

**OAK RIDGE CITY COUNCIL MEETING**  
Municipal Building Courtroom

February 11, 2013—7:00 p.m.

AGENDA

I. INVOCATION

The Reverend Troy Forrester, Associate Pastor of First United Methodist Church

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. APPEARANCE OF CITIZENS

V. PROCLAMATIONS AND PUBLIC RECOGNITIONS

A proclamation designating March 1, 2013 as *Arbor Day*.

VI. SPECIAL REPORTS

Briefing to the City Council by Delegation Chair Chuck Hope on recent visit to Atlanta EPA offices by City Council EPA Sub-Committee, staff, and former Councilmember Ellen Smith.

VII. CONSENT AGENDA

- a. Approval of the January 14, 2013 City Council Meeting minutes.
- b. Adoption of a resolution amending the contract (COR 96-01) between the City and Waste Connections of Tennessee, Inc., to establish a residential customer number beginning January 2013 and to set forth a simpler residential customer number calculation for future use.
- c. Adoption of a resolution amending Resolution 6-46-2012 to allow the City to purchase in-car digital video recording equipment for the Police Department from Insight Public Sector instead of L3 Communications.

VIII. RESOLUTIONS

- a. Adoption of a resolution authorizing a professional services agreement with Vaughn & Melton Consulting Engineering, Inc., Knoxville, for engineering services related to the Jackson Square Revitalization Project Phase I, in the estimated amount of \$152,945.00.
- b. Adoption of a resolution accepting an enhancement grant awarded by the State of Tennessee Department of Transportation to the City of Oak Ridge, Tennessee, to be utilized for construction of the Southern Appalachia Railway Museum in an amount not to exceed \$480,000.00; authoring the City to enter into the amended Enhancement Grant Agreement with TDOT; authorizing the City to enter into a construction management agreement with CROET and Heritage Center, LLC, for the project; and authorizing CROET and/or Heritage Center, LLC, to pay construction invoices for the project to be reimbursed by the City out of grant fund disbursements.

IX. PUBLIC HEARINGS AND FIRST READING OF ORDINANCES

X. FINAL ADOPTION OF ORDINANCES

XI. ELECTIONS/APPOINTMENTS, ANNOUNCEMENTS AND SCHEDULING

a. Elections/Appointments

- i. Elect one (1) member to the Oak Ridge Convention and Visitors Bureau
- ii. Elect one (1) member to the Elder Citizens Advisory Board
- iii. Appoint one (1) councilmember to the Sister City Support Organization

b. Announcements

c. Scheduling

XII. COUNCIL REQUESTS FOR NEW BUSINESS ITEMS OR FUTURE BRIEFINGS

XIII. SUMMARY OF CURRENT EVENTS

a. CITY MANAGER'S REPORT

b. CITY ATTORNEY'S REPORT

XIV. ADJOURNMENT

**PROCLAMATIONS  
AND  
PUBLIC RECOGNITIONS**

# PROCLAMATION

**WHEREAS**, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees and this holiday, called "Arbor Day," was first observed with the planting of more than a million trees in Nebraska; and

**WHEREAS**, Arbor Day is now observed throughout the nation and the world; and

**WHEREAS**, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and

**WHEREAS**, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

**WHEREAS**, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and

**WHEREAS**, trees, wherever they are planted, are a source of joy and spiritual renewal; and

**WHEREAS**, the City of Oak Ridge has been designated a "Tree City USA" by the National Arbor Day Foundation in recognition of the city's desire to maintain an effective program of tree care and planting that will continue through the years; and

**WHEREAS**, as part of this program, the City's Recreation and Parks Department distributes seedlings to fourth graders in all five of the elementary schools each year, and this year the seedlings will be sugar maples; and

**WHEREAS**, the program also includes the planting of an official tree on Arbor Day of each year, in cooperation with the UT Arboretum, with the planting location being rotated among the elementary schools; and

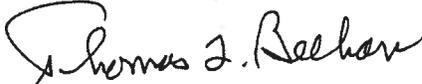
**WHEREAS**, this year a tulip poplar is being planted at Willowbrook Elementary School in a public ceremony to take place on Friday, March 1, 2013, at 10:00 a.m.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAK RIDGE, TENNESSEE**, that March 1, 2013, be proclaimed

## ARBOR DAY

in the City of Oak Ridge, Tennessee, and that all citizens be urged to support efforts to protect our trees and woodlands and to support our city's urban forestry program.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Great Seal of the City of Oak Ridge to be affixed, this the 1<sup>st</sup> day of March in the year 2013.

  
MAYOR

# CONSENT AGENDA

## **MINUTES OF THE OAK RIDGE CITY COUNCIL**

The regular meeting of the City Council of the City of Oak Ridge, Tennessee convened at 7:00 p.m. on January 14, 2013, in the Courtroom of the Municipal Building with Mayor Thomas L. Beehan presiding.

### **INVOCATION**

The Invocation was delivered by Dr. Tim Borchert of First Baptist Church.

### **PLEDGE OF ALLEGIANCE**

Ms. Ellen Smith led the Pledge of Allegiance to the Flag of the United States of America.

### **ROLL CALL**

Upon roll call the following councilmembers were present: Councilmember Trina Baughn; Mayor Thomas L. Beehan; Councilmember Anne Garcia Garland; Councilmember L. Charles Hensley; Councilmember Charles J. Hope, Jr.; Mayor Pro Tem D. Jane Miller; and Councilmember David N. Mosby.

Also present were Mark S. Watson, City Manager; Janice E. McGinnis, Finance Director; Kenneth R. Krushenski, City Attorney; and Diana R. Stanley, City Clerk.

(Agenda Amendment)

Mayor Beehan suggested an agenda amendment to consider the following ordinance after approval of the Consent Agenda:

AN ORDINANCE TO AMEND A USE DESIGNATION OF PARCEL 3.01, MAP 100J, GROUP B, IN HENDRIX CREEK PLANNED UNIT DEVELOPMENT, PHASE IV, LOCATED AT THE CORNER OF HENDRIX DRIVE AND HERITAGE DRIVE, FROM OPEN SPACE TO RESIDENTIAL, WITH THE OVERALL ZONING DISTRICT REMAINING R-1-C/PUD, ONE-FAMILY RESIDENTIAL WITH A PLANNED UNIT DEVELOPMENT OVERLAY.

Mayor Pro Tem Miller moved, seconded by Councilmember Hensley that the agenda be amended as referenced above. The motion was approved by unanimous voice vote with Councilmembers Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye."

### **APPEARANCE OF CITIZENS**

Mr. Martin McBride, 954 West Outer Drive, requested that the City consider generating a total cost estimate of Environmental Protection Agency (EPA) Administrative Order (AO). Mr. McBride indicated that there are three (3) missing elements: operating and maintenance costs, laterals costs, and money spent by the City prior to the Order.

### **PROCLAMATIONS AND PUBLIC RECOGNITIONS**

*A proclamation designating the month of January 2013 as "Free Medical Clinic of Oak Ridge Month."*

Councilmember Hensley moved, seconded by Councilmember Hope that the proclamation be adopted. The motion was approved by unanimous voice vote with Councilmembers Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye."

The proclamation was accepted by Ms. Theresa Britton, Executive Director of the Free Medical Clinic of Oak Ridge.

Mayor Beehan requested that the minutes reflect his comments regarding the late Mr. Kerry Trammell. Mayor Beehan noted that he Mr. Trammell had provided a great service to the community, especially as a board member of Elder Citizens Advisory Board. No opposition expressed by the councilmembers to

include these remarks.

### **SPECIAL REPORTS**

*Presentation and public meeting to provide information concerning the City of Oak Ridge's application for a Clean Water State Revolving Loan Fund (SRF).*

The City Manager noted that the State of Tennessee required a public meeting to receive public comments before consideration of the City's application for the Clean Water State Revolving Loan Fund could begin. Mr. Watson explained that funds were being sought to help with the rehabilitation of the waste water system as a result of the EPA's AO.

For informational purposes, Public Works Director Gary Cinder and Finance Director Janice McGinnis reviewed a presentation with the following key points of the City's possible Clean Water State Revolving (SRF) Loan Fund application: purpose, history, loan process, rehabilitation project description, as well as long-term benefits, short-term impacts, funding, debt instrument comparison, advantages of the SRF loan, and impact of wastewater rates. During and following the presentation, both Mr. Cinder and Ms. McGinnis responded to questions and comments of City Council.

Mayor Pro Tem Miller moved, seconded by Councilmember Hensley to open the floor for the scheduled public meeting. The following residents participated:

Mr. Don Quinley, 125 Barrington Drive, explained that he does not have any issues with the City Council applying for the loan, but that he was interested in receiving additional information regarding the rehabilitation plan. Specifically, Mr. Quinley asked several questions regarding the construction, implementation, and maintenance of the new basins would be installed as part of the City's plan. Mr. Cinder provided explanations regarding the basins construction, use, and possible locations.

Mr. Martin McBride, 954 West Outer Drive, suggested that City Council explore negotiating with the EPA and exploring other means to fund the AO, particularly the utilization of the Department of Energy (DOE), given the AO's significant impact on the community.

The following residents expressed their support in the City pursuing the SRF:

Ms. Ellen Smith, 116 Morningside Drive  
Mr. Joseph Lee, 99 East Pasadena Road  
Mr. Aditya Savara, 109 Trinton Drive

Councilmember Baughn moved that City Council direct the City Manager to immediately cease pursuit of these loans and, instead, direct him to ensure that all appeals to the both EPA and the DOE have been exhausted before committing any further funding toward these projects. Additionally, she requested that Council direct the City Manager to seek alternative funding solutions that do not further obligate the rate payers, increase the City's debt, or increase the tax rate.

Before addressing Councilmember Baughn's motion, the Mayor requested a motion to close the public meeting to which Councilmember Hensley moved, seconded by Mayor Pro Tem Miller that the public meeting be closed. The motion was approved by unanimous voice vote Councilmembers Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye."

Councilmember Baughn's motion was not seconded.

(The Mayor requested that the ordinance on the agenda be considered before the Consent Agenda. No opposition was expressed by City Councilmembers.)

(Agenda Amended)

## **PUBLIC HEARINGS AND FIRST READING OF ORDINANCES**

### **First Reading of an Ordinance**

AN ORDINANCE TO AMEND A USE DESIGNATION OF PARCEL 3.01, MAP 100J, GROUP B, IN HENDRIX CREEK PLANNED UNIT DEVELOPMENT, PHASE IV, LOCATED AT THE CORNER OF HENDRIX DRIVE AND HERITAGE DRIVE, FROM OPEN SPACE TO RESIDENTIAL, WITH THE OVERALL ZONING DISTRICT REMAINING R-1-C/PUD, ONE-FAMILY RESIDENTIAL WITH A PLANNED UNIT DEVELOPMENT OVERLAY.

Mayor Pro Tem Miller moved, seconded by Councilmember Baughn that the ordinance be approved on first reading.

Community Development Director Kathryn Baldwin explained that the item was deferred from the December City Council meeting to allow City Council to receive and review an Ordinance No. 34-87 that removed open space designation from other lots in Hendrix Creek in the 1970s.

Mr. Ken Peters, 100 Hollbrook Lane, remarked that the Open Space Designation adds value to his property, which was a main selling point for acquiring the property when explained by his realtor explained the zoning designation. Mr. Peters concluded that he is requesting that City Council not make any changes to the zoning and leave the space as Open Space Designation.

Mr. Lyn Cardwell, 104 Hollbrook Lane, noted that he had received information from the developer of the property that the parcel was designated for greenbelts and would not be developed, and that during the property's selling transition, he thought that he would be unable to pursue purchasing. He concluded that if greenbelts add value to one's home, then conversely, removing the designation would have a negative effect on his home value and requested that City Council not approve the request.

Mr. Bill Simpson, 102 Hollbrook Lane, commented that the previous homeowners of his property had also thought that the lot was City-owned greenbelt. Mr. Simpson noted that zoning is a protection for those buying property and for existing homeowners. Mr. Simpson questioned about the sustainability of rezoning statutes, and requested that City Council uphold the previous denial decisions.

Mr. Robert Wilkinson, 100 Carson Lane, representing the adjacent property owners, raised some concerns of rezoning from the Open Space Designation. Mr. Wilkinson explained that Planned Unit Development (PUD) allows for a concentrated development of residential dwellings and still has value for residents to locate to said dwellings. He cautioned that if the rezoning occurred, then the City could have to consider the prospect of selling greenbelts, and asked that City Council not allow the rezoning.

Mr. Aditya Savara, 109 Trenton Drive, explained that it was the responsibility of the property owners to learn about the designation of the parcel next to them, and that the rezoning request should be approved.

Councilmembers Hensley, Baughn, Garcia Garland, and Mayor Pro Tem Miller discussed the amendment with staff responding to their questions.

Before City Council began the voting process, the City Clerk noted that the City had received a letter at the beginning of the meeting from Mr. and Mrs. Will and Janet Livingston, 101 Hardwick Place expressing their opposition to the development on the designated property.

The ordinance failed on first reading by board vote with Councilmembers Baugh, Garcia Garland, and Mayor Pro Tem Miller voting "Aye," and Councilmembers Hensley, Hope, Mosby, and Mayor Beehan voting "Nay."

### **CONSENT AGENDA**

Following an inquiry from Councilmember Mosby on the memo accompanying Resolution No. 1-3-2012, Oak Ridge Fire Chief Darryl Kerley clarified that the Oak Ridge Fire Department was purchasing sixty (66) flashlight at \$95.00 per flashlight.

Councilmember Hensley moved, seconded by Councilmember Hope that the Consent Agenda be approved as presented. The motion was approved by unanimous voice vote with Councilmembers Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye," thereby approving:

- o The December 10, 2012 City Council Meeting minutes.
- o The December 17, 2012 City Council Special Meeting minutes.
- o Adopting **Resolution No. 1-1-2013** approving updated Rules and Procedures for the Board of Building and Housing Code Appeals.
- o Adopting **Resolution No. 1-2-2013** authorizing the transfer of the ActFast Public Education Trailer to Morgan County at no cost.
- o Adopting **Resolution No. 1-3-2013** to accept a \$91,660.00 Assistance to Firefighter Grant Award from the Federal Emergency Management Agency (FEMA) for safety equipment.
- o Adopting **Resolution No. 1-4-2013** amending the bylaws for the Oak Ridge Municipal Planning Commission to change the regular meetings to the third Thursday of each month and to change the annual meeting to January.

