 150 East Washington Street, Rogersville, TN 37857, hereinafter referred to as the **OWNER**, and **HOLT CONSULTING COMPANY, LLC**, located at 2801 Devine Street, Suite 201, Columbia, SC 29205, herein after referred to as the **CONSULTANT**. This is the effective date of the **AGREEMENT**.

WITNESSETH

WHEREAS, the **OWNER** intends to initiate various design, engineering, and architectural projects and construct certain airfield, landside, and terminal improvements over the next five (5) years, in connection with the Airport Capital Improvement Plan, at the **Hawkins County Airport**, herein after referred to as the **PROJECT**, each of which will be described in future Work Authorizations; and,

WHEREAS, the **OWNER** desires to retain the services of the **CONSULTANT** for a period of five (5) years from the effective date of the **AGREEMENT** in accordance with the provisions of Federal Aviation Administration Advisory Circular No: 150/5100-14E dated September 30, 2014; and,

WHEREAS, the **OWNER** may require other general consulting services in the conduct of its business over the period of this **AGREEMENT**, which will be described in future Work Authorizations; and,

WHEREAS, the **CONSULTANT** has represented to the **OWNER** that it is qualified to perform the various described tasks and work of the projects, and, based upon **CONSULTANT's** representations, the **OWNER** desires to retain the services of the **CONSULTANT** to perform the work described herein.

NOW THEREFORE, for and in consideration of their mutual benefit, the parties hereto agree as follows:

The **CONSULTANT** shall, upon receipt of each duly executed Work Authorization, perform the work described in the Work Authorization in accordance with the attached Exhibits "A", "B", "C", "D", and "E" as may be required in said Work Authorizations. Each Work Authorization shall include the **CONSULTANT's** good faith estimate of allowable costs as described in Chapter 4 of Federal Aviation Administration Advisory Circular No: 150/5100-14E dated September 30, 2014.

The **OWNER**, in consideration of the performance of the **CONSULTANT's** undertakings under this **AGREEMENT**, pursuant to Work Authorizations fully executed by the **OWNER** and **CONSULTANT**, shall pay the **CONSULTANT** the consideration determined in each Work Authorization, which consideration shall constitute complete payment for all services furnished in connection with the work required to be performed under the Work Authorization.

The following Exhibits are attached to and made part of this **AGREEMENT**:

- A. "General Provisions for Program Management and General Consulting Services"
- B. "General Provisions for Planning and Environmental Services"
- C. "General Provisions for Engineering Services"
- D. "General Provisions for Architectural Design Services"
- E. "Duties, Responsibilities, and Limitations of Authority of Resident Project Representative"
- F. "Payments and Miscellaneous Provisions"
- G. "Mandatory Federal Provisions"
- H. "Sample Work Authorization Form"
- I. "Insurance Requirements"

This **AGREEMENT** shall apply to all projects initiated within five (5) years, more or less, after the date of this **AGREEMENT**.

This **AGREEMENT**, together with the Exhibits identified above and subsequent Work Authorizations constitutes the entire **AGREEMENT** between the **OWNER** and the **CONSULTANT** and supersedes all prior written or oral understandings. This **AGREEMENT** and said Exhibits may only be amended, supplemented, modified, or canceled by a duly executed written instrument. This **AGREEMENT** and said Exhibits hereafter shall be referred to as the **MASTER AGREEMENT**.

IN WITNESS WHEREOF, the parties hereto have made and executed this **AGREEMENT** as of the date first above written.

HAWKINS COUNTY

WITNESS: _____

BY: _____

TITLE: _____

HOLT CONSULTING COMPANY, LLC

WITNESS: _____

BY: _____

TITLE: _____

August 12, 2024

Page 2

EXHIBIT A

GENERAL PROVISIONS FOR PROGRAM MANAGEMENT AND GENERAL CONSULTING SERVICES

This is an exhibit attached to and made a part of the **AGREEMENT** between the **OWNER** and the **CONSULTANT** for Professional Services. For elements of the **PROJECT** described in the referenced **AGREEMENT**, the **CONSULTANT** shall perform Professional Services in accordance with acceptable architectural, engineering, and surveying practices. These services shall be the limits of the **CONSULTANT's** responsibility under this **AGREEMENT**.

These General Provisions set forth the general requirements for the performance of the various services for program management and general consulting required under this **AGREEMENT**. The **CONSULTANT** under each duly executed Work Authorization shall perform the scope of work required by such Authorization, and unless requirements to the contrary are specifically prescribed therein, shall perform the required services in accordance with the following requirements.

SECTION I – PROGRAM MANAGEMENT AND GENERAL CONSULTING SERVICES

- A. The services for program management respond to the complexities resulting from multi-project, multi-discipline, and long-range programs. Typical program management services can include:
1. Project formulation/programming,
 2. Project coordination,
 3. Master program scheduling,
 4. Consultant/subconsultant coordination,
 5. Funding and financial coordination assistance,
 6. Meeting preparation and documentation, and
 7. Technical assistance.
- B. The general consulting services to be provided under this section are undefined, general in nature, and only required periodically by the **OWNER**. Typical services anticipated might include:
1. Presentation preparation
 2. Coordination of meetings with local, state, and federal officials
 3. Site visits
 4. Facility inspection
 5. Obstruction surveys
 6. Property surveys
 7. Other services requested by the **OWNER** that are not otherwise directly associated with a current project

- C. Specific program management services will be reviewed in advance with the **OWNER** and set forth in each Work Authorization. FAA approval of scope will be obtained for FAA funded items and tasks.
- D. The amount of compensation and method of payment will be established when each Work Authorization is developed and presented for approval.

SECTION II – MISCELLANEOUS PROVISIONS

- 1. **Exhibit "F," Payments and Miscellaneous Provisions** specifies requirements for payments to **CONSULTANT, OWNER's** responsibilities, and other miscellaneous provisions, and **Exhibit "G"** specifies mandatory Federal provisions.

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EXHIBIT B

GENERAL PROVISIONS FOR PLANNING AND ENVIRONMENTAL SERVICES

This is an exhibit attached to and made a part of the **AGREEMENT** between the **OWNER** and the **CONSULTANT** for professional consulting services. For elements of the **PROJECT** described in the referenced **AGREEMENT**, the **CONSULTANT** shall perform professional services as hereinafter described, which shall include customary planning, environmental, and auxiliary services incidental thereto. These services, when performed in accordance with acceptable practices, shall be the limits of the **CONSULTANT's** responsibility under this **AGREEMENT**.

These General Provisions set forth the general requirements for the performance of the various services for planning and environmental projects required under this **AGREEMENT**. The **CONSULTANT** under each duly executed Work Authorization shall perform the scope of work required by such Authorization, and unless requirements to the contrary are specifically prescribed therein, shall perform the required services in accordance with the following requirements.

SECTION I – SERVICES

- A. Basic and Special Services for planning projects will be reviewed in advance with the **OWNER** and set forth in each Work Authorization. FAA approval of scope will be obtained for FAA funded items and tasks.
- B. The amount of compensation and method of payment will be established when each planning Work Authorization is developed and presented for approval.
- C. At the written request of the **OWNER**, the **CONSULTANT** shall accomplish such special services as required by the **OWNER** to complete the **PROJECT**. At the option of the **OWNER**, special services may be provided by the **OWNER** through contracts with other professionals or may be provided by the **CONSULTANT**. When the **CONSULTANT** is requested to provide special services, such services may be provided by the **CONSULTANT's** own forces or through subcontracts with other professionals. However, contracts with other professionals for special services must have the approval of the **OWNER** before the work is initiated. (**OWNER's** approval of **CONSULTANT's** Work Authorization listing subconsultants and subconsultant fees will be considered approval of subconsultant's contract.) Special services which may be requested include, but are not necessarily limited to the following:
 - 1. Soils and materials investigations including test borings, laboratory testing of soils and materials, and related analyses and recommendations;
 - 2. Reproduction of additional copies of reports and other documents above the specified number described in each Work Authorization;
 - 3. The accomplishment of special surveys and investigations, such as aerial photography and mapping, traffic volume data collection, and the preparation of special reports and drawings as may be requested or authorized in writing by the **OWNER** in connection with the **PROJECT**;

4. Land surveys as necessary to establish property boundaries required for property acquisition purposes or preparation of property maps; and,
5. Special environmental studies including biotic studies, historical and archeological studies, noise studies and other related work.

