

**Anderson County Board of Commissioners  
Purchasing Committee Meeting Agenda  
February 12, 2024  
4:30 p.m.  
Room 312 of the Courthouse**

**Members:** Phil Yager (Committee Chair), Tyler Mayes, Denise Palmer, Aaron Wells and Steve Verran.

**A. Contracts Approved by Law Director**

1. State of TN Dept of Finance and Admin, Office of Criminal Justice, Mayor, Contract #23-0094 A1 – Amendment to extend Domestic Violence Victim Coordinator Grant through FY 2025 for an additional \$130,000.
2. Heritage Health Solutions, Sheriff, Contract #24-0094 – Three-year contract for Medical Bill Scrubbing. Provides more in-depth review than current contract.
3. HealthPlan Freedom, Sheriff, Contract #24-0095 – Three-year Memorandum of Understanding to assist eligible inmates with finding health insurance. No cost to the County.
4. Devin Burnett, EMS, Contract #24-0096 – Agreement to provide EMS employee tuition in the amount of \$1,500 for the Critical Care Course with the conditions that the employee passes the course, obtains his Critical Care Paramedic State License and remains employed full-time with EMS for one-year after obtaining license.
5. MathSpace, BOE, Contract #24-0098 – Five-year curriculum contract in the High Schools in the amount of \$115,500. Sole Source Purchase (public notice posted on Vendor Registry for ten business days).
6. City of Clinton, Mayor, Contract #24-0100 – Deed to convey land for Animal Shelter for a cost of \$70,000.

**B. Contracts Pending Law Director Approval**

1. State of TN Dept of Finance and Admin, Office of Criminal Justice, Mayor, Contract #23-0105 A1 – Amendment to extend Family Justice Center VOCA Grant through FY 2025 for an additional \$200,000.

2. **Energy Systems Group, BOE, Contract #24-0099** – Contract to upgrade Wastewater Treatment and Septic at Dutch Valley and Briceville Elementary Schools and to enhance security at all schools. Cost is \$1,854,000.
3. **MBI, BOE, Contract #24-0101** – Architectural Services for the new Claxton Elementary School Building. Work estimated to be completed by July 2026.


**C. Other Business**

1. Request to surplus 2011 Ford Crown Victoria in order to donate it to the City of Norris. Vehicle runs, has front end damage.

**D. New Business**

**E. Unfinished Business**

23-0094 A1

		9-20-18 AMEND-G	
<b>GRANT AMENDMENT</b>			
Agency Tracking # NA	Edison ID 50976	Contract # 50976	Amendment # 1
Contractor Legal Entity Name Anderson County Government			Edison Vendor ID 4143
Amendment Purpose & Effect(s) Revises Clauses, Revises Budget, Increases Maximum Liability, and Extends Expiration Date			
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: 6/30/2025	
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			+ \$130,000.00
Funding —			
FY	State	Federal	TOTAL Contract Amount
FY24		\$130,000.00	\$130,000.00
FY25		\$130,000.00	\$130,000.00
TOTAL:		\$260,000.00	\$260,000.00
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.		OCR USE	
Speed Chart FA00003360	Account Code County - 71301000		

**AMENDMENT ONE  
OF GRANT CONTRACT 50976**

This Grant Contract Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Office of Criminal Justice Programs, hereinafter referred to as the "State" and Anderson County Government, hereinafter referred to as the "Grantee." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Grant Contract is hereby amended as follows:

1. Grant Contract section B.1. is deleted in its entirety and replaced with the following:
  - B.1. This Grant Contract shall be effective on 7/1/2023 ("Effective Date") and extend for a period of Twenty Four (24) months after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.
2. Grant Contract section B.2. is added with the following:
  - B.2. Term Extension. It is understood and agreed that the State may extend the Term an additional period of time, not to exceed three hundred-sixty five (365) days beyond the expiration date of this Grant Contract, under the same terms and conditions. In no event, however, shall the maximum Term, including all extensions or renewals, exceed a total of sixty (60) months.
3. Grant Contract section C.1. is deleted in its entirety and replaced with the following:
  - C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed Two Hundred Sixty Thousand Dollars (\$260,000.00) ("Maximum Liability"). The Grant Budget attached and incorporated as Attachment A-1 for fiscal year 2024 and Attachment A-1 for fiscal year 2025, is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
4. Grant Contract section C.7. is deleted in its entirety and replaced with the following:
  - C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within forty-five (45) days of the Grant Contract end date, in form and substance acceptable to the State.
    - a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by Section C of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit said refund with the final grant disbursement reconciliation report.
    - b. The State shall not be responsible for the payment of any invoice submitted to the state after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
    - c. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
    - d. The Grantee must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.



5. Grant Contract section D.6. is deleted in its entirety and replaced with the following:
- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract. Notwithstanding the foregoing, when administering a Federal or State grant, the Tennessee Department of Finance and Administration, Office of Criminal Justice Programs may contract with an entity for which a current employee of the State of Tennessee is providing criminal justice or victim service related professional services including training for allied professionals as an employee or independent contractor of the entity outside of his/her hours of state employment, provided that such outside employment does not violate applicable law, the state agency's policies, or create a conflict of interest.
6. Grant Contract Attachment A-1 is deleted in its entirety and replaced with the new attachment A-1 attached hereto.
7. Grant Contract Attachment B is deleted in its entirety and replaced with the new attachment B attached hereto.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective April 30, 2024. All other terms and conditions of this Grant Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

ANDERSON COUNTY GOVERNMENT:

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GRANTEE SIGNATURE

DATE

Terry Frank, County Executive

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PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

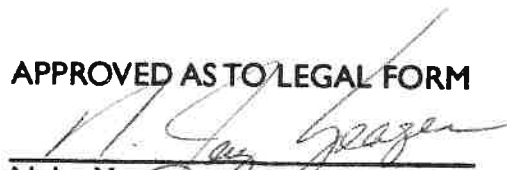
DEPARTMENT OF FINANCE AND ADMINISTRATION:

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JIM BRYSON, COMMISSIONER

DATE

APPROVED AS TO LEGAL FORM

  
N. Jay Yeager  
Anderson County Law Director

February 2024 Purchasing Agenda

## ATTACHMENT A-1

Page 1

GRANT BUDGET				
AGENCY NAME: Anderson County Government				
FUND SOURCE: VOCA				
SOLICIATION IDENTIFICATION TITLE: County Victim Coordinator				
The grant budget line-item amounts below shall be applicable only to expense incurred during the following				
Applicable Period:		BEGIN: 7/01/2023	END: 6/30/2024	
POLICY 03 Object Line-item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY <sup>1</sup>	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
1, 2	Salaries, Benefits & Taxes <sup>2</sup>	\$130,000.00	\$0.00	\$130,000.00
4, 15	Professional Fee, Grant & Award <sup>2</sup>	\$0.00	\$0.00	\$0.00
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications <sup>2</sup>	\$0.00	\$0.00	\$0.00
11, 12	Travel, Conferences & Meetings <sup>2</sup>	\$0.00	\$0.00	\$0.00
13	Interest <sup>2</sup>	\$0.00	\$0.00	\$0.00
14	Insurance <sup>2</sup>	\$0.00	\$0.00	\$0.00
16	Specific Assistance To Individuals <sup>2</sup>	\$0.00	\$0.00	\$0.00
17	Depreciation <sup>2</sup>	\$0.00	\$0.00	\$0.00
18	Other Non-Personnel <sup>2</sup>	\$0.00	\$0.00	\$0.00
20	Capital Purchase <sup>2</sup>	\$0.00	\$0.00	\$0.00
22	Indirect Cost <sup>2</sup>	\$0.00	\$0.00	\$0.00
24	In-Kind Expense <sup>2</sup>	\$0.00	\$0.00	\$0.00
25	<b>GRAND TOTAL</b>	<b>\$130,000.00</b>	<b>\$0.00</b>	<b>\$130,000.00</b>