### **RESOLUTIONS**

#### **Resolution No. 1-5-2013**

**Adoption of a resolution authorizing the City to apply for a grant from the Tennessee Department of Environment and Conservation (TDEC), Clean Tennessee Energy Program, in the amount of \$250,000.00 with a sixty percent (60%) local match, and accepting said grant if awarded.**

Mayor Pro Tem Miller moved, seconded by Councilmember Hope that the resolution be adopted, and was approved by unanimous voice vote with Councilmembers Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye."

#### **Resolution No. 1-6-2013**

**Adoption of a resolution to adopt the *City of Oak Ridge, Tennessee 2013 State and Federal Legislative Agenda* to inform state and federal officials of key projects, policies, and priorities in the City of Oak Ridge, and to help secure funding for agreed upon priorities of the community.**

Councilmember Hensley moved, seconded by Councilmember Hope that the resolution be adopted.

Councilmember Hensley noted that project "Oak Ridge General Aviation Airport" under the State Legislative Agenda should have Metropolitan Knoxville Airport Authority (MCAA) listed as a responsible agency, and that the benefit is to increase the commercial flight space at McGhee Tyson Airport while moving general aviation operations to a general aviation airport that can enhance the business communities access. The City Manager noted that he would coordinate language with McGhee Tyson Airport.

Councilmember Mosby requested that additional language be added to the legislative agenda that the Tennessee Department of Environment and Conservation (TDEC) provide routine updates to the City on the status of the \$18 million Environmental Management Waste Management Facility (EMWMF) Perpetual Care Fund. Government Affairs and Information Services Director Amy Fitzgerald provided City Council with a brief overview of the EMWMF.

The City Manager noted that City Staff would incorporate discussions from City Council into the legislative agenda.

Mr. Bill Nolan, Oak Ridge Consultant, responded to questions and comments of City Council regarding the "Fast Track" program and the Tennessee Basic Education Program.

The resolution was approved by unanimous voice vote with Councilmembers Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye."

#### FINAL ADOPTION OF ORDINANCES

(NONE)

#### ELECTIONS/APPOINTMENTS, ANNOUNCEMENTS AND SCHEDULING

##### Elections/Appointments

###### *YAB Screening Panel*

Councilmember Garcia Garland moved, seconded by Councilmember Hensley to accept Councilmember Hope as City Council's representative on the Youth Advisory Board (YAB) Screening Panel for a one (1) year term. The motion was approved by unanimous voice vote with Councilmembers Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye."

###### *EPA Committee*

No opposition was expressed by councilmembers to expand the current membership of the Committee to four (4) City Councilmembers. The following councilmembers—Garcia Garland, Hensley, Hope, and Mosby—were unanimously elected to serve by voice vote with Councilmembers Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye."

###### *Anderson County Development Corporation*

Councilmember Hope moved, seconded by Mayor Pro Tem Miller to confirm the Mayor's appointments of Councilmember Hensley and Ms. Louise B. Dunlap to serve as the City of Oak Ridge representatives on the Board of Directors for a term of office that is concurrent with the Mayor's current term. The motion was approved by voice vote with Councilmembers Hensley, Hope, Mosby, and Mayor Pro Tem Miller, and Mayor Beehan voting "Aye." Councilmember Baughn voted "Nay," and Councilmember Garcia Garland abstained.

###### *Anderson County Tourism Council*

Mayor Beehan noted that Councilmember Baughn was not accepting the original nomination to serve on the Tourism Council. Councilmember Garcia Garland volunteered to fill the position. Councilmember Hope moved, seconded by Councilmember Hensley to elect Councilmember Garcia Garland to the Advisory Board for a one-year term of office. The motion was approved by unanimous voice vote with Councilmembers Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye."

###### *Oak Ridge Municipal Planning Commission*

Councilmember Hensley moved, seconded by Mayor Pro Tem Miller to confirm the Mayor's appointment of Mr. Terry C. Domm as the Mayor's designated representative for a term of office that is concurrent with the Mayor's current term. The motion was approved by unanimous voice vote with Councilmembers

Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye."

*Highland View Redevelopment Board*

Councilmember Hensley moved, seconded by Mayor Pro Tem Miller that the Mayor continue his service on the Board for the duration of his term of office. The motion was approved by unanimous voice vote with Councilmembers Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye."

*Oak Ridge Economic Partnership*

Councilmember Hensley moved, seconded by Councilmember Hope to confirm the Mayor's appointment of Mayor Pro Tem Miller for a term of office of two (2) years of office or the remainder of her elected City Council position, whichever is the shortest. The motion was approved by unanimous voice vote with Councilmembers Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye."

*City Attorney's & City Manager's Evaluation Committee*

The Mayor noted that he was requesting that Councilmember Baughn serve in his place, and Councilmember Baugh accepted the request. Mayor Pro Tem Miller moved, seconded by Councilmember Hope to approve the nominations of Councilmember Garcia Garland (Chair), Mosby, and Baughn to serve on the City Attorney's Evaluation Committee, and Councilmember Hope (Chair), Mayor Pro Tem Miller, and Councilmember Hensley to serve on the City Manager's Evaluation Committee. The motion was approved by unanimous voice vote with Councilmembers Baughn, Garcia Garland, Hensley, Hope, Mosby, Mayor Pro Tem Miller, and Mayor Beehan voting "Aye."

Mayor Beehan request that since the City was beginning preparation in selecting an auditor, he would like for Councilmember Baughn to work with city staff during that process as the City Council's representative. No opposition was expressed by City Councilmembers.

Announcements

Scheduling

COUNCIL REQUESTS FOR NEW BUSINESS ITEMS OR FUTURE BRIEFINGS

Mayor Beehan requested that the City Clerk assemble documents from previous City Council meetings regarding economic development and City Council goals. Mayor Pro Tem Miller suggested that the documents begin when Mr. Darrell Akins served as a facilitator to present. Additionally, Mayor Pro Tem Miller suggested that Mr. Akins serve, again, as a facilitator.

Councilmember Hope noted that work produced from the above mentioned meetings should become finished products for use as a reference tool to City Council.

Councilmember Hensley requested that City Council set a meeting to discuss and establish policies to help with the City's future direction.

Councilmember Mosby suggested that City Council determine a clear goal before these meetings commence.

Councilmember Baughn inquired about the coordination for the Rules and Procedures Committee to begin meeting.

SUMMARY OF CURRENT EVENTS

CITY MANAGER'S REPORT

The City Manager noted that, currently, he was interested in having discussions with City Council to pursue two regular City Council meetings a month to help move city business faster.

CITY ATTORNEY'S REPORT

The City Attorney noted that the Industrial Development Board (IDB) was holding a special meeting to discuss the Alexander Inn Payment In Lieu of Taxes (PILT) on January 15, 2013 at 5:00 p.m. in the City Manager's Conference Room.

ADJOURNMENT

The meeting adjourned at 10:25 p.m.

Diana R. Stanley, City Clerk  
CITY OF OAK RIDGE, TENNESSEE

**PUBLIC WORKS DEPARTMENT MEMORANDUM**  
**13-03**

**DATE:** January 28, 2013  
**TO:** Mark Watson, City Manager  
**FROM:** Gary M. Cinder, P.E., Public Works Director   
**SUBJECT: SOLID WASTE CONTRACT AMENDMENT**

The accompanying resolution amends the existing contract with Waste Connections, Inc., COR 96-01, to adjust the number of customers served and to remove ambiguities in the original contract language, resulting in an additional \$27,664.20 during the remainder of FY2013 for the contracted services.

The original contract between the City and Waste Connections, Inc., beginning July 1996, included 11,645 residential customers to be served. The number of customers was calculated by the number of electric meters in service, less apartments (except Rolling Hills) and other multi-family dwellings. The contract allowed this number to be adjusted upon the request of the contractor, which occurred in September 2012. Public Works staff requested the assistance of the Finance Department and the Electric Department with following the calculation in Article V of the contract (copy attached) and found that the formula in the contract could not be easily calculated.

To determine the actual number of residents receiving services, Waste Connections, Inc. offered to perform a house count which includes driving every street in the city and recording the number of houses on each street. The Site Manager from Waste Connections, Inc. and a City staff person completed the house count during October 2012. Public Works staff has reviewed the house count and randomly compared the number of utility customers per street to the house count street totals. Staff requested several streets to be recounted, which Waste Connections, Inc. completed and confirmed the new total in December 2012.

The updated house count consisted of 12,351 residential customers eligible to receive trash collection services. The house count was then adjusted for the 52 homes being removed as part of the new Kroger development, making the adjusted house count total 12,299 units. The letter from Waste Connections (copy attached) requests an adjustment of the number of households serviced to become effective April 1, 2013. The table below provides cost information based on the current and proposed house count total for FY2013.

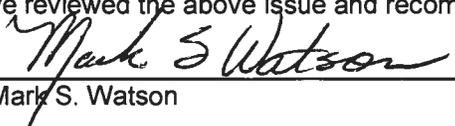
ITEM	CURRENT	PROPOSED	DIFFERENCE
House count Total	11,645	12,299	654
Per Household Cost	\$14.10	\$14.10	\$0
Monthly Cost	\$164,194.50	\$173,415.90	\$9,221.40
Annual Cost	\$1,970,334.00	\$1,997,998.20	\$27,664.20
The annualized cost of the revised house count total is \$110,656.80. The FY2014 per household cost will include a CPI adjustment, as required by the contract, increasing the annual cost and will need to be adjusted in the budget accordingly.			

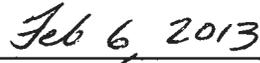
As previously mentioned, Article V of the original contract includes a method of updating the number of residential services that is very difficult to calculate. The original contract also contains conflicting language concerning multi-family units and special waste receptacles and containers. The proposed amendment (copy attached) to the contract clarifies the conflicting language and changes the method of updating the number of residential services to the universally accepted calculation of adding the number of residential building permits and deducting the number of residential demolition permits.

We continue to receive exemplary service with this contract. Funding for the proposed adjustment is currently available in the FY2013 Solid Waste Fund budget. Staff recommends approval of the amendment.

**City Manager's Comments:**

I have reviewed the above issue and recommend council action as outlined in this document.

  
\_\_\_\_\_  
Mark S. Watson

  
\_\_\_\_\_  
Date

the owners of private property, "special waste receptacles" may be replaced with "standard containers."

- g. **Bundle** shall mean and include boxes, cartons, paper, trimmings, and similar material, including brush, bound so as not to exceed four (4) feet in length, three and one-half (3 1/2) feet in perimeter and weighing less than fifty-five (55) pounds. Such bundles must be securely tied to facilitate handling with a binder of sufficient strength to bear the full weight of the bundle.
- h. **Plastic Bag** shall mean and include a bag made of plastic approximately two (2) feet in diameter and four (4) feet in length and be of sufficient strength to contain the weight of the contents without breaking open. Such plastic bags must be securely tied.
- i. **Service** shall mean and include the complete removal of stored refuse from all public and private residences and establishments covered by this contract, without regard for the degree of fullness of the storage container.
- j. **Residential Service** shall mean service to single family residential dwellings, duplexes, triplexes and multifamily residential dwellings (those containing four (4) or more contiguous living units intended exclusively for use as residential single persons or families). Residential service shall not include multifamily dwellings subscribing to commercial service.

### ARTICLE III - Payment

As consideration for performing all work and services set forth in this contract, and as full consideration thereof, the City agrees to pay the Contractor in accordance with the unit prices set forth in the Schedule of Quantities and Prices. Payment will be made monthly within twenty (20) days after receipt of acceptable itemized and certified invoices for services performed by the Contractor in accordance with the unit prices set forth in the Schedule of Quantities and Prices, as may be adjusted in accordance with Article V.

### ARTICLE IV - Final Payment

Upon completion of the work under this contract and before final payment, the Contractor must furnish evidence to satisfy the City that all suppliers of materials used and all labor and other employees working for the Contractor pursuant to this contract have been fully paid. Upon final payment, the City is to be released from all liability whatever growing out of the contract.

### ARTICLE V - Rate Adjustment

The City may at any time by written order, and without notice to the sureties, delete locations listed for servicing. The City may also at any time by written order, and without notice to the sureties, add locations for servicing and make changes in and additions to provisions and schedules under this contract within the general scope thereof and/or in the nature of the work to

be performed.

The number of residential locations and services upon which payments shall be based shall be the number of contracts with residential electrical customers adjusted according to the provisions of Articles V.a. and V.b. The number so determined shall prevail for purposes of computing payment for residential services through June 1997.

In the event the City annexes an area with existing residential units and the contractor is required to provide the services of this contract to these newly annexed units, the number of residential locations upon which payment shall be made will be automatically adjusted to reflect the new number of units serviced said adjustment to become effective with the first full month of service. The rate of payment per unit shall be that which is in effect for the current service year.

The number of residential services for subsequent years shall be redetermined by the same method on the last full day of business in June of each year for the following year. Compensation for residential services during the ensuing full year (July 1 through June 30) will be based upon the unit price, as determined below, times the number of residential customers.

The number of residential refuse customers will be determined annually for billing purposes by taking the number of residential electrical contracts and adjusting said number as follows:

- a. The number of extra meters at single-family residences with more than one meter (e.g., former duplexes or triplexes converted to single-family occupancy without removal of duplicate meter bases, home workshops with separate meters, etc.) shall be deducted from the total. Conversely, an appropriate upward adjustment in the billing figure will be made where a single meter base serves more than one household. A comprehensive survey will be made prior to initiation of the contract to determine such adjustments. Subsequent adjustments will be based upon information readily available to the Utilities Business Office or information based upon general observation.
- b. Multiple-family dwelling units served by commercial refuse collection (items other than that specified as "Residential Service/Recycle Options" in the Schedule of Prices, p. 9 of bid package) will not be included in the total residential units for residential service billing purposes. The number of individual meter connections at multiple-family units served by commercial refuse service will be deducted from the total residential units recorded in the Utilities Business Office.

In both a. and b. above, the City will provide the Contractor with a list of residential meter base addresses which have been deleted from or added to the gross figure supplied by the Utilities Business Office.

In calculating prices and adjustments, whenever the following terms occur, the interpretation shall have the meaning hereinafter given:



January 21, 2013

WASTE CONNECTIONS OF TN  
*Connect with the Future®*

Mr. Mark Watson  
City Manager  
City of Oak Ridge  
PO Box 1  
Oak Ridge, TN 37831

Dear Mr. Watson,

This letter is in regards to two changes we would like made to our agreement with the City of Oak Ridge as to our current collection contract.