SECTION II – MISCELLANEOUS PROVISIONS

1. **Exhibit "F," Payments and Miscellaneous Provisions** specifies requirements for payments to **CONSULTANT, OWNER's** responsibilities, and other miscellaneous provisions, and **Exhibit "G"** specifies mandatory Federal provisions.

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EXHIBIT C

GENERAL PROVISIONS FOR ENGINEERING SERVICES

This is an exhibit attached to and made a part of the **AGREEMENT** between the **OWNER** and the **CONSULTANT** for professional consulting services. For elements of the **PROJECT** described in the referenced **AGREEMENT** which are primarily engineering projects, the **CONSULTANT** shall perform professional services as hereinafter described, which shall include customary civil, structural, mechanical, and electrical engineering services. These services, when performed in accordance with acceptable engineering practices, shall be the limits of the **CONSULTANT's** responsibility under this **AGREEMENT**.

These General Provisions set forth the general requirements for the performance of the various services for development projects required under this **AGREEMENT**. The **CONSULTANT** under each duly executed Work Authorization shall perform work required to accomplish the intent of such work authorization, and unless otherwise specifically prescribed therein, shall perform the required services in accordance with the following requirements.

SECTION I – BASIC SERVICES

A. Basic Engineering Services will generally be completed in four (4) phases:

1. Preliminary Design Phase
2. Final Design Phase
3. Bidding Phase
4. Construction Phase

The general types of services to be performed in each phase are described herein. However, typical services may be changed or deleted as required for each project. Additional services may be added as mutually agreed upon between **OWNER** and **CONSULTANT**. Such additions, changes, or deletions will be outlined in each Work Authorization.

B. Preliminary Design Phase

This phase involves those activities required for defining the scope of a project and establishing preliminary requirements. Items of work for this phase of a project include:

1. Conferring with the **OWNER** on project requirements, finances, schedules, early phases of the **PROJECT**, and other pertinent matters; and meeting with concerned agencies and parties on matters affecting the **PROJECT**.
2. Advising **OWNER** as to the necessity of providing or obtaining from others, data or services of the types described in Section II such as, but not limited to field surveys, soil borings, aerial mapping, and laboratory testing. At **OWNER's** option, services may be provided by the **OWNER** through direct contracts with other professionals or may be provided by the **CONSULTANT** in accordance with **Exhibit "E", Payments and Miscellaneous Provisions, Section I.2.**
3. Developing design schematics, sketches, project recommendations and preliminary layouts, and cost estimates.

C. Final Design Phase

After authorization to proceed with the Final Design Phase, **CONSULTANT** shall, on the basis of the accepted Preliminary Design documents and the construction budget authorized by **OWNER**:

1. Prepare necessary engineering reports and recommendations,
2. Prepare detailed plans, specifications, and cost estimates,
3. Print and provide necessary copies for in-house production of engineering drawings and contract specifications,
4. Advise **OWNER** of any adjustments to the preliminary estimate of probable construction costs caused by changes in general scope, extent or character or design requirements of the **PROJECT**, or market conditions. Furnish to **OWNER** a revised opinion of probable construction costs based on the Final Drawings and Specifications,
5. Prepare for review and approval by **OWNER**, its legal counsel and other advisors, necessary bidding information, bidding forms, the conditions of the contract, and the form of **AGREEMENT** between the **OWNER** and Contractor, and
6. Distribute documents for approvals to FAA, **OWNER**, State, and other regulatory agencies.

D. Bidding Phase

After authorization to proceed with the Bidding Phase, **CONSULTANT** shall:

1. Assist the **OWNER** in advertising for and obtaining bids for each separate prime contract for construction, materials, equipment, and services; and, where applicable, maintain a record of prospective bidders to whom bidding documents have been issued, and receive and process deposits for bidding documents.
2. Assist the **OWNER** in conducting a pre-bid conference for each separate prime contract to share pertinent bidding and technical information and requirements with prospective bidders.
3. Issue addenda as appropriate to interpret, clarify or expand the bidding documents.
4. Distribute sets of bidding documents to prospective bidders and plan offices during the Bidding Phase.
5. Attend the bid opening, prepare bid tabulation sheets, and assist **OWNER** in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment, and services.

E. Construction Phase

1. The **CONSULTANT's** responsibility to provide Basic Services for the Construction Phase under this **AGREEMENT** commences with the award of each contract for construction and terminates at the earlier of the issuance by the **OWNER** of the final Certificate for Payment or 30 days after the date of Substantial Completion of the Work, but, if so stated by Work Authorization, may be extended under the terms of **Section II "Special Services."**
2. **CONSULTANT** shall attend and administer the preconstruction conference.
3. Visits to site and observation of construction: In connection with observations of the work of contractor(s) while it is in progress:
 - a. **CONSULTANT** shall make visits to the site at intervals appropriate to the various stages of construction as **CONSULTANT** deems necessary in order to observe as an experienced and qualified design professional the progress of the various aspects of contractor(s)' work. Based on information obtained during such visits and on such observations, **CONSULTANT** shall endeavor to determine in general if such work is proceeding in accordance with the contract documents and **CONSULTANT** shall keep **OWNER** informed of the progress of the work.
 - b. If **OWNER** requests more extensive site representation than is described in 3.a above, **CONSULTANT** will provide a Resident Project Representative(s) as a Special Service.
 - c. **CONSULTANT** 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 **CONSULTANT** have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by contractor(s), for safety precautions and programs incident to the work of contractor(s) or for any failure of contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to contractor(s) furnishing and performing their work. Accordingly, **CONSULTANT** can neither guarantee the performance of the construction contracts by contractor(s) nor assume responsibility for contractor(s)' failure to furnish and perform their work in accordance with the contract documents.
4. Defective Work: During such visits and on the basis of such observations, **CONSULTANT** may disapprove of or reject contractor(s)' work while it is in progress if **CONSULTANT** believes that such work will not produce a completed **PROJECT** that conforms generally to the contract documents or that it will prejudice the integrity of the design concept of the **PROJECT** as reflected in the contract documents.
5. Interpretations and Clarifications: **CONSULTANT** shall issue necessary interpretations and clarifications of the contract documents and in connection therewith prepare work directive changes and change orders as required.

6. Shop Drawings: **CONSULTANT** shall review and approve (or take other appropriate action in respect of) shop drawings, samples, and other data which contractor(s) are required to submit, but only for conformance with the design concept of the **PROJECT**. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.
7. Substitutes: **CONSULTANT** shall evaluate and determine the acceptability of substitute materials and equipment proposed by contractor(s), but subject to the provision of Section II, paragraph 13 of this Exhibit C.
8. Inspections and Tests: **CONSULTANT** shall have authority, as **OWNER's** representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testing(s), and approvals required by laws, rules, regulations, ordinances, codes, orders, or the contract documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the contract documents).
9. Disputes Between Owner and Contractor: **CONSULTANT** shall act as initial interpreter of the requirements of the contract documents and judge of the acceptability of the work thereunder and make decisions on all claims of **OWNER** and contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the contract documents pertaining to the execution and progress of the work. **CONSULTANT** shall not be liable for the results of any such interpretations or decisions rendered in good faith.
10. Applications for Payment: Based on **CONSULTANT's** on-site observations as an experienced and qualified design professional, on information provided by the Resident Project Representative and on review of applications for payment and the accompanying data and schedules:
 - a. **CONSULTANT** shall determine the amounts owing to contractor(s) and recommend in writing payments to contractor(s) in such amounts. Such recommendations of payment will constitute a representation to **OWNER**, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of **CONSULTANT's** knowledge, information and belief, the quality of such work is generally in accordance with the contract documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the contract documents and to any other qualifications stated in the recommendation). In the case of unit price work, **CONSULTANT's** recommendations of payment will include determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the contract documents).