<sup>1</sup> Each expense object line-item shall be defined by the Department of Finance and Administration Policy 03, *Uniform Reporting Requirements and Cost Allocation Plans for Subrecipients of Federal and State Grant Monies, Appendix A.*  
(posted on the Internet at: [https://www.tn.gov/content/dam/tn/finance/ocjp/Appendix\\_J\\_Policy\\_03\\_Report.xls](https://www.tn.gov/content/dam/tn/finance/ocjp/Appendix_J_Policy_03_Report.xls))

<sup>2</sup> Applicable detail follows this page if line-item is funded.

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**ATTACHMENT A-1**

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**GRANT BUDGET LINE-ITEM DETAIL:**

AGENCY NAME: Anderson County Government

FUND SOURCE: VOCA

SOLICITATION IDENTIFICATION TITLE: County Victim Coordinator

<b>SALARIES, BENEFITS &amp; TAXES</b>	<b>AMOUNT</b>
Position 1: Domestic Violence Victim Witness Coordinator, Salary & Benefits (Est. 100%)	\$74,800.00
Position 2: Victim Witness Coordinator, Salary & Benefits (Est. 100%)	\$55,200.00
<b>TOTAL</b>	<b>\$130,000.00</b>

GRANT BUDGET				
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FUND SOURCE: VOCA				
SOLICITATION IDENTIFICATION TITLE: County Victim Coordinator				
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4, 15	Professional Fee, Grant & Award <sup>2</sup>	\$0.00	\$0.00	\$0.00
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications <sup>2</sup>	\$0.00	\$0.00	\$0.00
11, 12	Travel, Conferences & Meetings <sup>2</sup>	\$0.00	\$0.00	\$0.00
13	Interest <sup>2</sup>	\$0.00	\$0.00	\$0.00
14	Insurance <sup>2</sup>	\$0.00	\$0.00	\$0.00
16	Specific Assistance To Individuals <sup>2</sup>	\$0.00	\$0.00	\$0.00
17	Depreciation <sup>2</sup>	\$0.00	\$0.00	\$0.00
18	Other Non-Personnel <sup>2</sup>	\$0.00	\$0.00	\$0.00
20	Capital Purchase <sup>2</sup>	\$0.00	\$0.00	\$0.00
22	Indirect Cost <sup>2</sup>	\$0.00	\$0.00	\$0.00
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25	<b>GRAND TOTAL</b>	<b>\$130,000.00</b>	<b>\$0.00</b>	<b>\$130,000.00</b>

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**ATTACHMENT A-1**

Page 2

**GRANT BUDGET LINE-ITEM DETAIL:**

AGENCY NAME: Anderson County Government

FUND SOURCE: VOCA

SOLICIATION IDENTIFICATION TITLE: County Victim Coordinator

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<b>TOTAL</b>	<b>\$130,000.00</b>

**ATTACHMENT B****Federal Award Identification Worksheet**

Subrecipient's name (must match name associated with its Unique Entity Identifier (SAM))	Anderson County Government
Subrecipient's Unique Entity Identifier (SAM)	FYPENE4ABBG6
Federal Award Identification Number (FAIN)	2020-V2-GX-0012
Federal award date	09/17/2020
Subaward (Federal Award) Period of Performance Start and End Date	10/01/2019 – 09/30/2023 Ext: 09/30/2024
Subaward (Federal Award) Budget Period Start and End Date	10/01/2019 – 09/30/2023 Ext: 09/30/2024
Assistance Listing number (formerly known as the CFDA number) and Assistance Listing program title.	16.575; Victims of Crime Act
Grant contract's (Sub-Recipient) begin date	7/1/2023
Grant contract's (Sub-Recipient) end date	6/30/2025
Amount of federal funds obligated by this grant contract	\$260,000.00
Total amount of federal funds obligated to the subrecipient	\$260,000.00
Total amount of the federal award to the pass-through entity (Grantor State Agency)	\$34,273,320.00
Federal award project description (as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA))	VWC- County
Name of federal awarding agency	Office for Victims of Crime
Name and contact information for the federal awarding official	DOJ: Attorney General Merrick B. Garland 202-514-2000
Name of pass-through entity	State of Tennessee: Finance & Administration; Office of Criminal Justice Programs
Name and contact information for the pass-through entity awarding official	Laura Vermillion Laura.vermillion@tn.gov
Is the federal award for research and development?	No
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	N/A

## PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_ 2023 (the "Effective Date") between Heritage Health Solutions Inc., a Texas Corporation, having its principal office located at 750 Canyon Dr., Suite 120, Coppell, TX 75019 ("Heritage"), and Anderson County Sheriff's Office, located at 101 South Main St Suite 400, Clinton, TN 37716 ("County"). Heritage and County may each be referred to herein individually as a "Party" and collectively as the "Parties".

WHEREAS, Heritage has considerable expertise in providing off-site administrative healthcare services as described in Attachment A (the "Services"); and

WHEREAS, the County desires to contract with Heritage to provide administrative healthcare services of certain medical care and prescription plan services not provided at the jail facilities for inmates at the County; and

WHEREAS, Heritage is able and agreeable to provide the County with administrative healthcare services and represents that it is competent, qualified, capable, and prepared to do so according to the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreement hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Term. The initial term of this Agreement shall commence on the date first written above and shall continue for a period of three (3) years (the "Initial Term"). Unless either party gives the other written notice within sixty (60) days of the expiration of the Initial Term, this Agreement will ~~automatically renew for an additional two (2) one-year terms unless earlier terminated.~~ 195  
No  
Auto Renewal
2. Scope of Services. Heritage agrees to perform the Services described in Attachment A ("Services"). The intervals at which the Services will be provided and other details regarding the Services are set forth in the attachments to this Agreement.
3. Preferred Provider. Heritage is County's preferred provider for those Services identified as preferred in Attachment A ("Preferred Services"). The County agrees to purchase from Heritage all of its requirements for the Preferred Services during the term of this Agreement.
4. Price and Payment.
  - a. Prices for the Services are listed in Attachment B ("Price Offering"). Applicable taxes and similar assessments are not included in the prices and will be billed separately on the County's invoice.
  - b. Payments are due within thirty (30) days of the invoice date. All payments by the County under this Agreement shall be made by electronic funds transfer. Heritage and County agree that, in the event the County fails to make payment when due, an amount equal to the lesser of (i) 1.5% per month (18% per annum) or (ii) the maximum amount allowed by law, will be added to all amounts outstanding which have not in good faith been disputed by County. In the event that County in good faith disputes the charges set forth in an invoice, County shall notify Heritage within thirty (30) days of its receipt of such invoice. County will pay all undisputed charges in accordance with this Section 4.
  - c. Upon anniversary of the Initial Term and subsequent renewal term, the Prices will be automatically adjusted ("CPI Price Adjustment") by an amount equal to the greater of (a) the percentage change in the Consumer Price Index ("CPI") for the most recently available previous February 2024 Purchasing Agenda

twelve months or (b) 5%. The CPI used to calculate the CPI Price Adjustment will be the Consumer Price Index All Items, All Urban Consumers as published by the U.S. Department of Labor. County will be given 30 days written notice of any CPI Price Adjustment.

5. Termination. Either party may terminate this Agreement if the other party fails to perform in accordance with this Agreement and the breaching party fails to correct such default or neglect within thirty (30) days after written notice thereof. Heritage may terminate this Agreement with or without cause upon thirty (30) days written notice to the County.