At our request, we have completed a new home count using our Site Manager in Oak Ridge and a member of City staff assigned by Gary Cinder. The new home count consists of 12,351 residential customers receiving residential trash collection. We have adjusted this number down by the 52 homes being removed from service due to the new Kroger Project making the adjusted new home count total 12,299 units.

The second item we are requesting for approval is an amendment to our contract to better describe the services we are required to fulfill. There were some ambiguities in the contract language and working with Susan Fallon and Gary Cinder we have agreed on an annual home count adjustment method that simplifies the process and should be more accurate than the home electrical meter count. The amendment utilizes the number of new residential building permits less demolition permits for an adjustment on the anniversary date of our contract for the preceding year from July 1 to June 30<sup>th</sup>.

We ask for both of these changes to become effective April 1, 2013 as stated in the enclosed Amendment to Contract.

If you have any questions as to this matter, please feel free to call me at 865-679-2656 and I will be happy to talk or set up a meeting with you and Gary Cinder.

Sincerely,  
Waste Connections of Tennessee, Inc.

Douglas McGill  
Divisional Municipal Marketing Manager

CC: Gary Cinder-Public Works Director

**RESOLUTION**

A RESOLUTION AMENDING THE CONTRACT (COR 96-01) BETWEEN THE CITY AND WASTE CONNECTIONS OF TENNESSEE, INC., TO ESTABLISH A RESIDENTIAL CUSTOMER NUMBER BEGINNING JANUARY 2013 AND TO SET FORTH A SIMPLER RESIDENTIAL CUSTOMER NUMBER CALCULATION FOR FUTURE USE.

WHEREAS, by Resolution 4-52-96, City Council awarded a contract (COR 96-01) to Browning-Ferris Industries of Tennessee, Inc., (BFI) for weekly residential backdoor refuse pickup and curbside recycling, refuse pickup at City facilities, annual leaf pickup, annual cleanup campaign, and convenience center operation; and

WHEREAS, by Resolution 10-136-02, City Council assigned the contract to Waste Connections of Tennessee, Inc. (Waste Connections); and

WHEREAS, by Resolutions 11-161-98, 8-107-06, and 10-100-08, City Council amended and extended the contract, with said contract terminating on June 30, 2021; and

WHEREAS, the City and Waste Connections desire to amend the contract to establish the current actual customer number—which hasn't been recalculated since 1996—and to provide for a simpler method to calculate the number of residential customers receiving service in the future by utilizing building permit and demolition permit data; and

WHEREAS, the parties also desire to amend the contract to clarify some conflicting language; and

WHEREAS, the City Manager recommends said contract amendment.

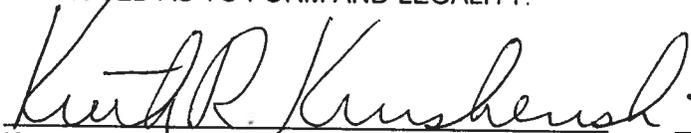
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAK RIDGE, TENNESSEE:

That the recommendation of the City Manager is approved and the attached amendment to COR 96-01 between the City and Waste Connections of Tennessee, Inc., is hereby approved.

BE IT FURTHER RESOLVED that the Mayor is hereby authorized to execute the appropriate legal instruments to accomplish the same.

This the 11th day of February 2013.

APPROVED AS TO FORM AND LEGALITY:



Kenneth R. Krushenski, City Attorney

\_\_\_\_\_  
Thomas L. Beehan, Mayor

\_\_\_\_\_  
Diana R. Stanley, City Clerk

**AMENDMENT  
(CONTRACT COR 96-01)**

This Amendment entered into this 11<sup>th</sup> day of February, 2013, by and between the City of Oak Ridge, Tennessee, hereinafter referred to as the "City," and Waste Connections of Tennessee, hereinafter referred to as the "Contractor," amends the contract known as COR 96-01, dated April 22, 1996.

**WITNESSETH**

WHEREAS, the City and Browning-Ferris Industries of Tennessee, Inc., entered in a contract (COR 96-01) for household refuse and recyclable collection and transportation services, approved by Resolution 4-52-96; and

WHEREAS, such contract was extended by Resolution 11-161-98, assigned to the Contractor by Resolution 10-136-02, amended and extended by Resolution 8-107-06, and amended and extended by Resolution 10-100-08; and

WHEREAS, COR 96-01, as amended, has a term expiration date of June 30, 2021 unless further renewed or extended in accordance with its terms.

NOW, THEREFORE, the parties desire to amend COR 96-01 as follows:

1. Services being provided as of the date of this amendment are grandfathered as they are currently being provided.
2. Article II, Definitions, is hereby amended by deleting subsection "f" in its entirety without replacement.
3. Article II, Definitions, is hereby amended by deleting subsection "j" in its entirety and replacing said subsection with a new subsection "j" which shall read as follows:
  - j. Residential Service shall mean service to: (1) single family detached residential dwellings, and (2) other multi-family attached residential dwelling units not exceeding four (4) contiguous living units used or intended for use as residences for single persons or single families located on a single lot or parcel of land. Residential service shall not include multi-family dwellings that include more than four (4) units of rental dwellings or those already subscribing to commercial service.
4. Article II, Definitions, is hereby amended by adding a new subsection "k" which subsection shall read as follows:
  - k. Residential Service Location Pick-Up – All multi-family residential service shall be picked up (collected) at ground level on the road frontage side of the site or complex or at an alternative location mutually agreeable to the Contractor and the City.
5. Article V, Rate Adjustment, is hereby amended by deleting paragraphs two through six, and adding the following language immediately after paragraph one and immediately prior to existing paragraph seven which begins "In calculating prices and adjustments...":

Beginning March 2014, the number of residential services shall be calculated by the City no later than April 1, 2014, upon receipt of the written request from the Contractor dated by March 1, 2014. The number of residential refuse customers will be calculated as stated in Item b below. Compensation for residential services during the ensuing full

fiscal year (July 1 through June 30) will be based upon the unit price, times the number of residential customers, as determined below.

- a. Current year residential customers as of January 1, 2013 totaling 12,299 will be the number of customers through June 30, 2014.

Both parties acknowledge the development schedule of the Kroger Marketplace that includes the removal of fifty-two (52) residential structures during the months of November 2012 through March 2013. The calculated residential customer number above includes the deduction of these fifty-two (52) residential structures.

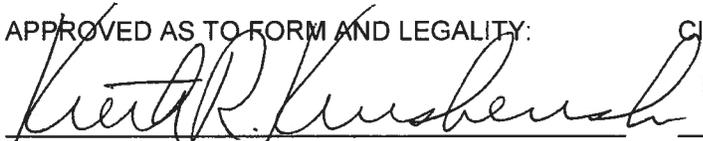
- b. For the billing period of July 1, 2014 through June 30, 2015, the number of residential customers will be determined by taking the calculated number of customers at January 1, 2013; adding the number of new residential building permits (4-plex and less) from January 1, 2013 through December 31, 2013 and subtracting the number of residential demolition permits (4-plex and less) from January 1, 2013 through December 31, 2013.
- c. The calculation described in item b above will be repeated each year for the remainder of the contract term.

- 6. Article XII, Refuse Collection, is hereby amended by deleting the phrase "special waste receptacles" from subsections "a" and "c," and deleting the phrase "special standard containers" in subsection "a."
- 7. This Amendment becomes effective with the April 1, 2013 billing cycle.
- 8. All other terms, conditions and provisions of COR 96-01, as amended, not in conflict with this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the City and the Contractor have caused this Amendment to be executed by the duly authorized representatives thereof.

APPROVED AS TO FORM AND LEGALITY:

CITY OF OAK RIDGE, TENNESSEE

  
\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Mayor

WASTE CONNECTIONS OF TENNESSEE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

Approved by Resolution \_\_\_\_\_

OAK RIDGE POLICE DEPARTMENT MEMORANDUM  
13-01

DATE: February 4, 2013  
TO: Mark S. Watson, City Manager  
FROM: James T. Akagi, Chief of Police  
SUBJECT: AMENDMENT TO RESOLUTION 6-46-2012 REGARDING THE CONTRACTOR FOR THE PURCHASE OF COMPATIBLE IN-CAR DIGITAL VIDEO RECORDING EQUIPMENT FOR THE POLICE DEPARTMENT

Introduction

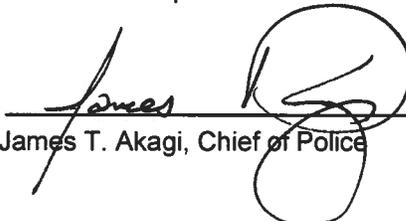
An item for the agenda is a resolution amending Resolution 6-46-2012 to allow the City to purchase compatible in-car digital video recording equipment for new police vehicles and required replacements for the Police Department from Insight Public Sector, Tempe, Arizona.

Background

City Council authorized the City to purchase compatible in-car digital video recording equipment for new police vehicles and required replacements for the Police Department from L3 Communications, in the estimated amount of \$55,000.00, by Resolution 6-46-2012. At the time of the resolution, L3 Communications was the sole supplier of compatible equipment. However, now there is a state contract available with Insight Public Sector to purchase this equipment with improved technology over what is available from L3 Communications. Additionally, purchasing equipment from Insight Public Sector will be more cost effective and is serviceable by our in-house Information Services Department whereas L3 Communications equipment is not.

Recommendation

Approval of the attached resolution is recommended, which will allow the City to purchase needed in-car digital video recording equipment through the state contract. Funds are available for this purchase.

  
James T. Akagi, Chief of Police

Attachment

**City Manager's Comments:**

I have reviewed the above issue and recommend Council action as outlined in this document.

  
Mark S. Watson

  
Date

**RESOLUTION**

A RESOLUTION AMENDING RESOLUTION 6-46-2012 TO ALLOW THE CITY TO PURCHASE IN-CAR DIGITAL VIDEO RECORDING EQUIPMENT FOR THE POLICE DEPARTMENT FROM INSIGHT PUBLIC SECTOR INSTEAD OF L3 COMMUNICATIONS.

WHEREAS, by Resolution 6-46-2012, City Council authorized the City to purchase in-car digital video recording equipment for new police vehicles and required replacements for the Police Department from L3 Communications, in the estimated amount of \$55,000.00; and

WHEREAS, at the time of the resolution, L3 Communications was the sole supplier of compatible equipment; and

WHEREAS, a state contract is now available with Insight Public Sector, Tempe, Arizona, utilizing improved technology over L3 Communications' equipment; and

WHEREAS, the City desires to utilize state contract pricing to purchase compatible equipment from Insight Public Sector; and

WHEREAS, said equipment is more cost effective for the City and can be serviced by the City's Information Services Department whereas L3 Communications' equipment cannot.

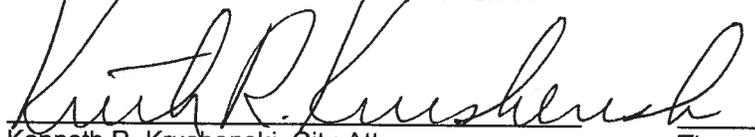
WHEREAS, the City Manager recommends an amendment to Resolution 6-46-2012 to allow the purchase to be made from Insight Public Sector.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAK RIDGE, TENNESSEE:

That the recommendation of the City Manager is approved and Resolution 6-46-2012 is hereby amended to allow the City to purchase compatible in-car digital video recording equipment for new police vehicles and required replacements for the Police Department from Insight Public Sector, Tempe, Arizona, instead of L3 Communications.

This the 11th day of February 2013.

APPROVED AS TO FORM AND LEGALITY:



Kenneth R. Krushenski, City Attorney

\_\_\_\_\_  
Thomas L. Beehan, Mayor

\_\_\_\_\_  
Diana R. Stanley, City Clerk

# RESOLUTIONS

**PUBLIC WORKS DEPARTMENT MEMORANDUM**  
**13-02**

**DATE:** January 30, 2013

**TO:** Mark S. Watson, City Manager

**FROM:** Steven R. Byrd, P.E., City Engineer 

**THROUGH:** Gary M. Cinder, P.E., Public Works Director 

**SUBJECT: JACKSON SQUARE REVITALIZATION PROJECT PHASE I –  
PROFESSIONAL SERVICES AGREEMENT**

The accompanying resolution authorizes an agreement between the City of Oak Ridge and Vaughn & Melton Consulting Engineering, Inc. (V&M) of Knoxville for professional services for the Jackson Square Revitalization Project Phase I in the total estimated amount of \$152,945.00

Oak Ridge City Council Resolution 10-94-11 authorized the City to apply for a Tennessee Department of Transportation (TDOT) Enhancement Grant in the amount of \$1,000,000.00. The grant application was approved by TDOT with the total budget of \$998,358.14. During a ceremony at Jackson Square in June 2012, Governor Bill Haslam announced approval of the grant with the State paying 80% of the construction cost in the grant application, estimated at \$798,687.00

Project enhancements included in the grant application and approved by TDOT for Jackson Square include but are not limited to: (see attached concept drawing)

- reconfiguration of the parking lot
- improving existing and constructing new sidewalk infrastructure
- creating open space including an interactive fountain
- landscaping
- connectivity to the parking lot on the north side of Broadway
- other amenities such as lighting, bike racks, benches, trash receptacles and signage

Upon award of the grant, a committee was established to select the engineering firm for design services for the project. Members included the City Manager Mark Watson, Public Works Director Gary Cinder, City Engineer Steven Byrd, Consultant Ray Evans, Jackson Square property owner Tony Cappiello, Oak Ridge Garden Club President Trish Jones and Jackson Square Merchants Association member Jeannie O'Brian.

Eight firms submitted letters of interest and qualifications for the Phase I design. Four of the eight firms were determined by the committee to be viable candidates for the design work and were invited for interviews and project presentations. Of the four firms interviewed, V&M was chosen to be the most qualified firm to perform the services requested. V&M has a diverse base of experience and qualifications and has worked on numerous projects similar to what is envisioned for the revitalization of Jackson Square. Working with V&M will be the landscape architecture firm, Hedstrom Design, and an environmental firm, S&ME, Inc. TDOT has listed V&M, Hedstrom and S&ME as having unlimited status in multiple areas of disciplines, and will approve their qualifications to perform the design services and inspection for the Jackson Square Revitalization Project.