- b. By recommending any payment, **CONSULTANT** will not thereby be deemed to have represented that exhaustive, continuous, or detailed reviews or examinations have been made by **CONSULTANT** to check the quality or quantity of contractor(s)'s work as it is furnished and performed beyond the responsibilities specifically assigned to **CONSULTANT** in this **AGREEMENT** and the Contract documents. **CONSULTANT's** review of contractor(s)' work for the purposes of recommending payments will not impose on **CONSULTANT** responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or contractor(s) compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on **CONSULTANT** to make any examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the contract price, or to determine that title to any of the work, materials or equipment has passed to **OWNER** free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between **OWNER** and contractor that might affect the amount that should be paid.
11. Contractor(s)' Completion Documents: **CONSULTANT** shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by contractor(s) in accordance with the contract documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals the results certified indicate compliance with, the contract documents); and shall transmit them to **OWNER** with written comments.
12. Inspections: **CONSULTANT** shall conduct an inspection to determine if work is substantially complete and a final inspection to determine if the completed work is acceptable to **OWNER**, FAA and other governing agencies so that **CONSULTANT** may recommend, in writing, final payment to contractor(s) and may give written notice to **OWNER** and contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in sub-paragraph E.10.b of this Exhibit C, Section I.
13. Limitation of Responsibilities: **CONSULTANT** shall not be responsible for the act or omissions of any contractor, or of any subcontractor or supplier, or any of the contractor(s)' or subcontractor's or supplier's agents or employees or any other persons (except **CONSULTANT's** own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s)' work; however, nothing contained in the foregoing sub-paragraphs E.1. through E.12. inclusive, shall be construed to release **CONSULTANT** from liability for failure to properly perform duties and responsibilities assumed by **CONSULTANT** in the contract documents.

SECTION II – SPECIAL SERVICES

Services Requiring Authorization in Advance

If authorized in writing by **OWNER**, **CONSULTANT** shall accomplish such special services of the following types which are not considered normal or customary Basic Services except where specifically provided for otherwise in the Work Authorizations. At **OWNER's** option, services may be provided by the **OWNER** through direct contracts with other professionals or may be provided by the **CONSULTANT**. When the **CONSULTANT** is requested to provide special services, such services may be provided by the **CONSULTANT's** own forces or through subcontracts with other professionals; however, contracts with other professionals for special services must have the approval of the **OWNER** before the work is initiated (**OWNER** approval of **CONSULTANT's** Work Authorization listing subconsultant's and subconsultant fees will be considered approval of subconsultant's contract.) Special services will be paid for by **OWNER** as indicated in each Work Authorization in addition to the compensation for Basic Services described herein.

1. Preparation of applications and supporting documents for governmental grants, loans, or advances in connection with the **PROJECT**; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the **PROJECT** of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the **PROJECT**.
2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by **OWNER**; commonly referred to as A/E survey (Architectural/Engineering survey).
3. Services resulting from significant changes in the general scope, extent or character of the **PROJECT** or its design including, but not limited to, changes in size, complexity, **OWNER's** schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to causes beyond **CONSULTANT's** control.
4. Providing renderings or models for **OWNER's** use.
5. Preparing to serve or serving as a **CONSULTANT** or witness for **OWNER** in any litigation, public hearing or other legal or administrative proceeding involving the **PROJECT** (except as agreed to under Basic Services in Section I of this Exhibit C).
6. Soils and material investigations including test borings, laboratory testing of soils and materials, related analyses, and recommendations.
7. Quality assurance testing during construction.
8. Furnishing services of a Resident Project Representative to assist **CONSULTANT** in observing performance of the work of contractor(s).
9. Preparation of Disadvantaged Business Enterprise Program.

10. Cost accounting services, grant administration, and grant closeout.
11. Reproduction and postage of reports, contract documents and specifications to FAA, **OWNER**, contractor, regulatory agencies, prospective bidders, and plan rooms.
12. Services in connection with work directive changes and change orders to reflect changes requested by **OWNER** if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
13. Services in revising drawings and specifications occasioned by the acceptance or substitutions proposed by contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor.
14. Services resulting from delays beyond the control of **CONSULTANT**.
15. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or negligent work of any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, (4) default by any contractor, or (5) other causes beyond **CONSULTANT's** control.
16. Evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the work.
17. Services after issuance to the **OWNER** of the final certificate for payment or in the absence of such certificate, more than 30 days after the date of Substantial Completion of the Work.
18. Provide assistance in the closing of any financial or related transaction for the **PROJECT**.
19. Provide assistance in connection with the refining and adjusting of any equipment or system.
20. Preparation of a set of reproducible record prints of drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by contractor(s) to **CONSULTANT** and which **CONSULTANT** considers significant.
21. Operational Phase Services:
 - a. Provide assistance in connection with the refining and adjusting of any equipment or system.
 - b. Assist **OWNER** in training **OWNER's** staff to operate and maintain the **PROJECT**.
 - c. Assist **OWNER** in developing systems and procedures for control of the operation and maintenance of and record keeping for the **PROJECT**.

SECTION III – MISCELLANEOUS PROVISIONS

1. **Exhibit "F," Payments and Miscellaneous Provisions** specifies requirements for payments to **CONSULTANT**, **OWNER's** responsibilities, and other miscellaneous provisions, and **Exhibit "G"** specifies Federal Mandatory Provisions.

EXHIBIT D

GENERAL PROVISIONS FOR ARCHITECTURAL DESIGN SERVICES

This is an exhibit attached to and made a part of the **AGREEMENT** between the **OWNER** and the **CONSULTANT** for professional consulting services. For elements of the **PROJECT** which are primarily building improvements, described in the referenced **AGREEMENT**, the **CONSULTANT** shall perform professional services as hereinafter described, which shall include customary architectural, structural, mechanical, and electrical engineering services. These services, when performed in accordance with acceptable engineering and architectural practices, shall be the limits of the **CONSULTANT's** responsibility under this **AGREEMENT**.

These General Provisions set forth the general requirements for the performance of the various architectural services for projects required under this **AGREEMENT**. The **CONSULTANT** under each duly executed Work Authorization shall perform the scope of work required by such Authorization, and, unless requirements to the contrary are specifically prescribed therein, shall perform the required services in accordance with the following requirements.

SECTION I – BASIC SERVICES

A. Basic Architectural Services will generally be completed in five (5) phases:

1. Schematic Design Phase
2. Design Development Phase
3. Contract Document Phase
4. Bidding Phase
5. Construction Phase

The general types of services to be performed in each phase are described herein. However, typical services may be changed or deleted as required for each project. Additional services may be added as mutually agreed upon between **OWNER** and **CONSULTANT**. Such additions, changes, or deletions will be outlined in each Work Authorization.

B. Schematic Design Phase

1. The **CONSULTANT** shall review the program furnished by the **OWNER** to ascertain the requirements of the **PROJECT** and shall arrive at a mutual understanding of such requirements with the **OWNER**.
2. The **CONSULTANT** shall provide a preliminary evaluation of the **OWNER's** program, schedule, and construction budget requirements, each in terms of the other, subject to the limitations set forth in Exhibit F, paragraph II. A.
3. The **CONSULTANT** shall review with the **OWNER** alternative approaches to design and construction of the **PROJECT**.

4. Based on the mutually agreed upon program, schedule and construction budget requirements, the **CONSULTANT** shall prepare, for approval by the **OWNER**, schematic design documents consisting of drawings and other documents illustrating the scale and relationship of project components.
5. The **CONSULTANT** shall submit to the **OWNER** a preliminary estimate of construction cost based on current area, volume, or other unit costs.

C. Design Development Phase

1. Based on the approved schematic design documents and any adjustments authorized by the **OWNER** in the program, schedule or construction budget, the **CONSULTANT** shall prepare, for approval by the **OWNER**, design development documents consisting of drawings and other documents to fix and describe the size and character of the **PROJECT** as to architectural, structural, mechanical, and electrical systems, materials and such other elements as may be appropriate.
2. The **CONSULTANT** shall advise the **OWNER** of any adjustments to the preliminary estimate of construction cost.

D. Construction Documents Phase

1. Based on the approved design development documents and any further adjustments in the scope or quality of the **PROJECT** or in the construction budget authorized by the **OWNER**, the **CONSULTANT** shall prepare, for approval by the **OWNER**, construction documents consisting of drawings and specifications setting forth in detail the requirements for the construction of the **PROJECT**.
2. The **CONSULTANT** shall assist the **OWNER** in the preparation of the necessary bidding information, bidding forms, the conditions of the contract, and the form of **AGREEMENT** between the **OWNER** and the contractor.
3. The **CONSULTANT** shall advise the **OWNER** of any adjustments to previous preliminary estimates of construction cost indicated by changes in requirements or general market conditions.
4. The **CONSULTANT** 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**.

E. Bidding Phase

After authorization to proceed with the Bidding Phase, **CONSULTANT** shall:

1. Assist the **OWNER** in advertising for and obtaining bids for each separate prime contract for construction, materials, equipment, and services; and, where applicable, maintain a record of prospective bidders to whom bidding documents have been issued, attend pre-bid conferences, and receive and process deposits for bidding documents.
2. Issue addenda as appropriate to interpret, clarify or expand the bidding documents.
3. Consult with and advise **OWNER** as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) (herein called "contractor(s)") for those portions of the work as to which such acceptability is required by the bidding documents.
4. Consult with **OWNER** concerning and determine the acceptability of substitute materials and equipment proposed by contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.
5. Attend the bid opening, prepare bid tabulation sheets, and assist **OWNER** in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment, and services.
6. Furnish sets of bidding documents to contractor bidding and plan offices during the Bidding Phase. The number of documents and their distribution will be specified in the Work Authorization(s).