6. Representations, Warranties, and Additional Covenants.

- a. Heritage is engaged in the business of providing the Services.
- b. Heritage covenants that it will use its best efforts to perform all work in a safe and efficient manner and using industry accepted practices.
- c. Heritage covenants that it will not knowingly fail to comply with any requirements of federal, state, provincial and local laws, rules, regulations, by-laws, ordinances, and orders ("Laws") applicable to the Services to be performed.
- d. Heritage covenants that the Services shall substantially conform to the description set forth in the applicable attachment and that Services provided by Heritage employees will be provided by individuals possessing appropriate qualifications.
- e. County represents and warrants to Heritage that it is and shall remain in compliance with any and all federal, state and local laws, rules and regulations applicable to County's business and that County shall implement, maintain and document comprehensive privacy and security policies and procedures in accordance with leading industry standards and all applicable laws, rules and regulations.
- f. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO OTHER REPRESENTATIONS OR WARRANTIES BY HERITAGE, AND COUNTY HAS NOT RELIED ON ANY OTHER REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR ANY WARRANTY IMPLIED BY COURSE OF PERFORMANCE OF USAGE OF TRADE. WITHOUT IN ANY WAY LIMITING THE FOREGOING, COUNTY FURTHER ACKNOWLEDGES AND AGREES THAT THE SERVICES INCORPORATE THIRD PARTY SERVICES OR MATERIALS, WITH RESPECT TO WHICH HERITAGE MAKES NO REPRESENTATION OR WARRANTY; THAT HERITAGE MAKES NO REPRESENTATION OR WARRANTY THAT THE SERVICES WILL BE ERROR OR INTERRUPTION FREE, WILL BE PERFORMED OR ACHIEVED BY ANY PARTICULAR DEADLINE OR WILL ACHIEVE OR ACCOMPLISH ANY PARTICULAR RESULTS; AND THAT THE SERVICES ARE INTENDED TO SUPPLEMENT, BUT NOT COMPLETELY REPLACE, TRADITIONAL MEDICAL OR PSYCHIATRIC CARE.

7. Insurance. Heritage agrees to procure and maintain at least the following insurance (where applicable) covering the Services:

- a. Workers' Compensation  
Statutory
- b. Employer's Liability



- \$1,000,000 per occurrence
- c. General Liability (bodily injury and property damage - combined single limit)  
\$1,000,000 per occurrence, \$2,000,000 annual aggregate
- d. Automobile Liability (and MCS-90 Motor Carriers Act of 1980 endorsement)  
\$1,000,000 combined single limit

Upon request, Heritage shall furnish certificates of such insurance to the County.