City staff met with V&M to finalize the project scope of work and to negotiate the engineering services fee. As shown in the enclosed V&M proposal, the engineering services to be provided include:

- 1) deed research/field survey/ mapping,
- 2) design concept development/ National Environmental Policy Act (NEPA) phase,
- 3) preliminary plans/specifications/estimates,
- 4) construction phase plans/specifications/estimates and
- 5) Construction Engineering Inspection (CEI) and Administration.

**Public Works Department Memorandum**

**13-02**

**Page 2 of 2**

In accordance with a new TDOT policy, the City will be responsible for 100% of engineering design which includes items one through four as listed above, for an estimated amount of \$101,685.00. Item number five listed above, CEI, is considered a construction item with an estimated cost of \$51,260.00 which 80% will be reimbursed to the City by TDOT.

It is anticipated that bid ready construction plans and specifications will be completed within six to eight months upon approval of the Engineering Design Services Agreement. Upon City Council approval of the construction contract, the construction phase of the project is anticipated to be completed within six months. A project goal is to complete construction prior to the June 2014 Lavender Festival.

The grant application included a city budget for the project of \$280,000.00 which included \$200,000.00 for construction and \$80,000.00 for engineering design services. After negotiating the engineering fees with V&M, which includes a deduction in the budgeted CEI line item, the total estimated city cost of the project is \$283,070.00 with an estimated:

- \$181,385.00 for 20% of construction costs (including \$10,252.00 or 20% of CEI costs)
- \$101,685.00 for 100% of professional design services

As with all TDOT Enhancement Grant projects, the City is required to pay for all construction and CEI costs, receiving an 80% reimbursement from TDOT. The estimated cost of \$283,070.00 is available in the Capital Projects Fund.

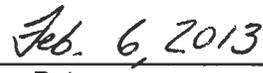
Staff recommends approval of the resolution awarding a professional services agreement to Vaughn & Melton Consultant Engineering, Inc. in the estimated amount of \$152,945.00

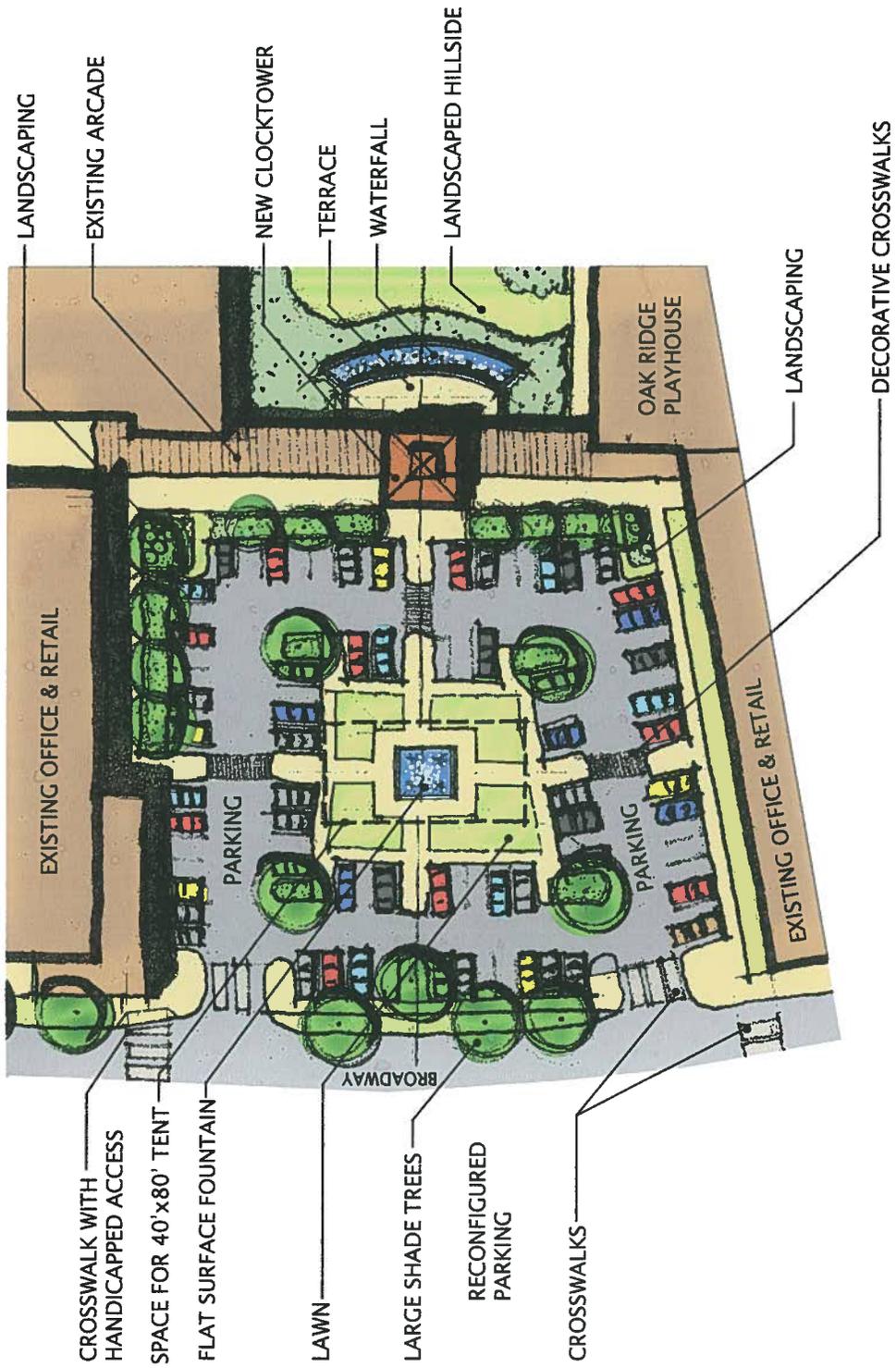
Enclosures: Jackson Square Drawing  
Vaughn & Melton Consultant Engineering, Inc. – Engineering Services Proposal

**City Manager's Comments:**

I have reviewed the above issue and recommend council action as outlined in this document.

  
\_\_\_\_\_  
Mark S. Watson

  
\_\_\_\_\_  
Date



# JACKSON SQUARE REVITALIZATION

ENLARGED CONCEPT PLAN



benefield.richters



## **Vaughn & Melton**

Engineering • Surveying  
www.vaughnmelton.com

January 17, 2013

City of Oak Ridge  
Attention: Mr. Steve Byrd, P.E.  
City Engineer  
Central Services Complex  
100 Woodbury Lane  
Oak Ridge, TN 37830

RE: Proposal for the Jackson Square Revitalization Project

Dear Steve,

Vaughn and Melton Consulting Engineers, Inc. along with Hedstrom Design, Inc. and S&ME (V&M) appreciates the opportunity to provide you with our proposal for performing the design and construction engineering inspection services for the referenced project site. This proposal contains our understanding of the work to be accomplished and an estimate of the fees.

### **PROJECT DESCRIPTION**

Our understanding is that the Tennessee Department of Transportation (TDOT) has awarded the City of Oak Ridge (City) a Transportation Enhancement Grant to revitalize Jackson Square in Oak Ridge, Tennessee. This federally funded project will be administered by the TDOT Local Programs Office. It is our further understanding that the City plans to utilize the funding to reconfigure the Jackson Square parking lot into a landscaped, more walkable plaza and parking area. The project area as we discussed with you in our meeting last week (12/12/12) is limited to the current Jackson Square Parking area between 205-253 Broadway Avenue and encompasses the existing parking lot and sidewalks in front of the existing buildings. We also understand that the project envelope needs to incorporate a connection between Jackson Square and the existing parking lot directly across Broadway Avenue including the stairway that connects Jackson Square to Towne Road. Our scope is based upon and includes items in the "Jackson Square Revitalization Enlarged Concept Plan" that was included in the grant application prepared by the City. We anticipate the NEPA determination for this project to be a Categorical Exclusion (CE) based on preliminary information provided to the design team.

### **PROJECT ELEMENTS/FEE**

#### **Deed Research/Field Survey/Base Mapping:**

1. Research and confirm property deeds and records for ROW confirmation
2. Topographic survey of site and appurtenances



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3. Base map import from City
4. Combine base map and site survey

**Fee: \$ 5,200.00**

### **Design Concept Development/NEPA Phase:**

1. Preparation of Purpose and Need Statement
2. Preparation of USFWS, USACE, TWRA and TDEC Agency Review Letters
3. Cultural Resource Surveys
4. Hazardous Material Evaluation
5. Noise and Air Studies
6. Confirm Jackson Square Concept Plan and project envelope
7. Prepare materials board and planting board
8. Design Concept Meeting with City staff
9. Stakeholder Meeting
10. Preparation of CE Document per TDOT format and TDOT Coordination for approval to proceed to Preliminary Phase

**Fee: \$ 41,430.00**

### **Plans, Specifications, and Estimates – Preliminary Phase:**

*Based upon approval of the Design Concept phase we will prepare:*

1. Proposed site plan per comments from the Conceptual Design Phase
2. Grading and drainage plans, signing, pavement markings, details required to construct the project
3. Erosion control, construction phasing, traffic control, general notes plans
4. Technical specifications including planting soils, plant material, site furnishings, specialty pavements, drainage, and special conditions per TDOT specifications
5. SWPPP for NPDES permit
6. Draft materials, layout, and planting plans
7. Draft details for the fountain, decorative pavement, fencing, and or seat walls
8. Draft fountain design/details
9. Estimate of probable cost per the scope
10. Coordinate with TDOT Local Programs/Utilities/ROW offices for Utilities Certifications
11. Coordination with TDOT Local Programs office for approval to proceed to Construction Documents Phase
12. Exhibits for Public Meeting, Assist City in coordination of Public Meeting, attend and present at Public Meeting



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**Fee: \$ 27,215.00**

### **Plans, Specifications, and Estimates – Construction Phase:**

*Based upon approval of the Preliminary Phase we will prepare the final construction documents*

1. Submit ROW (if applicable) plans to TDOT for approval to proceed with Construction Phase
2. Design and Contract Plans
3. Materials, layout, and planting plans
4. Details for fountain, decorative pavement, fencing and or seat walls
5. Fountain design and details
6. Final estimate of probable construction cost
7. Final technical specifications and special conditions
8. Submit Final Construction Documents to City for approval
9. Submit Final Construction Documents to TDOT for approval to proceed to Advertise for Bids for the Project
10. Coordinate and hold pre-bid meeting in City
11. Answer questions from potential bidders
12. Analyze bids per the contract documents
13. Prepare bid tabulation and recommendation for award to City/TDOT
14. Obtain approval to proceed with Construction from TDOT

**Fee: \$ 27,840.00**

### **Construction Engineering Inspection and Construction Administration Phase: upon approval to proceed with Construction from City/TDOT, we will:**

1. Coordinate and hold pre-construction meeting with TDOT Materials/TDOT Resident Engineer/Contractor/City
2. Review/Approve shop drawings per contract documents
3. Hold monthly progress meetings with aforementioned personnel to review Contract progress, Contractor Pay Application, DBE (if applicable)
4. Conduct monthly interviews with Construction Personnel per TDOT specifications
5. Review weekly certified payroll submittals from Contractor
6. Prepare and maintain necessary project files for City/TDOT/CEI per TDOT Local Program Guidelines
7. Review and recommend for approval Contractor Applications for Payment
8. Prepare TDOT reimbursement application for City and submit to LPA for payment on behalf of City
9. Review As-built drawings at project completion
10. Hold Punch List and Final Completion Meeting with



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- City/TDOT/Contractor
11. Submit project documentation to TDOT for project closeout
  12. Submit project documentation and TDOT certification

**Fee:       \$       51,260.00**

**Summary of Phase Services and Fee:**

Deed Research/Field Survey/Base Mapping:	\$       5,200.00
Design Concept Development/NEPA Phase	\$     41,430.00
Plans, Specifications, and Estimates – Preliminary Phase:	\$     27,215.00
Plans, Specifications, and Estimates – Const/Bid Phase:	\$     27,840.00

**Estimate Design Fee:                       \$     101,685.00**

CEI and Construction Administration Phase:                       \$     51,260.00

The CEI and Construction Administration Phase estimate is based upon a six (6) month construction period. This fee may be lesser or greater dependent upon the actual time of project construction.

This proposal is solely intended for the Services as listed above. The proposal does not provide for the development of a Memorandum of Agreement, Data Recovery Plan or other steps necessary to evaluate or address adverse effects on potentially significant resources that may be identified during the scope of work. Nothing in this proposal should be construed as fulfilling any consultation obligations of TDOT, USACE, the Tennessee Valley Authority or other federal agencies, enumerated in the *The Protection of Historic Properties* (36 CFR 800).

Also, should the USFWS request a threatened or endangered species survey, we will submit a change order for those services. In general, requests for additional studies that may be prompted by the regulatory scoping letters will be addressed under separate cover as a change order, once the specific issue of concern has been identified.

Thank you for the opportunity to serve the City of Oak Ridge on this project. If you should have any questions, or need any further information, please do not hesitate to contact me.

Sincerely,

Danl Hall, P.E., R.L.S.  
Senior Project Manager

**RESOLUTION**

A RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH VAUGHN & MELTON CONSULTING ENGINEERING, INC., KNOXVILLE, FOR ENGINEERING SERVICES RELATED TO THE JACKSON SQUARE REVITALIZATION PROJECT PHASE I, IN THE ESTIMATED AMOUNT OF \$152,945.00.

WHEREAS, by Resolution 10-94-11, City Council authorized the City to apply for and accept a \$1,000,000.00 enhancement grant from the Tennessee Department of Transportation (TDOT) to support the revitalization of Jackson Square, which grant requires a twenty percent (20%) local match; and

WHEREAS, the City was awarded a grant with a total budget cost of \$998,358.14, with TDOT paying eighty percent (80%) of the construction costs; and

WHEREAS, a committee comprised of City staff and certain Jackson Square interested parties reviewed letters of interest and qualifications from eight interested firms and ultimately recommended the firm of Vaughn & Melton Consulting Engineering, Inc., Knoxville, to provide the engineering services for this phase; and

WHEREAS, Vaughn & Melton Consulting Engineering, Inc., will utilize the services of Hedstrom Design and S&ME, Inc., all three of which are listed by TDOT as having unlimited status in multiple areas of discipline; and

WHEREAS, the City Manager recommends entering into a professional services agreement with Vaughn & Melton Consulting Engineering, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAK RIDGE, TENNESSEE:

That the recommendation of the City Manager is approved and the City is hereby authorized to enter into a professional services agreement with Vaughn & Melton Consulting Engineering, Inc., Knoxville, Tennessee, to provide various engineering services for the Jackson Square Revitalization Project Phase I, as set forth in their proposal dated January 17, 2013; said agreement in the estimated amount of \$152,945.00.