F. Construction Phase

1. The **CONSULTANT's** responsibility to provide Basic Services for the Construction Phase under this **AGREEMENT** commences with the award of the contract for construction and terminates at the earlier of the issuance to the **OWNER** of the final Certificate for Payment or the original date established for Substantial Completion of the Work but may be extended under the terms of Section II "Special Services."
2. The **CONSULTANT** shall provide administration of the contract for construction as set forth below, unless otherwise provided in this **AGREEMENT**.
3. **CONSULTANT** shall attend preconstruction conference.

4. Visits to site and observation of construction: In connection with observations of the work of contractor(s) while it is in progress:
 - a. **CONSULTANT** shall make visits to the site at intervals appropriate to the various stages of construction as **CONSULTANT** deems necessary to observe as an experienced and qualified design professional, the progress and quality of the various aspects of contractor(s)' work. Based on information obtained during such visits and on such observations, **CONSULTANT** shall endeavor to determine in general if such work is proceeding in accordance with the contract documents and **CONSULTANT** shall keep **OWNER** informed of the progress of the work.
 - b. If **OWNER** requests more extensive site representation than is described in F.4 (a) above, **CONSULTANT** will provide a Resident Project Representative(s) as a Special Service.
 - c. **CONSULTANT** 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 **CONSULTANT** have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by contractor(s), for safety precautions and programs incident to the work of contractor(s) or for any failure of contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to contractor(s) furnishing and performing their work. Accordingly, **CONSULTANT** can neither guarantee the performance of the construction contracts by contractor(s) nor assume responsibility for contractor(s)' failure to furnish and perform their work in accordance with the contract documents.
5. Defective Work: During such visits and on the basis of such observations, **CONSULTANT** may disapprove of or reject contractor(s)' work while it is in progress if **CONSULTANT** believes that such work will not produce a completed **PROJECT** that conforms generally to the contract documents or that it will prejudice the integrity of the design concept of the **PROJECT** as reflected in the contract documents.
6. Interpretations and Clarifications: **CONSULTANT** shall issue necessary interpretations and clarifications of the contract documents and in connection therewith prepare work directive changes and change orders as required.
7. Shop Drawings: **CONSULTANT** shall review and approve (or take other appropriate action in respect of) shop drawings, samples, and other data which contractor(s) are required to submit, but only for conformance with the design concept of the **PROJECT** and compliance with the information given in the contract documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.
8. Substitutes: **CONSULTANT** shall evaluate and determine the acceptability of substitute materials and equipment proposed by contractor(s), but subject to the provision of Section II, paragraph 37 of this Exhibit D.

9. Inspections and Tests: **CONSULTANT** shall have authority, as **OWNER's** representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testing(s), and approvals required by laws, rules, regulations, ordinances, codes, orders, or the contract documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the contract documents).
10. Disputes: **CONSULTANT** shall act as initial interpreter of the requirements of the contract documents and judge of the acceptability of the work thereunder and make decisions on all claims relating to the acceptability of the work or the interpretation of the requirements of the contract documents pertaining to the execution and progress of the work.
11. Applications for Payment: Based on **CONSULTANT's** on-site observations as an experienced and qualified design professional, on information provided by the Resident Project Representative and on review of applications for payment and the accompanying data and schedules:
 - a. **CONSULTANT** shall determine the amounts owing to contractor(s) and recommend in writing payments to contractor(s) in such amounts. Such recommendations of payment will constitute a representation to **OWNER**, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of **CONSULTANT's** knowledge, information and belief, the quality of such work is generally in accordance with the contract documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the contract documents and to any other qualifications stated in the recommendation). In the case of unit price work, **CONSULTANT's** recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the contract documents).

By recommending any payment, **CONSULTANT** will not thereby be deemed to have represented that exhaustive, continuous, or detailed reviews or examinations have been made by **OWNER** to check the quality or quantity of contractor(s)'s work as it is furnished and performed beyond the responsibilities specifically assigned to **CONSULTANT** in this **AGREEMENT** and the contract documents. **CONSULTANT's** review of contractor(s)' work for the purposes of recommending payments will not impose on **CONSULTANT** responsibility to supervise, direct, or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or contractor(s) compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on **CONSULTANT** to make any examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the contract price, or to determine that title to any of the work, materials or equipment has passed to **OWNER** free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between **OWNER** and contractor that might affect the amount that should be paid.

12. Contractor(s)' completion documents: **CONSULTANT** shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by contractor(s) in accordance with the contract documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals the results certified indicate compliance with, the contract documents); and shall transmit them to **OWNER** with written comments.
13. Inspections: **CONSULTANT** shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that **CONSULTANT** may recommend, in writing, final payment to contractor(s) and may give written notice to **OWNER** and the contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in paragraph F.11.b.
14. Limitation of responsibilities: **CONSULTANT** shall not be responsible for the act or omissions of any contractor, or of any subcontractor or supplier, or any of the contractor(s)' or subcontractor's or supplier's agents or employees or any other persons (except **CONSULTANT's** own employees and agents) at the site or otherwise furnishing or performing any of the contractor(s)' work; however, nothing contained in paragraphs F.1 through F.13 inclusive, shall be construed to release **CONSULTANT** from liability for failure to properly perform duties and responsibilities assumed by **CONSULTANT** in the contract documents.

SECTION II – SPECIAL SERVICES

Services Requiring Authorization in Advance

If authorized in writing by **OWNER**, **CONSULTANT** shall accomplish such special services of the following types which are not considered normal or customary Basic Services except where specifically provided for otherwise in the Work Authorizations. At **OWNER's** option, services may be provided by the **OWNER** through direct contracts with other professionals or may be provided by the **CONSULTANT**. When the **CONSULTANT** is requested to provide special services, such services may be provided by the **CONSULTANT's** own forces or through subcontracts with other professionals. However, contracts with other professionals for special services must have the approval of the **OWNER** before the work is initiated, however **CONSULTANT** shall remain responsible for work of subcontractant's. Special services will be paid for by **OWNER** in addition to the compensation for Basic Services described herein.

1. Preparation of pre-applications and/or applications and supporting documents for governmental grants, loans, or advances in connection with the **PROJECT**; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the **PROJECT** of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the **PROJECT**.

2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by **OWNER**; commonly referred to as A/E survey.
3. Services resulting from significant changes in the general scope, extent or character of the **PROJECT** or its design including, but not limited to, changes in size, complexity, **OWNER's** schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to causes beyond **CONSULTANT's** control.
4. Providing renderings or models for **OWNER's** use.
5. Preparing documents for alternate, separate, or sequential bids requested by **OWNER** after receipt of original bids and for contractor(s)' work which is not executed or documents for out-of-sequence work.
6. Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the **PROJECT**; evaluating processes available for licensing and assisting **OWNER** in obtaining process licensing; detailed quantity surveys of material, equipment and labor, and audits for inventories required in connection with construction performed for **OWNER**.
7. Services resulting from the award of more separate prime contracts for construction, materials, equipment, or services for the **PROJECT** than are contemplated by an approved Work Authorization, and services resulting from the arranging for performance by persons other than the principal prime contractors of services for the **OWNER** and administering **OWNER's** contracts for such services.
8. Providing any type of property surveys or related engineering services needed for the transfer of interests in real property and field surveys for design purposes and engineering surveys and staking to enable contractor(s) to proceed with their work and providing land surveys and other special field surveys.
9. Assistance in connection with bid protests, re-bidding or renegotiating contracts for construction, materials, equipment, or services.
10. Services during out-of-town travel required of **CONSULTANT** other than visits to the site as required by Section I.
11. Preparing to serve, or serving, as a **CONSULTANT** or witness for **OWNER** in any litigation, public hearing or other legal or administrative proceeding involving the **PROJECT** (except as agreed to under Basic Services in Section I of this Exhibit D).
12. Soils and Material Investigations including test borings, laboratory testing of soils and materials, related analyses, and recommendations.
13. Quality assurance testing during construction.
14. Furnishing services of a Resident Project Representative to assist **CONSULTANT** in observing performance of the work of contractor(s).