BE IT FURTHER RESOLVED that a \$51,260.00 portion of said engineering services is considered construction costs, eighty percent (80%) of which will be reimbursed by the Tennessee Department of Transportation under the grant applied for and accepted by Resolution 10-94-11.

BE IT FURTHER RESOLVED that the Mayor is hereby authorized to execute the appropriate legal documents to accomplish the same.

This the 11th day of February 2013.

APPROVED AS TO FORM AND LEGALITY:



Kenneth R. Krushenski, City Attorney

Thomas L. Beehan, Mayor

Diana R. Stanley, City Clerk

LEGAL DEPARTMENT MEMORANDUM  
13-07

DATE: January 30, 2013

TO: Honorable Mayor and Members of City Council

FROM: Kenneth R. Krushenski, City Attorney

SUBJECT: SOUTHERN APPALACHIA RAILWAY MUSEUM – ACCEPTANCE OF A GRANT FROM TDOT FOR CONSTRUCTION OF THE MUSEUM, APPROVAL OF THE AMENDED ENHANCEMENT GRANT AGREEMENT, APPROVAL OF A CONSTRUCTION MANAGEMENT AGREEMENT WITH CROET AND HERITAGE, AND AUTHORIZATION TO REIMBURSE CROET AND/OR HERITAGE FOR PAID CONSTRUCTION INVOICES RELATED TO THE PROJECT OUT OF GRANT FUND DISBURSEMENTS

Introduction

An item for City Council's consideration is a resolution accepting the amended enhancement grant from the Tennessee Department of Transportation for construction of the Southern Appalachia Railway Museum (SARM) in an amount not to exceed \$480,000.00 and authorizing the City to enter into the associated enhancement grant agreement. The resolution also authorizes the City to enter into a construction management agreement with the Community Reuse Organization of East Tennessee (CROET) and Heritage Center, LLC, (Heritage) for CROET and/or Heritage to provide the twenty percent (20%) local match required under the grant and associated construction management services to the City.

Background

By Resolution 6-94-00, City Council authorized submittal of an application for an enhancement grant from TDOT for the construction of the museum at the East Tennessee Technology Park (ETTP) in the amount of \$480,000.00. This grant required a twenty percent (20%) local match (equal to \$120,000.00) and the SARM non-profit organization committed to the City to raise the required match. Later, CROET agreed to provide the required local match. The grant was ultimately awarded, however, the project proceeded very slowly to the point that the State of Tennessee gave SARM a last chance opportunity to reach an authorization to proceed by no later than November 1, 2012. By Resolution 9-71-2012, City Council authorized the City Manager to contact to TDOT to cancel the grant if the deadlines were not met.

SARM had many hurdles to overcome by the deadline including major design revisions, a National Environmental Policy Act (NEPA) environmental clearance for the new site, identification of the right-of-way, and design review. However, TDOT is now ready to issue an authorization to proceed for this project and has submitted an amended enhancement grant agreement for the City's signature.

In addition to providing the local match, CROET and Heritage have signed a guaranty agreement with the City to assume full responsibility for repayment of the grant should the repayment provisions of the grant agreement be triggered. This guaranty agreement also specifies the City assumes no responsibility for any funds to support the museum project.

CROET and/or Heritage have agreed to provide payments for construction invoices on the museum project. TDOT will agree to provide reimbursement to the City under the grant for invoices paid by CROET and/or Heritage provided the City adopts a resolution setting forth such arrangement. The attached resolution sets forth that arrangement and also approves the grant agreement with TDOT. The grant agreement requires the City to enter into a construction contract for the project. In order to set forth the responsibilities of CROET and Heritage with respect to payment of invoices and reimbursement of

such payments by the City out of grant funds, a construction management agreement between the parties is needed. The resolution also approves the attached construction management agreement.

Recommendation

Approval of the attached resolution is recommended. Such approval will accomplish the following: acceptance of the TDOT enhancement grant in an amount up to \$480,000.00 for construction of the museum project; authorize the City Manager to sign the enhancement grant agreement, as amended, with TDOT; authorize the City Manager to sign the construction management agreement with CROET and Heritage; and allow the City to reimburse CROET and/or Heritage from grant fund disbursements from TDOT for project construction invoices.

  
Kenneth R. Krushenski

Attachments: Resolution 6-94-00  
Resolution 9-71-2012  
Guaranty Agreement  
Resolution for Council's Consideration  
Enhancement Grant Agreement  
Construction Management Agreement

**RESOLUTION**

WHEREAS, through the use of federal grant funds, the City of Oak Ridge can foster the building of the Southern Appalachia Railway Museum which is of significant value to the City; and

WHEREAS, the City desires to request a grant to foster the building of the Southern Appalachia Railway Museum in the amount of \$480,000 from the State of Tennessee Department of Transportation, to be matched with a twenty percent (20%) contribution in local funds; and

WHEREAS, the Southern Appalachia Railway Museum non-profit organization is committed to raise the required twenty percent (20%) contribution in local matching funds through its own sources for this grant; and

WHEREAS, the City Manager recommends submittal of the grant application.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCILMEN OF THE CITY OF OAK RIDGE, TENNESSEE:

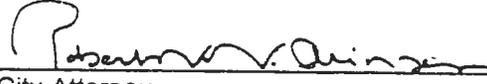
That the recommendation of the City Manager is approved and the City Manager is hereby authorized to submit a grant application to the State of Tennessee Department of Transportation for \$480,000 in grant funds, to be matched with a twenty percent (20%) contribution in local funds, to foster the building of the Southern Appalachia Railway Museum.

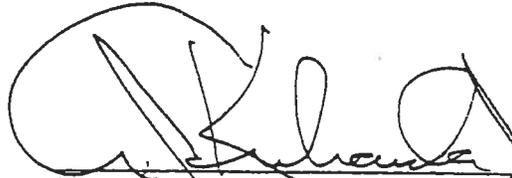
BE IT FURTHER RESOLVED that the required twenty percent (20%) local matching funds of approximately \$120,000 shall be provided by the Southern Appalachia Railway Museum non-profit organization.

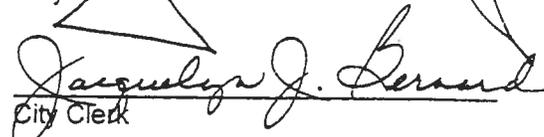
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the appropriate legal instruments to accomplish the same.

This the 19th day of June 2000.

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
City Attorney

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Clerk

**RESOLUTION**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT A LETTER TO THE TENNESSEE DEPARTMENT OF TRANSPORTATION RELEASING THE ENHANCEMENT GRANT FUNDS FOR THE CONSTRUCTION OF THE SOUTHERN APPALACHIAN RAILWAY MUSEUM.

WHEREAS, by Resolution 8-94-00, City Council authorized the submission of a grant application to the Tennessee Department of Transportation (TDOT) for construction of the Southern Appalachian Railway Museum (SARM), with the twenty percent (20%) local matching funds to come from the SARM non-profit organization; and

WHEREAS, the grant was subsequently awarded to the City by TDOT, however, the SARM project has proceeded slowly and TDOT has given a deadline of November 1, 2012 to meet certain requirements in order to obtain an authorization to proceed; and

WHEREAS, those requirements include environmental clearances, right-of-way and utility certifications, permit approvals, design plan revisions, detailed cost estimate revisions, bid specification revisions, and a revised bid advertisement; and

WHEREAS, the Community Reuse Organization of East Tennessee (CROET) is now providing the local match and must submit to the City an agreement to be responsible for all funding not covered by the grant; and

WHEREAS, while the City is not involved in the funding of this project, the City is the grantee and TDOT is not taking action on other City projects—such as the Jackson Square renovation—until this project is either underway or terminated; and

WHEREAS, the City Manager requests authorization from City Council to submit a letter to TDOT releasing the grant in the event it is determined by the City Manager, after consultation with CROET, that the requirements for the SARM project will not be met by the November 1, 2012 deadline.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAK RIDGE, TENNESSEE:

That City Manager is hereby authorized to submit a letter to the Tennessee Department of Transportation (TDOT) releasing the enhancement grant for construction of the Southern Appalachian Railway Museum (SARM) in the event it is determined by the City Manager after consultation with the Community Reuse Organization of East Tennessee and the Southern Appalachian Railway Museum (SARM) that the requirements for the SARM project will not be met by the November 1, 2012 deadline thereby allowing TDOT to utilize those grant funds for other projects and allow the grant for the Jackson Square renovation project to move forward.

This the 10th day of September 2012.

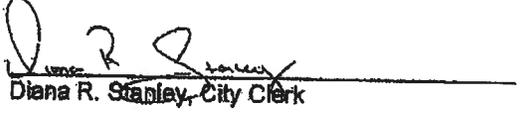
APPROVED AS TO FORM AND LEGALITY:



Kenneth R. Krushenski, City Attorney



Thomas L. Beehan, Mayor



Diana R. Stanley, City Clerk

## **GUARANTY AGREEMENT**

**THIS GUARANTY AGREEMENT** made and entered into this 8th day of November, 2012, between the **CITY OF OAK RIDGE ("COR")** and the **COMMUNITY REUSE ORGANIZATION OF EAST TENNESSEE ("CROET")** and the **HERITAGE CENTER, LLC ("Heritage")**.

### **WITNESSETH THAT:**

**WHEREAS**, by Resolution No. 6-94-00, City Council authorized the submission of a grant application to the Tennessee Department of Transportation ("TDOT") for construction of the Southern Appalachia Railway Museum, Incorporated ("SARM"), with the twenty percent (20%) local matching funds to come from the SARM non-profit organization; and

**WHEREAS**, TDOT subsequently awarded such grant to the COR in the amount of Four Hundred Eighty Thousand Dollars (\$480,000.00) (the "TDOT Grant"), however, the SARM Project has proceeded slowly and TDOT has given a deadline of November 9, 2012 to meet certain requirements in order to obtain an authorization to proceed; and

**WHEREAS**, those requirements include environmental clearances, right-of-way and utility certifications, permit approvals, design plan revisions, detailed cost estimate revisions, bid specification revisions, and a revised bid advertisement; and

**WHEREAS**, the TDOT Grant requires that under certain limited conditions the TDOT Grant may have to be repaid; and

**WHEREAS**, as a part of their support for the SARM Project, CROET and/or Heritage has agreed to repay the TDOT Grant to TDOT if the repayment requirements are triggered.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt of which is acknowledged, the Parties, COR, CROET and/or Heritage, agree as follows:

1. CROET is a non-profit corporation duly organized, legally existing, and in good standing under the laws of the State of Tennessee. Heritage is a non-profit limited liability company duly organized, legally existing, and in good standing under the laws of the State of Tennessee.
2. CROET and/or Heritage is duly authorized and empowered to execute, deliver, and perform under this Guaranty Agreement, and Heritage's Board of Governors has authorized Heritage to execute and perform under this Guaranty Agreement. All other corporate action on Heritage's part required for the due execution, delivery, and performance of this Guaranty Agreement has been duly and effectively taken. A copy of the Affidavit of the Heritage Chief Manager is attached as Exhibit A.

3. COR, by virtue of this Guaranty Agreement with Heritage, assumes no responsibility for providing any funds to support the SARM Project except for the TDOT Grant.
4. CROET and/or Heritage, in accordance with City Council Resolution No. 6-94-00 set out in Exhibit B attached hereto, assume full responsibility for repayment of the TDOT Grant in the event that the TDOT Grant repayment provisions are triggered and agrees to hold COR harmless from any repayment obligation up to the amount of the TDOT Grant.
5. The obligations of CROET and/or Heritage under this Guaranty Agreement are continuing, absolute and unconditional and shall remain in full force and effect until either (i) the TDOT Grant has been repaid in full and discharged, or (ii) the obligation to repay the TDOT Grant has expired or terminated and such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event whatsoever.
6. The provisions of this Guaranty Agreement are intended to be for the benefit of the COR, and CROET and/or Heritage shall not assign any rights or delegate any obligation hereunder without prior approval of City Council. Any attempted assignment or delegation without the prior consent of City Council shall be void.
7. All communications under this Guaranty Agreement shall be in writing and shall be deemed given when delivered and, if delivered by mail, shall be mailed by registered or certified first class mail, postage prepaid, and addressed as follows:

**To: CROET**

Mr. Lawrence T. Young,  
President  
Community Reuse Organization  
of East Tennessee  
1020 Commerce Park Drive, Suite L  
Oak Ridge, Tennessee 37830

**To: CITY OF OAK RIDGE**

Mr. Mark S. Watson  
City Manager  
City of Oak Ridge  
P. O. Box 1  
Oak Ridge, Tennessee 37831-0001

**To: HERITAGE**

Mr. Lawrence T. Young,  
Chief Manager  
Heritage Center, LLC  
1020 Commerce Park Drive, Suite L  
Oak Ridge, Tennessee 37830

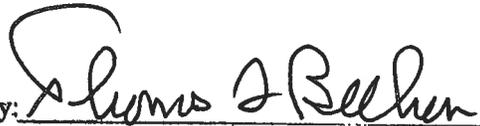
8. This Guaranty Agreement is irrevocable and represents the entire understanding between the parties concerning the liability of CROET and/or Heritage to guarantee repayment of the TDOT Grant set out in Exhibit B, and no provision of this Guaranty Agreement may be amended or waived without approval of City Council.