15. Preparation of Disadvantaged Business Programs.
16. Cost accounting services, grant administration, and grant closeout.
17. Reproduction of additional copies of reports, contract documents and specifications above the specified number furnished in Basic Services described in each Work Authorization.
18. Providing analyses of the **OWNER's** needs and programming the requirements of the **PROJECT**.
19. Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the **PROJECT**.
20. Providing services relative to future facilities, systems, and equipment.
21. Providing services to verify the accuracy of drawings or other information furnished by the **OWNER**.
22. Providing coordination of construction performed by separate contractors or by the **OWNER's** own forces and coordination of services required in connection with construction performed and equipment supplied by the **OWNER**.
23. Providing services in connection with the work of a construction manager or separate consultants retained by the **OWNER**.
24. Providing detailed estimates of construction cost.
25. Providing detailed quantity surveys or inventories of material, equipment, and labor.
26. Providing analyses of owning and operating costs.
27. Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings, and related equipment.
28. Providing services for planning tenant or rental spaces.
29. Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
30. Preparing a set of reproducible record drawings showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the contractor to the **CONSULTANT**.
31. Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
32. Providing services of consultants for other than architectural, structural, mechanical, and electrical engineering portions of the **PROJECT** provided as a part of Basic Services in Section I of Exhibit C.
33. Providing any other services not otherwise included in this **AGREEMENT** or not customarily furnished in accordance with generally accepted architectural practice.

34. Services in connection with work directive changes and change orders to reflect changes requested by **OWNER** if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
35. Services in revising drawings and specifications occasioned by the acceptance or substitutions proposed by contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor.
36. Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment, or energy shortages.
37. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or negligent work of any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, and (4) default by any contractor.
38. Services in connection with any partial utilization of any part of the **PROJECT** by **OWNER** prior to Substantial Completion.
39. Evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the work.
40. Services after issuance to the **OWNER** of the final certificate for payment or in the absence of such certificate, more than 60 days after the date of Substantial Completion of the Work.

SECTION III - MISCELLANEOUS PROVISIONS

1. **Exhibit "F," Payments and Miscellaneous Provisions** specifies requirements for payments to **CONSULTANT, OWNER's** responsibilities, and other miscellaneous provisions, and **Exhibit "G"** specifies mandatory Federal provisions.

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EXHIBIT E

DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE

This is an exhibit attached to and made a part of the **AGREEMENT** between the **OWNER** and the **CONSULTANT** for Professional Consulting Services. For elements of the **PROJECT** described in the referenced **AGREEMENT**, the **CONSULTANT** shall perform Resident Project Representative Services in accordance with the following:

- A. General: Resident Project Representative (**RPR**) will be the **CONSULTANT's** agent at the site, will act as directed by and under the supervision of **CONSULTANT**, and will confer with **CONSULTANT** regarding **RPR** actions. **RPR's** dealings in matters pertaining to the onsite work shall in general be only with the **CONSULTANT** and contractor, and dealings with subcontractors shall only be through or with the full knowledge of Contractor. Written communication with **OWNER** will be only through or as directed by **CONSULTANT**.
- B. Duties and Responsibilities of RPR:
1. Schedules: Review the progress schedule, schedule of shop drawing submissions, and schedule of values prepared by contractor and consult with the **CONSULTANT** concerning acceptability.
 2. Conferences and Meetings: Attend meetings with contractor such as preconstruction conferences, progress meetings and other conferences as required in consultation with **CONSULTANT** and notify those expected to attend in advance. Prepare and circulate copies of minutes thereof.
 3. Liaison:
 - a. Serve as the **CONSULTANT's** liaison with contractor, working principally through contractor's superintendent and assist him in understanding the intent of the contract documents. Assist the **CONSULTANT** in serving as the **OWNER's** liaison with the contractor when the contractor's operations affect the **OWNER's** onsite operations.
 - b. As requested by the **CONSULTANT**, assist in obtaining from the **OWNER** additional details or information, when required at the job site for proper execution of the work.
 4. Shop Drawings and Samples:
 - a. Record date of receipt of shop drawings and samples, receive samples which are furnished at the site by contractor, and notify the **CONSULTANT** of their availability for examination.
 - b. Advise the **CONSULTANT** and contractor or its superintendent immediately of the commencement of any work requiring a shop drawing or sample submission if the submission has not been approved by the **CONSULTANT**.

5. Review of Work, Rejection of Defective Work, Inspection, and Tests:
 - a. Conduct onsite observations of the work in progress to assist **CONSULTANT** in determining if the work is proceeding in accordance with the contract documents and that completed work will conform to the contract documents.
 - b. Report to the **CONSULTANT** whenever **RPR** believes that any work is unsatisfactory, faulty, or defective or does not conform to the contract documents or does not meet the requirements of any inspections, tests, or approval required to be made or has been damaged prior to final payment and advise the **CONSULTANT** when he believes work should be corrected or rejected or should be uncovered for observation or requires special testing, inspection, or approval.
 - c. Verify that tests, equipment, and systems startups and operating and maintenance training are conducted as required by the contract documents and in presence of the appropriate personnel, and that contractor maintains adequate records thereof; observe, record, and report to the **CONSULTANT** appropriate details relative to test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the **PROJECT**, record the results of these inspections, and report to **CONSULTANT**.
6. Interpretation of Contract Documents: Transmit to contractor, **CONSULTANT's** clarifications, and interpretations of the contract documents.
7. Modifications: Consider and evaluate contractor's suggestions for modifications in drawings or specifications and report them with **RPR's** recommendations to **CONSULTANT**. Transmit to contractor decisions as issued by **CONSULTANT**.
8. Records:
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, shop drawings and samples submissions, reproductions of original contract documents including all addenda, change orders, field orders, additional drawings issued subsequent to the execution of the contract, **CONSULTANT's** clarifications and interpretations of the contract documents, progress reports and other project related documents.
 - b. Keep a diary or logbook, recording hours on the job site, weather conditions, data relative to contractor's questions or extras or deductions, quantities of materials installed on the **PROJECT**, list of visiting officials and representatives of manufacturers, fabricators, suppliers, and distributors, daily activities, decisions, observations in general and specific observations in more detail as in the case of the observing test procedures. Send copies to the **CONSULTANT**.
 - c. Record names, addresses, and telephone numbers of all contractors, subcontractors, and major suppliers of materials and equipment.

9. Reports:
- a. Furnish to **CONSULTANT**, **OWNER**, and the Federal Aviation Administration periodic reports as required of the progress of the work and contractor's compliance with the approved progress schedule and schedule of shop drawing submissions.
 - b. Consult with the **CONSULTANT** in advance of scheduled major tests, inspections, or start of important phases of the work.
 - c. Report immediately to the **CONSULTANT** upon the occurrence of any accident.
 - d. Review and certify contractor's payroll submittals for compliance with federal law pertaining to classification and wage rates.
10. Payment Requests: Review applications for payment with contractor for compliance with the established procedure for their submission and forward them with recommendations to the **CONSULTANT**, noting particularly their relation to the schedule of values, work completed, and material and equipment delivered at the site but not incorporated in the work.
11. Certificates, Maintenance, and Operation Manuals: During the course of the work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by contractor are applicable to the items actually installed; and deliver this material to the **CONSULTANT** for his review and forwarding to **OWNER** prior to final acceptance of the work.
12. Completion:
- a. Before the **CONSULTANT** issues a Certificate of Substantial Completion, submit to contractor a list of observed items requiring completion or correction.
 - b. Conduct final inspection in the company of **CONSULTANT**, **OWNER**, and contractor and prepare a final list of items to be completed or corrected.
 - c. Verify that all items on final list have been completed or corrected and make recommendations to the **CONSULTANT** concerning acceptance.

C. Limitations of Resident Project Representative's Authority:

Except upon written instructions of the **CONSULTANT, RPR**:

1. Shall not authorize any deviation from the contract documents or approve any substitute materials or equipment.
2. Shall not exceed limitations of the **CONSULTANT's** authority as set forth in the contract documents.
3. Shall not undertake any of the responsibilities of contractor, subcontractors, or contractor's superintendent or expedite the work.
4. Shall not advise on or issue directions relative to any aspect of the means, methods, techniques, sequences, or procedures of construction unless such is specifically called for in the contract documents.
5. Shall not issue directions as to safety programs in connection with the work.
6. Shall not accept shop drawing or sample submittals from anyone other than contractor.
7. Shall not authorize the **OWNER** to occupy or utilize the **PROJECT** in whole or in part, without the approval of **CONSULTANT**.
8. Shall not participate in specialized field or laboratory tests, or inspections conducted by others except as specifically authorized by **CONSULTANT**.