COMMUNITY REUSE ORGANIZATION  
OF EAST TENNESSEE

By:   
Lawrence T. Young

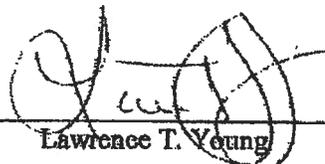
Title: President

CITY OF OAK RIDGE, TENNESSEE

By:   
Thomas J. Beeher

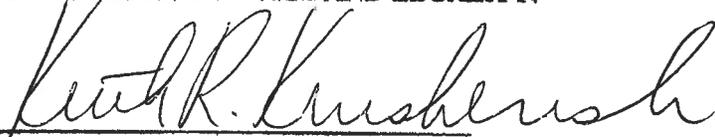
Title: Mayor

HERITAGE CENTER, LLC

By:   
Lawrence T. Young

Title: Chief Manager

APPROVED AS TO FORM AND LEGALITY:

  
Kenneth R. Krushenski  
City Attorney

This Instrument Prepared By:  
Kenneth R. Krushenski, Attorney  
City of Oak Ridge  
200 S. Tulane Avenue  
P. O. Box 1  
Oak Ridge, Tennessee 37831

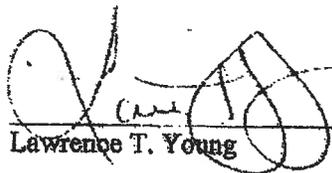
STATE OF TENNESSEE  
COUNTY OF ANDERSON

AFFIDAVIT

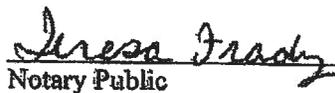
I, Lawrence T. Young, after first being duly sworn according to law hereby make oath as follows:

1. I am the Chief Manager of Heritage Center, LLC ("Heritage").
2. As such Chief Manager I am authorized by the Board of Governors of Heritage to execute the Guaranty Agreement to which this Affidavit is attached, and to bind Heritage to fully perform its obligations according to the terms of said Guaranty.

Further Affiant saith not.

  
Lawrence T. Young

Sworn and subscribed to before me this 8<sup>th</sup> day of November, 2012.

  
Notary Public

My Commission Expires: 3/12/13



**EXHIBIT B**

**City of Oak Ridge Resolution**

**(attached)**

**RESOLUTION**

WHEREAS, through the use of federal grant funds, the City of Oak Ridge can foster the building of the Southern Appalachia Railway Museum which is of significant value to the City; and

WHEREAS, the City desires to request a grant to foster the building of the Southern Appalachia Railway Museum in the amount of \$480,000 from the State of Tennessee Department of Transportation, to be matched with a twenty percent (20%) contribution in local funds; and

WHEREAS, the Southern Appalachia Railway Museum non-profit organization is committed to raise the required twenty percent (20%) contribution in local matching funds through its own sources for this grant; and

WHEREAS, the City Manager recommends submittal of the grant application.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCILMEN OF THE CITY OF OAK RIDGE, TENNESSEE:

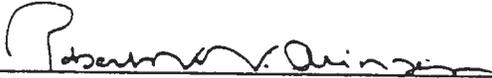
That the recommendation of the City Manager is approved and the City Manager is hereby authorized to submit a grant application to the State of Tennessee Department of Transportation for \$480,000 in grant funds, to be matched with a twenty percent (20%) contribution in local funds, to foster the building of the Southern Appalachia Railway Museum.

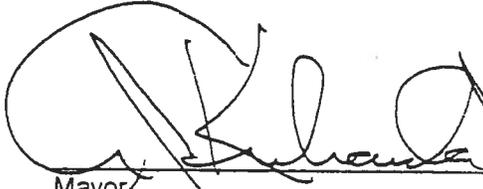
BE IT FURTHER RESOLVED that the required twenty percent (20%) local matching funds of approximately \$120,000 shall be provided by the Southern Appalachia Railway Museum non-profit organization.

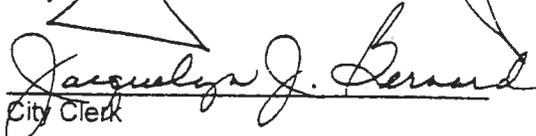
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the appropriate legal instruments to accomplish the same.

This the 19th day of June 2000.

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
City Attorney

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Clerk

**RESOLUTION**

A RESOLUTION ACCEPTING AN ENHANCEMENT GRANT AWARDED BY THE STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION TO THE CITY OF OAK RIDGE, TENNESSEE, TO BE UTILIZED FOR CONSTRUCTION OF THE SOUTHERN APPALACHIA RAILWAY MUSEUM IN AN AMOUNT NOT TO EXCEED \$480,000.00; AUTHORIZING THE CITY TO ENTER INTO THE AMENDED ENHANCEMENT GRANT AGREEMENT WITH TDOT; AUTHORIZING THE CITY TO ENTER INTO A CONSTRUCTION MANAGEMENT AGREEMENT WITH CROET AND HERITAGE CENTER, LLC, FOR THE PROJECT; AND AUTHORIZING CROET AND/OR HERITAGE CENTER, LLC, TO PAY CONSTRUCTION INVOICES FOR THE PROJECT TO BE REIMBURSED BY THE CITY OUT OF GRANT FUND DISBURSEMENTS.

WHEREAS, by Resolution 6-94-00, City Council authorized the submission of a grant application to the Tennessee Department of Transportation (TDOT) for construction of the Southern Appalachia Railway Museum (SARM), with the twenty percent (20%) local matching funds to come from the SARM non-profit organization; and

WHEREAS, pursuant to Agreement No. 2001594 for Project No. 041831.00, as amended by Amendment Number 1, (Enhancement Grant Agreement), TDOT has awarded an enhancement grant (Enhancement Grant) in an amount not to exceed Four Hundred Eighty Thousand Dollars (\$480,000.00), with a required local match of One Hundred Twenty Thousand Dollars (\$120,000.00), to the City of Oak Ridge, Tennessee, for the purpose of constructing the Southern Appalachian Railway Museum (SARM Museum Project) on a parcel fronting Heritage Center Boulevard at the former K-25 Site now known as the East Tennessee Technology Park (ETTP); and

WHEREAS, the required \$120,000.00 match will be fully funded by the Community Reuse Organization of East Tennessee (CROET) and/or its affiliate Heritage Center, LLC (Heritage); and

WHEREAS, although the Enhancement Grant Agreement requires the City to remain the obligor for the purposes of assuring that grant proceeds are properly utilized for construction of the SARM Museum Project, the City has requested, and CROET and Heritage have agreed, to assist the City in overseeing the SARM Museum Project and in managing construction of the SARM museum building; and

WHEREAS, the Enhancement Grant Agreement provisions further state that the Enhancement Grant can only be disbursed by TDOT to reimburse construction payments made for the SARM Museum Project after such payments have been made; and

WHEREAS, CROET and/or Heritage have agreed to advance such construction payments for the SARM Museum Project, but only upon the City's agreement to reimburse CROET and/or Heritage with funds from the Enhancement Grant; and

WHEREAS, TDOT has agreed that the City will be eligible for Enhancement Grant disbursements if CROET and/or Heritage pay SARM Museum Project construction invoices directly, but only if the Oak Ridge City Council adopts a resolution approving such arrangement; and

WHEREAS, pursuant thereto, the City, CROET, and Heritage have agreed to enter into a construction management agreement (Construction Management Agreement); and

WHEREAS, it is to the benefit of the citizens of the City of Oak Ridge, Tennessee, and the recommendation of the City Manager that the City accept the Enhancement Grant from TDOT and enter into the Construction Management Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAK RIDGE, TENNESSEE:

That the recommendation of the City Manager is approved and the City of Oak Ridge, Tennessee, hereby accepts the Enhancement Grant awarded by the State of Tennessee Department of Transportation (TDOT) in an amount not to exceed \$480,000.00 for the construction of the Southern Appalachia Railway Museum Project (SARM Museum Project).

BE IT FURTHER RESOLVED the City is hereby authorized to enter into the attached Amendment Number 1 to Agreement Number 2001594 (Enhancement Grant Agreement) for said project and the attached Construction Management Agreement between the City, the Community Reuse Organization of East Tennessee (CROET), and the Heritage Center, LLC, (Heritage).

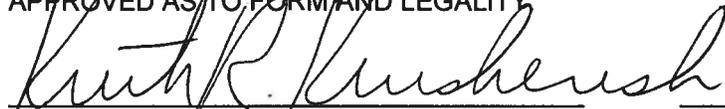
BE IT FURTHER RESOLVED that CROET and/or Heritage are authorized by the City to pay construction invoices for the SARM Museum Project and have agreed to do so.

BE IT FURTHER RESOLVED that after receipt of grant fund disbursements from TDOT, the City is authorized reimburse CROET and/or Heritage with said grant fund disbursements for construction invoices CROET and/or Heritage have paid for the SARM Museum Project.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the appropriate legal instruments to accomplish the same.

This the 11th day of February 2013.

APPROVED AS TO FORM AND LEGALITY:



Kenneth R. Krushenski, City Attorney

Thomas L. Beehan, Mayor

Diana R. Stanley, City Clerk

**Amendment Number: 1**

**Agreement Number: 2001594**

**Project Identification Number: 041831.00**

**Federal Project Number: STP-EN-NHE-58(24)**

**State Project Number: 73011-3621-94**

**FOR IMPLEMENTATION OF SURFACE TRANSPORTATION  
PROGRAM ACTIVITY**

THIS AGREEMENT AMENDMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF OAK RIDGE (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

Southern Appalachia Railway Museum: Construction of a railroad museum west of the main entrance to K-25/East Tennessee Technology Park on SR 58. Building will be approximately 40 ft x 120 ft and include exhibit space, a waiting area, information area, auditorium for education presentations, staffing offices, restrooms and a merchandise sales area. Project includes parking area, walkways and an ADA accessible boarding location for the excursion train.

1. The language of AGREEMENT # 2001594 dated March 28, 2005 is hereby deleted in its entirety and replaced with the following:

**A. PURPOSE OF AGREEMENT**

**A.1 Purpose:**

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.
- b) In the event this Agreement includes a Safe Routes to School Grant for non-infrastructure activities, a Detailed Grant Budget as further described in Attachment 1 attached hereto and by this reference made a part hereof (hereinafter

called the "Project") shall provide line-item amounts as applicable only to expenses incurred during the period between the effectual date of this Agreement and the completion date shown in Section B.2(c) hereof. Expenditures, reimbursements, and payments under this Grant Agreement shall adhere to the Grant Budget. The Agency may vary from a Grant Budget line-item amount by up to fifteen percent (15%) of the line-item amount, provided that any increase is offset by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Agreement amount detailed in the Grant Budget and provided that written approval of any such variance is received prior to the expenditure. The percentage of expenditure for non-infrastructure work versus infrastructure work also cannot be changed. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Agreement.

**A.2 Modifications and Additions:**

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

**B. ACCOMPLISHMENT OF PROJECT**

**B.1 General Requirements:**

- a)

	<b>Responsible Party</b>	<b>Funding Provided by: Agency or Project</b>
Preliminary Engineering by:	<b>Agency</b>	<b>Agency</b>
Environmental Clearance by:	<b>Agency</b>	<b>Agency</b>
Right-of-Way by:	<b>Agency</b>	<b>Agency</b>
Utility Coordination by:	<b>Agency</b>	<b>Agency</b>
Construction by:	<b>Agency</b>	<b>Project</b>

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.

- c) If this Agreement is funded with any Enhancement funds, then the Agency shall provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed with the Construction Phase by November 1, 2012. If the Agency does not provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed with the Construction Phase by the aforesaid date, then the Department may terminate this Agreement in accordance with Section D.23.
  
- d) A full time employee of the Agency shall supervise the herein described and assigned phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

**B.2 Completion Date:**

- a) The Agency shall complete the herein assigned phases of the Project on or before **December 31, 2013**. The Department shall have no obligation to reimburse the Agency for expenditures after the aforesaid completion date. An extension of the aforesaid completion date of this Agreement may only be effected by a written amendment to the Agreement, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement. Otherwise, without an extension of the aforesaid completion date of this Agreement, the Department shall have no obligation to reimburse the Agency for expenditures after the aforesaid completion date.

**B.3 Environmental Regulations:**

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.
  
- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.

#### **B.4 Plans and Specifications**

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.
  - 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

#### **B.5 Right-of-Way**

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.
- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will

certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.

- d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its contractor or agent during the Construction phase of the Project.

### **B.6 Approval of the Construction Phase**

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.
- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.
- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for

the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

### **B.7 Detours**

- a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

### **B.8 Utilities**

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
  - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
  - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

### **B.9 Railroad**

- a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

### **B.10 Safe Routes to School Requirements**

- a) If the herein described project is funded with Safe Routes to School (SRTS) funds, Section B.10 shall apply.
- b) The Agency shall provide pre and post Parent Surveys and Student Tally Sheets for each school under this Agreement:

## Locally Managed Enhancement Agreement

- 1) The Pre Parent Surveys and Student Tally Sheets are to be completed and returned with this Agreement.
  - 2) The Post Parent Surveys and Student Tally Sheets are to be sent no later than six (6) months from the completion of the infrastructure as defined herein with the final reimbursement request.
  - 3) The final reimbursement shall not be paid until the Post Parent Surveys and Student Tally Sheets are received by the Department.
  - 4) These surveys and tallies are to be completed on those specific forms sent to the Agency with the detailed instruction letter. (Required forms and instructions are available at: [www.saferoutesindo.org/resources](http://www.saferoutesindo.org/resources))
- c) The Agency shall obtain prior approval from the Department before purchasing any equipment and/or products under this Agreement. If prior approval is received, procurement shall be made on a competitive basis, in accordance with applicable state and local laws and regulations provided that the procurement conforms to applicable federal law and the standards identified in 49CFR18.36.
- d) The Agency shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Agreement. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the Local Programs Development Manager, for such decision and non-competitive procurement. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Agency's compliance with applicable federal procurement requirements.

## **C. PAYMENT TERMS AND CONDITIONS**

### **C.1 Total Cost:**

**In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

### **C.2 Eligible Costs:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

### **C.3 Limits on Federal and State Participation:**

- a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.
- b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.

- c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

**C.4 Payment Methodology:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.
- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.
- c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

**C.5 The Department's Obligations:**

**In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.**

- a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:
  - 1) **Misrepresentation:**  
The Agency shall have made misrepresentation of a material nature in its

application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

2) **Litigation:**

There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;

3) **Approval by Department:**

The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

4) **Conflict of Interests:**

There has been any violation of the conflict of interest provisions contained herein in D.16; or

5) **Default:**

The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

**C.6 Final Invoices:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

**C.7 Offset:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

### **C.8 Travel Compensation**

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency 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 subject to the Agreement Budget.

## **D. STANDARD TERMS AND CONDITIONS**

### **D.1 Governing Law:**

- a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency 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 Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

### **D.2 General Compliance with Federal, State, and Local Law:**

- a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.
- b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

### **D.3 State Law:**

- a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

**D.4 Submission of the Proceedings, Agreements, and Other Documents:**

- a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

**D.5 Appropriations of Funds:**

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

**D.6 Rights and Remedies Not Waived:**

- a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

**D.7 Department and Agency Not Obligated to Third Parties:**

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

**D.8 Independent Contractor:**

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement 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.