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EXHIBIT F

PAYMENTS AND MISCELLANEOUS PROVISIONS

This is an exhibit attached to and made a part of the **AGREEMENT** between the **OWNER** and the **CONSULTANT** for professional consulting services.

SECTION I – PAYMENTS TO THE CONSULTANT

The **OWNER** agrees to compensate the **CONSULTANT** for services performed in accordance with one of the following methods as hereinafter set forth. It is further agreed that such compensation includes both direct and indirect costs chargeable to the **PROJECT** under generally accepted accounting principles.

The method of payment and the amount of payment for specified services shall be detailed in each Work Authorization. The receipt of an approved Work Authorization will constitute the **CONSULTANT's** Notice-to-Proceed.

Unless otherwise approved in writing, the **CONSULTANT** is not to undertake any work prior to the receipt of an approved Work Authorization executed by the **OWNER**.

1. Cost Plus Fixed Fee

Under this method of payment, the **CONSULTANT's** compensation will be equal to direct hourly cost times a factor to cover overhead plus direct non-salary expense and a fixed fee to cover profit. The cost may be more or less than estimated, but the fixed fee will neither increase nor decrease, unless there is a change in the scope, complexity, or duration of the work. In that event, the fixed fee would be subject to re-negotiation. Should the total cost be more than the estimated budget in an approved Work Authorization, a supplemental Work Authorization covering the additional costs of the particular task in question will be prepared by the **CONSULTANT** and submitted to the **OWNER** for review and approval.

2. Hourly Fee Schedule and Subconsultants

Under this method of payment, the **CONSULTANT's** compensation will be based on actual hours worked, by discipline, times the then current fee schedule, plus direct non-salary expenses, including the direct costs of subconsultants plus a lump sum administrative fee. **The hourly fee schedule will only be utilized for specific minor items of work performed as special services.**

3. Lump Sum

For work that can be defined and delineated in advance, payment to the **CONSULTANT** will be made on the basis of a lump sum. The agreed lump sum shall represent full payment for all payroll, overhead, profit, and other direct non-salary expenses as herein described. The lump sum will not increase nor decrease unless there is a change in the scope, complexity, or duration of the work. In that event, the lump sum would be subject to re-negotiation, and **CONSULTANT** will prepare and submit a supplemental Work Authorization for **OWNER** approval.

4. General:

Payments to the **CONSULTANT** on account of the above fees are payable upon receipt and are past due thirty (30) days after the date of invoices. Amounts not paid within 30 days of invoice date are delinquent and **OWNER** agrees to pay a late payment fee in the amount of 1% per month or the maximum late payment fee permitted by applicable law (whichever is less) on any unpaid amount for each month, or fraction thereof, that such payment is delinquent. Invoices shall be submitted periodically for the amount of work carried out in that period. The **OWNER** shall not retain any amounts due from the **CONSULTANT's** invoices, nor withhold said invoices pending FAA and/or other agency approval.

5. The Following Definitions Will Apply to the Payments for Services:

- a. Salary Cost - For purposes of this **AGREEMENT**, direct salary cost is defined as the current actual cost of salaries of personnel for the time directly chargeable to the **PROJECT**.
- b. Overhead - For the purpose of this **AGREEMENT**, overhead shall be calculated in accordance with Federal Acquisition Regulations. For billing under the cost-plus fixed fee method of payment, overhead as defined herein shall be direct salary cost times the current overhead rate of the **CONSULTANT** when the Work Authorization is signed.
- c. Direct Non-Salary Expenses - These expenses generally include items of expense directly chargeable to the **PROJECT** and substantiated by appropriate documentation. Typical items may include the cost of subconsultants, living and traveling expenses of employees, communications expense, postage, reproduction, identifiable supplies, and other items that can be identified with the **PROJECT**.

SECTION II – MISCELLANEOUS PROVISIONS

A. Estimates:

- a. Since the **CONSULTANT** has no control over the cost of labor and materials or over competitive bidding and market conditions, the estimates of construction cost provided for herein are to be made on the basis of his experience and qualifications, but the **CONSULTANT** does not guarantee the accuracy of such estimates as compared to the contractor's bids or the **PROJECT** construction cost.

B. Extra Work:

- a. It is mutually understood and agreed that the **OWNER** will compensate the **CONSULTANT** for services resulting from significant changes in general scope of the **PROJECT** or its design, but not necessarily limited to, changes in size, complexity, project schedules, character of construction, revisions to previously accepted studies, reports, design documents for contract documents and for preparation of documents for separate bids, when such revisions are due to causes beyond the **CONSULTANT's** control and when requested and authorized by the **OWNER**. Compensation for such extra work when authorized by the **OWNER** shall be established in each Work Authorization. **CONSULTANT** shall promptly notify **OWNER** in writing of all extra work or cost variations on the **PROJECT** prior to undertaking said work.

C. Reuse of Documents:

- a. All documents including drawings and specifications prepared by the **CONSULTANT** pursuant to this **AGREEMENT** are instruments of service with respect to the **PROJECT**. They are not intended or represented to be suitable for reuse by **OWNER** or others on extensions of the **PROJECT** or on any other **PROJECT**. However, reproducible copies of drawings and copies of other pertinent data will be made available to the **OWNER** upon request, which may include paper or DVD copies. Any reuse without written verification will be at **OWNER's** sole risk and with no liability or legal exposure to **CONSULTANT**. Any such verification or adaptation will entitle **CONSULTANT** to further compensation at rates to be agreed upon by **OWNER** and **CONSULTANT**. Notwithstanding these provisions the **OWNER** shall be provided upon request a reproducible copy of any drawing produced under this **AGREEMENT** at the cost of reproduction and will be permitted full use of such documents subject to the limitations set forth herein.

D. Responsibility of the Consultant:

- a. The **CONSULTANT** shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the **CONSULTANT** under this **AGREEMENT**.
- b. Approval by the **OWNER** and other agencies of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the **CONSULTANT** of his responsibility for the technical adequacy of his work except as to matters involving peculiar conditions or uses of the property known to the **OWNER** or other agencies but not to the **CONSULTANT**.
- c. The **CONSULTANT** shall not be responsible for any time delays in the **PROJECT** caused by the loss or destruction of any portion of the **PROJECT** including, but not limited to, fire, theft, smoke, storm, vandalism, sudden or accidental damage from irregularities in electrical current or any other circumstance beyond the **CONSULTANT's** control.

E. Responsibility of Owner:

As a part to this **AGREEMENT**, the **OWNER** shall:

- a. Make available for the **CONSULTANT's** use all record drawings, maps, information as to unusual conditions or practices affecting the **CONSULTANT's** services, soil data, etc., that are readily available to the **OWNER**.
- b. Designate a person to act with authority on the **OWNER's** behalf and respond in a timely manner to submissions by the **CONSULTANT** providing approvals and authorizations as appropriate so that work may continue at a normal pace.
- c. Pay all costs associated with special services authorized by the **OWNER** and all costs associated with obtaining bids from contractors, including but not limited to cost of printing, postage, and public notice of advertisement.

- d. Furnish such accounting, insurance and legal counseling services as **OWNER** may require for this **PROJECT**. Obtain advice of an attorney, insurance counselor or other **CONSULTANTS** as **OWNER** deems appropriate for examination of the contract documents prepared by **CONSULTANT**.
- e. Pay all costs incidental to comply with requirements of the foregoing paragraphs a. through d.

F. Termination:

- a. This **AGREEMENT** may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this **AGREEMENT** through no fault of the terminating party provided that no such termination may be affected unless the other party is given:
 - i. Not less than 10 calendar days written notice of intent to terminate, and
 - ii. An opportunity for consultation with the terminating party prior to termination.
- b. This **AGREEMENT** may be terminated in whole or in part in writing by either party without cause on sixty (60) days written notice.
- c. Upon receipt of a termination notice, the **CONSULTANT** shall promptly discontinue all services affected (unless the notice directs otherwise) and deliver or otherwise make available to the **OWNER** all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the **CONSULTANT** in performing this **AGREEMENT**, whether completed or in process.
- d. If this **AGREEMENT** is terminated by either party, the **CONSULTANT** shall be paid for services rendered pursuant to this **AGREEMENT**. If termination of the **AGREEMENT** occurs at the conclusion of one phase and prior to authorization of the **OWNER** to begin the next phase, payment by the **OWNER** of the completed phase shall be considered full compensation due the **CONSULTANT**.