- b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

**D.9 Maintenance:**

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then The Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.
- c) In the event the Project is located on State Highway Right-of-Way, the Agency shall have the sole responsibility - at its own expense - of maintaining and keeping the project in good repair and in a safe and clean condition, including picking up litter that may accrue at the site.

**D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:**

**In the event that the herein-described project is funded with federal funds, the following shall apply:**

- a) **DBE Policy:**

It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state

regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.

b) **DBE Obligation:**

The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

**D.11 Tennessee Department of Transportation Debarment and Suspension:**

- a) In accordance with the Tennessee Department of Transportation regulations governing contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subcontractor.

**D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):**

a) **Instructions for Certification - Primary Covered Transactions:**

**By signing and submitting this Agreement, the Agency is providing the certification set out below.**

- 1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- 2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an

erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

- 3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.
- 5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.
- 6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to

the Federal Government, the Department may terminate this transaction for cause or default.

**b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:**

**The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:**

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- 2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement 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;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and
- 4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**D.13 Equal Employment Opportunity:**

- a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

**D.14 Title VI – Civil Rights Act of 1964:**

- a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

**D.15 Americans with Disabilities Act of 1990 (ADA):**

- a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

**D.16 Conflicts of Interest:**

- a) The Agency warrants that no 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 Agency in connection with any work contemplated or performed relative to this Agreement.
- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of it's subcontracts, the following provision:
  - 1) "No 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 Agency in connection with any work contemplated or performed relative to this Agreement."

**D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):**

- a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

**D.18 Restrictions on Lobbying (applies to federal aid projects):**

**The Agency 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 Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, 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 grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

**D.19 Records:**

- a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.
- b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subcontractors performing work on the Project and all other

records of the Agency and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

- c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

**D.20 Inspection:**

- a) The Agency shall permit, and shall require its contractor, subcontractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.
- b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any contractor, subcontractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

**D.21 Annual Report and Audit:**

- a) In the event that an Agency expends \$500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.
- b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.
- c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted

above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

**D.22 Termination for Convenience:**

- a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- b) In the event that the Project herein described includes the state highway system, the Department may rescind its authorization for the location of the Project upon state highway right-of-way at any time by giving the Agency at least ninety (90) days advance written notice thereof, and the Agency shall be obligated to close the Project to public use and remove it at the Agency's expense and restore the premises to the satisfaction of the Department by or before the effective date of such termination.

**D.23 Termination for Cause:**

- a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.
- b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.
- c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department

shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

**D.24 How Agreement is Affected by Provisions Being Held Invalid:**

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

**D.25 Agreement Format:**

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**D.26 Certification Regarding Third Party Contracts:**

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.
- c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.
- d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

**D.27 Amendment:**

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

**D.28 State Liability:**

- a) The Department shall have no liability except as specifically provided in this Agreement.

**D.29 Force Majeure:**

- a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

**D.30 Required Approvals:**

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

**D.31 Estimated Costs:**

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

**D.32 Third Party Liability:**

- a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

**D.33 Deposits:**

- a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

**D.34 Department Activities:**

- a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

**D.35 Congestion Mitigation and Air Quality Requirement:**

- a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.
  - 1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

**D.36 Investment of Public Funds:**

- a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

<b>Amount</b>	<b>=</b>	<b>Open to Public and Vehicular Traffic</b>
\$1.00 - \$200,000	=	5 Years
>\$200,000 - \$500,000	=	10 Years
>\$500,000 - \$1,000,000	=	20 Years

- b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.
- c) In the event this Agreement is funded with Roadscapes funds, the facility on which this Project is being developed shall remain open to the public for not less than ten (10) years.

**D.37 Federal Funding Accountability and Transparency Act:**

- a) **If the Project is funded with federal funds the following shall apply:**
  - 1) The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170 and 2 CFR Part 25. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.

Amendment Deleting Entire Previous Contract including Exhibit

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

**CITY OF OAK RIDGE**

**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
**Mayor**

By: \_\_\_\_\_  
**John C. Schroer  
Commissioner**

**APPROVED AS TO  
FORM AND LEGALITY**

**APPROVED AS TO  
FORM AND LEGALITY**

By: \_\_\_\_\_  
**City Attorney**

By: \_\_\_\_\_  
**John Reinbold  
General Counsel**

**EXHIBIT "A"****CONTRACT No.: 99-265****PROJECT IDENTIFICATION No.: 041831.00**

**PROJECT DESCRIPTION:** Southern Appalachia Railway Museum: Construction of a railroad museum west of the main entrance to K-25/East Tennessee Technology Park on SR 58. Building will be approximately 40 ft x 120 ft and include exhibit space, a waiting area, information area, auditorium for education presentations, staffing offices, restrooms and a merchandise sales area. Project includes parking area, walkways and an ADA accessible boarding location for the excursion train. The purpose of the project is not location dependent. The purpose of the project shall be accomplished in accordance with the project application, budget, and/or scope of work on which approval of the project was based and AASHTO standards. The application, budget, and /or scope of work may be amended from time to time and when amended will serve as the revised project standard.

**TYPE OF WORK: PEDESTRIAN AND BICYCLE FACILITIES**

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
CONST	ENHANCEMENT (ENH)	80%	10%	10%	\$600,000.00

**LIABILITY:** The Agency understands the estimated cost of the construction phase of the Project is \$600,000.00, and that the Department will pay the Agency, as herein provided, for 80% of the actual cost of the construction phase with the maximum liability of the Department being \$480,000.00. If the Agency provides its required 20% match by soft match, the reimbursement percentage can increase up to 100%. However, the maximum federal dollar amount does not change. Any additional costs for the construction phase shall be totally paid by the Agency.

The twenty percent (20%) non-federal share of the Project can be provided by the Agency as a cash match. The Agency also has the option of providing these funds through the use of the value of preliminary engineering services, donated land, services, material or equipment. To be eligible under this paragraph, the items or work performed must be done in accordance with State and Federal law.

It is hereby understood and agreed that the selection of the method of payment of the non-federal share must be made at the time the certification of the availability of right-of-way is made to the Department and cannot be changed once established. The value of the engineering services must be established by either a certification signed by the highest elected Official of the Agency or by a copy of a legal and binding contract between the Agency and a qualified engineering firm. The said contract must have been executed by all parties. The value of land donations is determined by appraisals. The value of donated services, material, or equipment will be determined on a case by case basis.

**INELIGIBLE COST:** One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said State funds is ruled ineligible at any time.

**LEGISLATIVE AUTHORITY:** STP: 23 U.S.C.A., Section 133, Surface Transportation Program.

**PROJECT FUNDING AND SCOPE LIMITATIONS:** Once the project is completed per the application and description above, all remaining federal funds will revert to the Department. Project scope revisions and /or additions outside the enhancement activity are prohibited. Limited project scope revisions consistent with the awarded activity must be reviewed and approved by the Department.

**Note:** Where the Agency is managing any phase of the project, the Departments shall provide various activities necessary for Project development. The estimated costs for these activities are included in the funds shown in "Dept. Oversight" above. These funds are not available to the Agency for expenditure and reimbursement.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

## CONSTRUCTION MANAGEMENT AGREEMENT

**THIS CONSTRUCTION MANAGEMENT AGREEMENT** ("Agreement") is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012, between the **CITY OF OAK RIDGE, TENNESSEE**, a Tennessee municipal corporation ("City"); the **COMMUNITY REUSE ORGANIZATION OF EAST TENNESSEE**, a Tennessee non-profit corporation ("CROET"); and CROET's affiliate, **HERITAGE CENTER, LLC**, a Tennessee limited liability company, ("Heritage"). CROET and Heritage may sometimes be referred to herein as "Manager."

### W I T N E S S E T H :

**WHEREAS**, pursuant to Agreement No. 2001594 for Project Identification No. 041831.00, also being Federal Project No. STP-EN-NHE-58(24) and State Project No. 73011-3621-94, as amended by Amendment No. 1 dated \_\_\_\_\_, 2012 (the "TDOT Grant Agreement"), the Tennessee Department of Transportation ("TDOT") has awarded a surface transportation program enhancement grant (the "TDOT Grant") in an amount not to exceed Four Hundred Eighty Thousand Dollars (\$480,000.00), with a required match of One Hundred Twenty Thousand Dollars (\$120,000.00), to the City for the purpose of constructing the Southern Appalachia Railway Museum (the "SARM Museum Project") on a parcel owned by Heritage fronting on Heritage Center Boulevard at the former K-25 site now known as East Tennessee Technology Park; and

**WHEREAS**, the required match of One Hundred Twenty Thousand Dollars (\$120,000.00) will be fully funded by CROET and/or Heritage; and

**WHEREAS**, the TDOT Grant Agreement provisions require that the City remain the obligor for purposes of assuring that the grant proceeds are properly utilized for construction of the SARM Museum Project; and

**WHEREAS**, the City has requested that CROET and Heritage assist the City in overseeing the SARM Museum Project and in managing construction of the SARM Museum building; and

**WHEREAS**, CROET and Heritage are willing to assist the City in overseeing the SARM Museum Project and in managing construction of the SARM Museum building, but only upon the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, CROET and Heritage hereby agree as follows:

1. **SARM Museum Project.** The City and TDOT have entered into the TDOT Grant Agreement. The TDOT Grant Agreement requires that the City enter into a construction contract for construction of the SARM Museum Project. The SARM Museum Project consists of a museum building approximately 40 feet by 120 feet

including exhibit space, a waiting area, information area, auditorium for education presentations, staffing offices, restrooms and a merchandise sales area. The SARM Museum Project further includes a parking area, walkways and an Americans with Disabilities Act accessible boarding location for the excursion train operated by SARM.

2. **TDOT Grant; Local Matching Funds.** The parties understand and acknowledge that the maximum amount of the TDOT Grant shall be Four Hundred Eighty Thousand Dollars (\$480,000.00). The TDOT Grant provisions require that local matching funds in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) be provided for the SARM Museum Project ("Local Matching Funds"), and CROET and/or Heritage have agreed to provide the Local Matching Funds.
  
3. **Cost Reimbursement.** The City acknowledges that TDOT shall only disburse the TDOT Grant funds on a cost reimbursable basis. In other words, the TDOT Grant Agreement requires that the TDOT Grant funds can only be disbursed by TDOT to the City to reimburse construction expenses for the SARM Museum Project after such construction expenditures have been made. The City further understands and acknowledges that CROET and/or Heritage agree to advance reasonable construction costs for the SARM Museum Project (the "Advanced Construction Costs"), but only upon the City's agreement to reimburse CROET and/or Heritage with the TDOT Grant funds. As set forth in Paragraph 5 hereinbelow, the City agrees to pay to CROET and/or Heritage the TDOT Grant funds upon the City's receipt of same, as reimbursement for the Advanced Construction Costs. The City further acknowledges that to be eligible to receive the TDOT Grant funds, the City must comply with all requirements of the TDOT Grant Agreement, and the City hereby agrees to so comply.
  
4. **CROET's Duties.** At the City's request, Manager has agreed to act as construction manager ("Manager") for the SARM Museum Project. Manager's duties as construction manager shall include the following:
  - (a) Assist and work with the City in helping prepare construction bid forms and invitation to bid letters, to be distributed to general contractors selected and approved by the City;
  - (b) Assist and work with the City in helping evaluate the construction bids received and in preparing appropriate construction contracts;
  - (c) Assist and work with the City, where necessary, in connection with the selection of subcontractors and materialmen, construction materials, and obtaining necessary building permits;
  - (d) Provide regular reports to the City concerning budgets, reports, scheduling, and status of construction;

- (e) Act as the clearing house for receipt of invoices from contractors, subcontractors and materialmen and other ordinary expenses related to the SARM Museum Project, and, to the extent permitted by TDOT and the TDOT Grant Agreement, to advance Manager's funds to pay such invoices;
  - (f) Promptly forward to the City contact person (identified in Paragraph 8 hereinbelow) invoices and supporting documentation for the City to submit to TDOT for reimbursement;
  - (g) Assist the City in helping prepare the City's responses to inquiries, questions and correspondence that the City receives from TDOT concerning the SARM Museum Project.
5. **City's Duties.** The City acknowledges that it is the obligor under the TDOT Grant Agreement and that TDOT requires that the City remain involved in all phases of the SARM Museum Project. The City further acknowledges that neither CROET nor Heritage is a party to the TDOT Grant Agreement. Therefore, the City agrees that it shall fully comply with all requirements and provisions of the TDOT Grant Agreement, including but not limited to the following:
- (a) Under the TDOT Grant Agreement, TDOT's prior approval is required before various phases of the SARM Museum Project can proceed. Therefore, the City agrees to submit to TDOT promptly and upon Manager's request all requests for approval and/or authorization necessary for the Project to proceed on a timely basis;
  - (b) The City agrees to place all necessary advertisements requesting bids for the SARM Museum Project in accordance with applicable federal and state regulations. City personnel shall be present at the opening of the bid packages and shall notify the contractor whose bid is selected. The City shall further enter into good faith negotiations with such contractor and shall work expeditiously to enter into a construction contract with such contractor.
  - (c) It is anticipated that all invoices from the prime contractor, subcontractors and materialmen, shall be provided to Manager. Manager shall prepare reimbursement invoices in the form required by TDOT with supporting documentation and shall forward such invoices to the City contact person. The City contact person shall, within forty-eight (48) of receipt of the same from Manager, forward such invoices and supporting documentation electronically to TDOT for reimbursement. In the event that the expiration of such forty-eight (48) hour period shall occur on a day that is a City holiday or a day that is not a weekday, the City contact person shall

have an additional twenty-four (24) hours (i.e., up to and including 72 hours from the City's receipt of same from Manager) to forward such invoices to TDOT for reimbursement.

- (d) The City agrees to forward to Manager all reimbursements that the City receives from TDOT in connection with the SARM Museum Project within forty-eight (48) hours of the City's receipt of such reimbursements. In the event that the expiration of such forty-eight (48) hour period shall occur on a day that is a City holiday or a day that is not a weekday, the City shall have an additional twenty-four (24) hours (i.e., up to and including 72 hours from the City's receipt of such reimbursements) to forward such reimbursements to Manager. The City shall pay such reimbursements to Manager with no deductions whatsoever and shall provide proof of the amount of the reimbursements received and the date of receipt with each reimbursement payment. Payment of the reimbursements shall be by City check or by wire transfer to Manager's account, at Manager's option.
- (e) Since the City is the obligor on the TDOT Grant Contract, it is anticipated that all inquiries, questions and other correspondence from TDOT will be sent to the City. The City agrees to forward to Manager all inquiries, questions and correspondence that the City receives from TDOT with respect to the SARM Museum Project within twenty-four (24) hours of City's receipt of same in order to allow Manager adequate time in which to assist the City in preparing a response. Upon receipt from Manager of a proposed response to any such inquiry, question or correspondence, the City shall forward such response to TDOT within forty-eight (48) hours of City's receipt of same. If such forty-eight (48) hour period shall expire on a City holiday or a day that is not a weekday, the City shall have an additional twenty-four (24) hours (i.e., up to and including 72 hours from its receipt of the response from Manager in which to forward such response to TDOT.

6. **CROET/Heritage Not Responsible for Negligence of Contractors/Subcontractors.** The City understands and acknowledges that while CROET and Heritage have experience in overseeing construction projects, neither CROET nor Heritage is a licensed contractor or engineer and neither has any specialized knowledge of construction techniques. The City further understands and acknowledges that neither CROET nor Heritage purports to offer architectural, engineering, construction or installation services. Therefore, the parties agree that neither CROET nor Heritage shall be liable for any defects in any materials or workmanship involved in the SARM Museum Project unless such defects are caused by or are the direct result of the gross negligence of CROET and/or Heritage.

7. **Reimbursement of TDOT Grant.** The parties acknowledge that under certain circumstances the City may be required to repay the TDOT Grant. The parties further acknowledge that if the repayment obligation is triggered, CROET and/or Heritage have agreed to reimburse the City for any repayment of the TDOT Grant that TDOT may require the City to make. Notwithstanding the foregoing, the parties agree that the obligation of CROET and/or Heritage to repay the TDOT Grant proceeds shall not be applicable if the obligation to repay the TDOT Grant proceeds arises as a direct result of the City's negligence.
8. **Notices.** All notices and other communications required or permitted to be given hereunder shall be in writing and shall be given either by personal delivery; by U.S. Certified or Registered Mail, Return Receipt Requested, postage prepaid; by Federal Express, Airborne Express, or similar overnight delivery service; or by e-mail, in each case addressed as follows:

If to CROET and/or Heritage:

Mr. Lawrence T. Young  
Heritage Center, LLC  
1020 Commerce Park Drive, Suite L  
Oak Ridge, TN 37830  
[lyoung@croet.com](mailto:lyoung@croet.com)

With a copy to:

Jackson G. Kramer, Esq.  
Kramer Rayson LLP  
P.O. Box 629  
Knoxville, TN 37901-0629  
[jgkramer@kramer-rayson.com](mailto:jgkramer@kramer-rayson.com)

If to City:

Ken Krushenski, Esq.  
City Attorney  
City of Oak Ridge  
P.O. Box 1  
Oak Ridge, TN 37830  
[KKrushenski@oakridgetn.gov](mailto:KKrushenski@oakridgetn.gov)

Notice shall be deemed effective upon receipt, if given by personal delivery; or three (3) business days following deposit in the U.S. Mail, if mailed; or if any overnight delivery service is utilized, upon the earlier of receipt by the addressee or the date promised for delivery by such overnight delivery service; or if by e-mail, upon senders forwarding such e-mail to the proper e-mail address as noted above.

For purposes of this Agreement, the contact person for CROET and Heritage shall be Lawrence T. Young. The contact person for the City shall be Ken Krushenski, Esq.

9. **Time of Essence.** Time is expressly declared to be of the essence of this Agreement.
10. **Force Majeure.** Manager shall not be responsible for construction delays or other consequences of acts of God (such as tornado, flood, hurricane, etc.); fires and other casualties; the acts, omissions to act or failures to timely act by the City, architect or any contractor; strikes, lockouts or other labor disturbances; riots, insurrections, and acts of war or terrorism; shortages or unavailability of materials, supplies, labor, equipment; and any other matters that are beyond the reasonable control of Manager.
11. **No Implied Acceptance of Work.** To the extent Manager makes any payments to contractors, subcontractors, materialmen or other entities for the SARM Museum Project, no such payments shall be deemed to signify or imply acceptance of the materials or workmanship covered by such invoice or invoices, and none of them shall operate as an admission on the part of Manager as to the propriety or accuracy of any of the amounts so paid.
12. **Disclaimer of Warranties.** Manager makes no warranties of any kind and specifically disclaims all warranties, including but not limited to any warranty of merchantability or fitness for a particular purpose, as to labor, materials or workmanship utilized in the SARM Museum Project, or as to any aspect of the SARM Museum Project.
13. **Binding Effect; Assignment.** This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, provided, however, that neither party shall assign this Agreement or any of its respective rights and obligations hereunder to any person, firm or entity without the prior written consent of the other party.
14. **Waivers.** No requirements, obligations or remedy or provision of this Agreement shall be deemed to have been waived unless such waiver is in writing signed by an authorized representative of all parties hereto, and any waiver of any provision shall not be considered a waiver of any right to enforce such provision thereafter.
15. **Entire Agreement; Amendments.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and there are no other terms, conditions, promises, undertakings, statements or representations, express or implied, other than as set forth herein. This

Agreement shall not be modified or amended except in writing signed by an authorized representative of all parties hereto.

16. **Headings.** The headings to the Sections and Paragraphs herein have been inserted for convenience of reference only and shall in no way modify or restrict any provisions hereof or be used to construct any such provisions.
17. **Enforcement Costs.** To the extent either party hereto is required to enforce the terms of this Agreement, as the result of the other party failing to fulfill its obligations under the terms of this agreement, the party breaching the terms of this Agreement and against whom enforcement is sought, shall pay all expenses and costs incurred by the prevailing party attempting to enforce the terms of this Agreement, including but not limited to reasonable attorney's fees and expenses.
18. **Construction.** No rule of strict construction shall apply. The language contained in this Agreement shall be deemed to be that approved by both parties and no rule of strict construction shall be applied against either party.
19. **Counterparts.** This Agreement may be executed by each party upon a separate copy, and in such case, one Counterpart of this Agreement shall consist of enough of such copies to reflect the signatures of all of the parties to this Agreement. This Agreement shall become effective when one or more Counterparts have been signed by each of the parties to this Agreement.

[signature page to follow]

**IN WITNESS WHEREOF**, the parties have executed this Agreement in their stated capacities or by a duly authorized representative, as of the day and year first above written.

**COMMUNITY REUSE ORGANIZATION  
OF EAST TENNESSEE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**HERITAGE CENTER, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF OAK RIDGE, TENNESSEE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ELECTIONS**  
**&**  
**APPOINTMENTS**  
**ANNOUNCEMENTS**  
**SCHEDULING**

## CITY CLERK MEMORANDUM

13-08

**DATE:** February 5, 2013  
**TO:** Honorable Mayor and Members of City Council  
**FROM:** Diana R. Stanley, City Clerk  
**SUBJECT:** ELECTIONS AND APPOINTMENTS—ECAB, CVB, AND SISTER CITY SUPPORT ORGANIZATION

### Elections

Over the last several weeks, two city boards—Elder Citizens Advisory Board (ECAB) and the Oak Ridge Convention and Visitors Bureau (CVB)—have experienced vacancies due to a resignation and an unfortunate loss.

Given that the City Clerk's Office recently completion of the end-of-year recruitment for the boards and commissions in December of 2012 with numerous applicants and City Council's past wishes to contact applicants who were not elected at the December meeting, the Clerk's Office contacted all remaining applicants from that election to inquire if they would be interested in being listed on the ballot for the February 11, 2013 City Council meeting.

All four (4) applicants were contacted for the CVB and one (1) applicant was contacted for the ECAB (this applicant was unable to be listed on the ballot for the December election as she, at the time, did not meet the special qualifications).

Mr. Aaron Wells (CVB) and Ms. Gene Dunaway (ECAB) accepted the request to be listed on the ballot for the February 11 meeting. Since, the number of applicants matches the exact number of vacancies, the City Clerk recommends the following by acclamation:

Mr. Aaron Wells serve on the Oak Ridge Convention and Visitors Bureau for the balance of an unexpired term ending on December 31, 2015, and that Mr. Gene Dunaway serve on the Elder Citizens Advisory Board for the balance of an unexpired term ending on December 31, 2013.

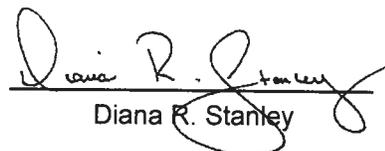
Their application information that was submitted during last year's end-of-year election has been attached to this memo for City Council's review.

Completing this election will allow the boards to quickly continue with their membership and using this process efficiently makes use of the City's previous resources that were expended during the last election.

### Appointment

Mr. Sean Seyfert, President of the Oak Ridge Sister City Support Organization, contacted the City Clerk's Office to inquire about having a representative of City Council serve on the organization. Mr. Seyfert explained that the organization will be meeting periodically and that the organization feels that it is important to have members from all entities affected by this program.

The City Clerk recommends that City Council nominate a councilmember to serve.

  
Diana R. Stanley

Attachments

# Convention and Visitors Bureau

NumVacancies 1  
 Total # of Members 10

Term of Office  
 Balance of an unexpired term ending on December 31, 2015.

## Qualifications

No special qualifications, other than Oak Ridge residency.

## Applicants

Convention and Visitors Bureau	Submitted	Preference	# of Previous Submissions
Mr. Aaron Wells	2/5/2013	2	

## Current Members

Convention and Visitors Bureau		Term Expires
Mr. Frank P. Chmielewicz		2014
Ms. Mary Anne Damos		2015
Mr. J. Mark Harvey		2015
Ms. Gretchen A. Julius	hotel representative	2013
Mrs. Patti Shelton	Vice Chair	2014
Mrs. Carol Smallridge	Chair	2014
Mr. Hugh B. Ward Jr.		2015
Ms. Misty Williams	hotel representative	2013
Mr. Adrian Zarczynski	Hotel/Motel Member	2013

# City of Oak Ridge Board Application

BoardName: Convention and Visitors Bureau

2013

Application Submitted

Applicant: Wells, Aaron

Choice

2

2/5/2013

09:00

107 Bradley Ave.

HomePhone

(865) 898-7471

Email

MobilePhone

(865) 898-7471

aaronwellsoakridge@gmail.com

Oak Ridge

TN

OfficePhone

Retired?

N

Current Position / Title

Business Development

Current Employer

Madison Insurance Group

Company / Organization Retired From

Do you currently serve on any other City board, commission or committee?

Board of Building and Housing Code of Appeals

Education, Professional and or Community Activity

I am applying for the Convention and Visitors Bureau due to my concern for our city to increase our tourism and out of town revenue. Over the last several years I have been active in our city's sports programs. I know first hand the amount of potential we have to increase revenue from individuals traveling to our area for events. It is my hope to use this knowledge and market our local businesses (ex: restaurants, hotels, retail shopping) to target audiences coming to Oak Ridge throughout the year.

Explain why you are interested in being appointed to this board, commission or committee

-As President of the Oak Ridge Boys Club Alumni Association I oversee and organize our annual golf tournament that brings in an average of 130 individuals to the country club. -As a coach of more than twenty youth and adult sports teams over the last decade I am knowledgeable in the types of families visiting our community during each season. This will help in target marketing throughout the year.-As an Insurance professional I work with business owners on a daily basis and hear their comments and concerns about our local retail environment.

Describe any special knowledge or past experience qualifying you for this appointment?

Graduate of Oak Ridge High School, Tennessee Real Estate School, Tennessee Licensed P&C Insurance Producer. President Oak Ridge Boys Club Alumni Association, active participant in the city sports leagues, Sunset Group Rotary Club, Active volunteer at the Boys and Girls Club of Oak Ridge averaging over 100 volunteer hours annually

Notes

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End of Application for

Wells, Aaron

For Board:

Convention and Visitors Bureau

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# Elder Citizens Advisory Board

NumVacancies 1  
 Total # of Members 11

Term of Office  
 Balance of an unexpired term ending on December 31, 2013

## Qualifications

No special qualifications, other than Oak Ridge residency.

## Applicants

Elder Citizens Advisory Board	Submitted	Preference	# of Previous Submissions
Mr. Gene R Dunaway	11/14/2012	2	

## Current Members

Elder Citizens Advisory Board		Term Expires
Ms. Elizabeth Batchelor	Anderson County Adult Safety Coalition and ElderWatch	2013
Dr. James T Gillespie Sr.	The 43 Club	2014
Mr. Lee Roy Gilliam	Coalition of Oak Ridge Retired Employees (CORRE)	2015
Ms. Margaret Gottshall	Senior Citizens Club	2013
Mrs. Barbara A Gunn	AARP, Oak Ridge Chapter	2014
Mr. David McCoy	At Large	2014
Mr. William A. Pryor	National Association of Retired Federal Employees	2015
Mr. Alfred Skyberg	At Large	2014
Mr. Robert Smallridge	Oak Ridge Retired Teachers' Association	2015

# City of Oak Ridge Board Application

BoardName: Elder Citizens Advisory Board

2013

Application Submitted

Applicant: Dunaway, Gene

Choice

2

11/14/2012 09:00

125 Vienna Road

HomePhone

(865) 934-9956

Email

MobilePhone

(865) 934-9956

Fastether@yahoo.com

Oak Ridge

TN

OfficePhone

Retired?

Y

Current Position / Title

Computer System Engineer

Current Employer

Company / Organization Retired From

Federal Reserve Bank

Do you currently serve on any other City board, commission or committee?

Traffic Safety Advisory Board

Education, Professional and or Community Activity

When appointment is made, I will have completed the Oak Ridge Citizen's Police Academy. Have a master's degree in Library Science with a minor in Criminal Justice. Extremely active as a volunteer at the Senior Center and also involved with programs at the Scarobor Center. Am over 65 years of age and still going strong. Complete resume previously submitted.

Explain why you are interested in being appointed to this board, commission or committee

This is my age group. Being a delivery driver for Munsey's Pharmacy has exposed me to the needs and problems faced by this age group. Working closely with Linda Jackson, Senior Center Director, also offers good exposure.

Describe any special knowledge or past experience qualifying you for this appointment?

I reference the following statement.

Notes

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End of Application for

Dunaway, Gene

For Board:

Elder Citizens Advisory Board

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