G. Audit: Access to Records:

- a. The **CONSULTANT** shall maintain books, records, documents, and other evidence directly pertinent to the work under this **AGREEMENT** in accordance with generally accepted accounting principles and practices. The **OWNER**, the Federal Aviation Administration, the Comptroller General of the United States, or any of their duly appointed representatives shall have access to any books, documents, papers, records, and other evidence for the purpose of examination, audit, excerpts, and transcriptions.
- b. Records described above shall be maintained and made available during the performance under this **AGREEMENT** and for a period of three years after the **OWNER** makes final payment and all other pending matters are closed.

H. Headings:

- a. The headings of the exhibits, sections, schedules, and attachments as contained in this **AGREEMENT** are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions in such exhibits, sections, schedules, and attachments.

I. Assignment:

- a. **CONSULTANT** acknowledges that its services are unique and personal and its rights under this **AGREEMENT** may not be assigned, or its duties or obligations delegated without the express written consent of **OWNER**.

J. Construction Means and Methods:

- a. **CONSULTANT** shall not be responsible for construction means, methods, techniques, sequences or procedures of construction contractors, or the safety precautions and programs incident thereto, and shall not be responsible for such contractors' failure to perform work in accordance with the contract documents.

K. Indemnification:

- a. **CONSULTANT** agrees to indemnify and hold harmless the **OWNER**, its agents, officers, and employees, their successors and assigns, individually and collectively, with respect to all claims, demands, or liability for any injuries to any person (including death) or damage to any property arising out of the activities of **CONSULTANT** based on negligent acts of the **CONSULTANT**, its officers, agents, or employees, and the **CONSULTANT** shall defend against all such claims and pay all expenses of such defense, including attorney fees, and all judgments based thereon; provided that his obligation shall not extend to any damage, injury, or loss due to negligence of the **OWNER**.

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EXHIBIT G

MANDATORY FEDERAL PROVISIONS

A. CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

During the performance of this contract, the **CONSULTANT**, for itself, its assignees, and successors in interest (hereinafter referred to as the "**CONSULTANT**") agrees as follows:

1.1 Compliance with Regulations. The **CONSULTANT** shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

1.2 Nondiscrimination. The **CONSULTANT**, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The **CONSULTANT** shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

1.3 Solicitations for Contracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the **CONSULTANT** for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier shall be notified by the **CONSULTANT** of the **CONSULTANT's** obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

1.4 Information and Reports. The **CONSULTANT** shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the **OWNER** or the Federal funding agency to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the **CONSULTANT** is in the exclusive possession of another who fails or refuses to furnish this information, the **CONSULTANT** shall so certify to the **OWNER** or the Federal funding agency, as appropriate, and shall set forth what efforts it has made to obtain the information.

1.5 Sanctions for Noncompliance. In the event of the **CONSULTANT's** noncompliance with the nondiscrimination provisions of this contract, the **OWNER** shall impose such contract sanctions as it or the Federal funding agency may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the **CONSULTANT** under the contract until the **CONSULTANT** complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

1.6 Incorporation of Provisions. The **CONSULTANT** shall include the provisions of foregoing paragraphs 1.1 through 1.5 in every contract and subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The **CONSULTANT** shall take such action with respect to any contract, subcontract or procurement as the **OWNER** or the Federal funding agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the **CONSULTANT** becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the **CONSULTANT** may request the **OWNER** to enter into such litigation to protect the interests of the **OWNER** and, in addition, the **CONSULTANT** may request the United States to enter into such litigation to protect the interests of the United States.

B. DISADVANTAGED BUSINESS ENTERPRISES

1. **Contract Assurance (§26.13)** - The **CONSULTANT** or any **SUBCONSULTANT** shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The **CONSULTANT** shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the **CONSULTANT** to carry out these requirements is a material breach of this contract, which may result in the termination of this **CONSULTANT** or such other remedy, as the recipient deems appropriate.
2. **Prompt Payment (§26.29)** - The **CONSULTANT** agrees to pay each **SUBCONSULTANT** under this **AGREEMENT** for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the **CONSULTANT** receives from **OWNER**. The **CONSULTANT** agrees further to return retainage payments to each **SUBCONSULTANT** within ten (10) days after the **SUBCONSULTANT's** work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the **OWNER**. This clause applies to both DBE and non-DBE **SUBCONSULTANTS**, contractors, and subcontractors.
3. **Policy** - It is the policy of the US Department of Transportation (USDOT) that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this **AGREEMENT**. Consequently, the DBE requirements of 49 CFR Part 26 apply to this **AGREEMENT**.
4. **DBE Obligation** – The **CONSULTANT** agrees to ensure that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds under this **AGREEMENT**. The **CONSULTANT** agrees to take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure the Disadvantaged Business Enterprises have the maximum opportunity to compete for contracts. The **CONSULTANT** or any **SUBCONSULTANT** shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract.

C. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

1. No Federal appropriated funds shall be paid, by or on behalf of the **CONSULTANT**, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

D. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this **AGREEMENT** on the part of the **CONSULTANT** or their **SUBCONSULTANTS**, contractors or subcontractors may result in the suspension or termination of this **AGREEMENT** or such other action that may be necessary to enforce the rights of the parties of this **AGREEMENT**. The duties and obligations imposed by the **AGREEMENT** and any Contract Documents which become effective pursuant to this **AGREEMENT** and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

E. RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this contract are subject to regulations issued by the Federal funding agency and the **OWNER** of the Federal grant under which this contract is executed.

F. TRADE RESTRICTION CLAUSE

The **CONSULTANT**, by execution of this **AGREEMENT**, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR),
- b. has not knowingly entered into any **AGREEMENT** for this **PROJECT** with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list, and
- c. has not procured any product nor contracted for the supply of any product for use on the **PROJECT** that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the **CONSULTANT** knowingly procures or contracts for the supply of any product or service of a foreign country on said list for use on the **PROJECT**, the Federal funding agency may direct through the **OWNER** cancellation of the **AGREEMENT** at no cost to the Government.

Further, the **CONSULTANT** agrees that it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts for this **PROJECT**. The **CONSULTANT** may rely on the certification of a prospective contractor unless it has knowledge that the certification is erroneous.

The **CONSULTANT** shall provide immediate written notice to the **OWNER** if the **CONSULTANT** learns that its certification or that of a contractor or subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. A contractor or subcontractor must agree to provide written notice to the **CONSULTANT** if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the **CONSULTANT** or a **SUBCONSULTANT** knowingly rendered an erroneous certification, the Federal funding agency may direct, through the **OWNER**, cancellation of the **AGREEMENT** for default at no cost to the Government. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a **CONSULTANT** is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

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

The **CONSULTANT** certifies, by acceptance of this **AGREEMENT**, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

H. ACCESS TO RECORDS AND REPORTS

The **CONSULTANT** shall maintain an acceptable cost accounting system. The **CONSULTANT** agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the **CONSULTANT** which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcriptions. The **CONSULTANT** agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

I. TERMINATION OF CONTRACT

1. The **OWNER** may, by written notice, terminate this **AGREEMENT** in whole or in part at any time, either for the **OWNER's** convenience or because of failure to fulfill the **AGREEMENT** obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the **OWNER**.
2. If the termination is for the convenience of the **OWNER**, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
3. If the termination is due to failure to fulfill the **CONSULTANT's** obligations, the **OWNER** may take over the work and prosecute the same to completion by contract or otherwise. In such case, the **CONSULTANT** shall be liable to the **OWNER** for any additional cost occasioned to the **OWNER** thereby.

4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the **CONSULTANT** had not so failed, the termination shall be deemed to have been affected for the convenience of the **OWNER**. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause. The rights and remedies of the **OWNER** provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

J. AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

The **CONSULTANT** assures that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the **CONSULTANT** and any tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon.

In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

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EXHIBIT H

WORK AUTHORIZATION FOR PROFESSIONAL SERVICES
BETWEEN
HAWKINS COUNTY
AND
HOLT CONSULTING COMPANY, LLC

Project Location: _____ Project Number: _____

Project Name: _____

It is agreed to undertake the following work in accordance with the provisions of the Master Agreement for Professional Services dated _____ between the **HAWKINS COUNTY** and **HOLT CONSULTING COMPANY, LLC**.

Scope of Services: (Attachment A)

Method of Payment: (Attachment B)

(Example: Lump sum amount \$XX, XXX or not to exceed \$XX, XXX.)

(Attachment B shall include **CONSULTANT's** good faith estimate of Allowable Costs as described in Chapter 4 of Federal Aviation Administration Advisory Circular No. 150/5100-14E dated September 30, 2014.)

Agreed as to scope of services, time schedule, and budget:

For: **HOLT CONSULTING COMPANY, LLC**

For: **HAWKINS COUNTY**

Date: _____

Date: _____

Attachments: A – Scope of Services
B – Budget

EXHIBIT I

INSURANCE REQUIREMENTS

The **CONSULTANT** shall maintain the following insurance for the duration of the **AGREEMENT**.

1. General Liability
Each Occurrence - \$1,000,000.00, General Aggregate - \$2,000,000.00

2. Automobile Liability
Combined Single Limit - \$1,000,000.00

3. Workers' Compensation
As required by Statute and Employer's Liability with a \$500,000.00 Limit.

4. Professional Liability (Engineers)
Claim-Made Basis, \$1,000,000.00 Per Claim and \$1,000,000.00 Aggregate.



CONSULTING COMPANY, LLC.

Holt Consulting Company, LLC 2024 Hourly Rate Schedule

Principal	\$285.00
Senior Project Manager	\$275.00
Project Manager	\$225.00
Senior Engineer/Planner	\$215.00
Engineer/Planner	\$165.00
Designer	\$140.00
Technician	\$120.00
Technical Assistant	\$90.00
Administrative Assistant	\$80.00

Note:

The above rates are for calendar year 2024. Holt Consulting Company reserves the right to adjust the rates annually to reflect inflationary increases. Reimbursable expenses such as mileage, reproduction, shipping costs, and permitting fees are not included in the rates shown above.

RESOLUTION NO. 2024/08/09

TO THE HONORABLE MARK DEWITTE, CHAIRMAN, AND MEMBERS OF THE HAWKINS COUNTY BOARD OF COMMISSIONERS IN REGULAR SESSION, MET THIS 26th DAY OF AUGUST 2024.

RESOLUTION IN REF: GENERAL PURPOSE SCHOOL FUND BUDGET AMENDMENT

WHEREAS, the Hawkins County Board of Education has approved the attached budget amendment to the General Purpose School Fund, and now requests approval of said amendment by the Hawkins County Board of Commissioners.

NOW THEREFORE BE IT RESOLVED THAT the Hawkins County Board of Commissioners, meeting in regular session, August 26, 2024, go on record as passing this resolution.

Introduced by Esq. Nancy Barker
Vice-Chairman Budget Committee Estimated Cost: _____

Seconded by Esq. _____ Paid From _____ Fund

ACTION: Aye Nay Abstain Date Submitted 08-12-24

Roll Call _____ County Clerk: Nancy A. Davis

Voice Vote _____ By: _____

Absent _____

COMMITTEE ACTION: APPROVED DISAPPROVED

CHAIRMAN: _____

FUND: 141 GENERAL PURPOSE SCHOOL FUND
 AMENDMENT NUMBER: 1
 DATE: August 26, 2024

ORIGINAL BUDGET AMOUNT	66,877,215.00
PREVIOUS AMENDMENTS	-
TOTAL	66,877,215.00
REQUESTED AMENDMENT	2,054,820.27
TOTAL	68,932,035.27

	ACCOUNT NO	DESCRIPTION	CURRENT BUDGET	INCREASE	DECREASE	AMENDED BUDGET
		EXPENDITURES				
1	To budget the Niswonger grant for part-time Project on Track tutors.					
		71100 REGULAR INSTRUCTION PROGRAM				
	71100-163-NISWO	Educational Assistants	-	89,850.00		89,850.00
	71100-201-NISWO	Social Security	-	5,571.00		5,571.00
	71100-204-NISWO	Pensions	-	7,188.00		7,188.00
	71100-212-NISWO	Employer Medicare	-	1,303.00		1,303.00
	71100-217-NISWO	Retirement - Hybrid Stabilization	-	899.00		899.00
				104,811.00		
	44990-NISWO	Other Local Revenues		104,811.00		
2	To correct the 2024-2025 Coordinated School Health budget.					
	72120-105-CSH	Supervisor/Director	64,362.00	4,709.00		69,071.00
	72120-201-CSH	Social Security	3,990.00	293.00		4,283.00
	72120-204-CSH	State Retirement	4,505.00	330.00		4,835.00
	72120-206-CSH	Life Insurance	117.00		12.00	105.00
	72120-207-CSH	Medical Insurance	16,890.00			16,890.00
	72120-212-CSH	Employer Medicare	933.00	68.00		1,001.00
	72120-355-CSH	Travel	600.00			600.00
	72120-499-CSH	Other Supplies and Materials	2,000.00			2,000.00
	72120-524-CSH	Inservice/Staff Development	2,000.00			2,000.00
	72120-599-CSH	Other Charges	7,612.00		3,397.00	4,215.00
			103,009.00			105,000.00
	39000	Unassigned Fund Balance			1,991.00	
				5,400.00	5,400.00	
3	To budget the remainder of the SLICE grant.					
		72210 REGULAR INSTRUCTION PROGRAM				
	72210-189-SLICE	Other Salaries and Wages	-	293,525.00		293,525.00
	72210-201-SLICE	Social Security	-	18,198.00		18,198.00
	72210-204-SLICE	Pensions	-	23,482.00		23,482.00
	72210-212-SLICE	Employer Medicare	-	4,256.00		4,256.00
	72210-399-SLICE	Other Contracted Services	-	95,975.00		95,975.00
	72210-499-SLICE	Other Supplies and Materials	-	582,126.98		582,126.98
	72210-790-SLICE	Other Equipment	-	200,000.00		200,000.00
				1,217,562.98		
	48990	Other		1,217,562.98		
4	To budget the Project RAISE grant for recruitment and retention awards.					
		72220 SPECIAL EDUCATION PROGRAM				
	72220-124-RAISE	Psychological Personnel	-	9,000.00		9,000.00
	72220-201-RAISE	Social Security	-	558.00		558.00
	72220-204-RAISE	Pensions	-	310.00		310.00
	72220-212-RAISE	Employer Medicare	-	131.00		131.00
				9,999.00		
	44570-RAISE	Contributions and Gifts		9,999.00		
5	To make appropriations for the AP/AR clerk to attend the Comptroller's Certified County Finance Officer program.					
		72510 FISCAL SERVICES				
	72510-524	Inservice/Staff Development	-	805.00		805.00
	46990	Other State Revenues	596,507.00	805.00		597,312.00
6	To budget reimbursement of facility use for Northeast State Community College for adult education.					
		72610 OPERATION OF PLANT, 72250 TECHNOLOGY				
	72610-415-NESCC	Electricity		4,900.00		4,900.00

	72610-434-NESCC	Natural Gas		1,400.00		1,400.00
	72610-454-NESCC	Water and Sewer		200.00		200.00
	72250-350-NESCC	Internet Connectivity		3,000.00		3,000.00
				9,500.00		
	44990-NESCC	Other Local Revenues		9,500.00		
7	To budget reimbursement for custodians for facility use.					
		72610 OPERATION OF PLANT				
	72610-166-FACIL	Custodial Personnel	-	700.00		700.00
	72610-201-FACIL	Social Security	-	43.00		43.00
	72610-204-FACIL	Pensions	-	49.00		49.00
	72610-212-FACIL	Employer Medicare	-	10.00		10.00
				802.00		
	44990-FACIL	Other Local Revenues	-	802.00		802.00
8	To budget the remainder of the COPS grant.					
		72610 OPERATION OF PLANT				
	72610-790-COPS	Other Equipment	-	304,272.44		304,272.44
	44570-COPS	Contributions and Gifts		304,272.44		
	To budget the remainder of the FY23 COPS School Violence Prevention Program grant with a 25% match.					
		72620 MAINTENANCE OF PLANT				
	72620-399-COPS2	Other Contracted Services	-	405,000.00		405,000.00
	44570-COPS2	Contributions and Gifts	-	303,750.00	-	303,750.00
	39000	Unassigned Fund Balance			101,250.00	
9	To budget a donation received for Family Resource Center and correct the 2024-2025 reserve.					
		73300 COMMUNITY SERVICES				
	73300-499-FRC-DON	Other Supplies and Materials	9,278.00	265.85	189.00	9,354.85
	39000	Unassigned Fund Balance		189.00		
				454.85	189.00	
	44570-FRC-DON	Contributions and Gifts	-	265.85		
		TOTAL EXPENDITURES & FUND BALANCE		2,058,607.27	106,839.00	
		TOTAL REVENUES		1,951,768.27	-	