#### 8. Indemnification.

- a. HERITAGE AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE COUNTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, PENALTIES, FORFEITURES, SUITS, AND THE REASONABLE COSTS AND EXPENSES INCIDENT THERETO (INCLUDING COSTS OF DEFENSE, SETTLEMENT AND REASONABLE LAWYERS' FEES, CONSULTANT OR OTHER PROFESSIONAL FEES AND THE REASONABLE COSTS OF INVESTIGATION, ANY REMEDIAL ACTIONS REQUIRED BY LAW, REGULATION OR ORDER (COLLECTIVELY REFERRED TO AS "LOSSES"), BUT ONLY TO THE EXTENT THAT SUCH LOSSES WERE SOLELY CAUSED BY: (I) HERITAGE'S KNOWING AND INTENTIONAL BREACH OF ANY TERM OR PROVISION OF THIS AGREEMENT; (II) THE FAILURE OF ANY REPRESENTATION OR WARRANTY OF HERITAGE TO BE SUBSTANTIALLY TRUE, ACCURATE, AND COMPLETE; OR (III) ANY GROSSLY NEGLIGENT ACT OR OMISSION OF HERITAGE OR ITS EMPLOYEES OR AGENTS WITHIN THE SCOPE OF THEIR EMPLOYMENT OR AGENCY.
  - b. COUNTY AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND HERITAGE, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, FROM AND AGAINST ANY AND ALL LOSSES, TO THE EXTENT THAT SUCH LOSSES WERE CAUSED IN WHOLE OR PART BY: (I) COUNTY'S BREACH OF ANY TERM OR PROVISION OF THIS AGREEMENT; (II) THE FAILURE OF ANY REPRESENTATION OR WARRANTY OF COUNTY TO BE TRUE, ACCURATE, AND COMPLETE; OR (III) ANY NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF COUNTY OR ITS EMPLOYEES OR AGENTS.
  - c. THE DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND PURSUANT TO 8(b) ABOVE SHALL ALSO INCLUDE LOSSES WHICH ARISE OR ARE ALLEGED TO ARISE IN WHOLE OR IN PART FROM ANY DEGREE OF NEGLIGENT, INTENTIONAL, OR OTHER CONDUCT OR FAULT OF HERITAGE, ITS EMPLOYEES OR AGENTS, WHETHER THAT NEGLIGENCE, CONDUCT OR FAULT IS ACTIVE OR PASSIVE, OR WHETHER IT IS A JOINT, CONCURRENT OR CONTRIBUTORY CAUSE.
  - d. THE DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND PURSUANT TO 8(a) ABOVE SHALL NOT APPLY WHERE COUNTY IS ENTITLED TO (I) SOVEREIGN IMMUNITY OR ANY SIMILAR PROTECTION OR (II) COVERAGE BY ANY INSURANCE POLICY.
9. Attorneys' Fees. If any legal action is commenced because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs (including costs of collection), in addition to any other relief to which it may be entitled.
10. Limitation of Liability. IN NO EVENT SHALL HERITAGE BE LIABLE FOR INDIRECT INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF

THIS CONTRACT, WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE. WITHOUT IN ANY WAY LIMITING THE FOREGOING, HERITAGE'S LIABILITY SHALL FURTHER IN NO EVENT EXCEED THE AMOUNT PAID TO HERITAGE DURING THE MOST RECENT SIX-MONTH PERIOD.

11. Confidentiality. For purposes of this Agreement, "Confidential Information" shall mean any non-public, confidential or proprietary information or data, whether communicated in writing, orally, or by any other method, and whether or not patentable or copyrightable, that is provided by one party (including any Authorized User or any party's affiliates) ("Discloser") to the other party ("Recipient") under this Agreement and that is (i) marked as "confidential" or "proprietary" by the Discloser at the time of disclosure, or within thirty (30) days after disclosure in written form; or (ii) information which a reasonable person engaged in a similar transaction would consider to be confidential information; further provided that, if such information or data relates to the Services, then such information and data will be "Confidential Information" whether or not it has been marked as "confidential" or "proprietary" by the Discloser. Without limitation, Confidential Information also includes Protected Health Information ("PHI"), as defined by Health Insurance Portability and Accountability Act of 1996 ("HIPAA") accessed in connection with the Services. Heritage's Confidential Information will include the terms of this Agreement and any SOW, web site architecture and content, any of Heritage's or its third party service providers' or vendors' technology, or computer software in all versions and forms of expression, manuals, notes, documentation, technical information, drawings, diagrams, or specifications. County's Confidential Information shall include County Data, which means any non-public, proprietary data, information, or material provided or submitted to Heritage by the County in connection with the County's use of the Services. All Confidential Information will be maintained in confidence by the Recipient using at least the same degree of care as the Recipient uses to protect its own Confidential Information, but in no event less than a reasonable degree of care, and will not be disclosed to a third party or used for any purposes except as set forth in this Agreement. The obligations described in this Section 11 will not apply to any Confidential Information that (i) is known by the Recipient at the time of receipt, and not through a prior disclosure by the Discloser, as documented by the Recipient's business records; is known to the public before its receipt from the Discloser, or thereafter becomes known to the public through no breach of this Agreement by the Recipient; (ii) is subsequently disclosed to the Recipient by a third party who is not under an obligation of confidentiality to the Discloser; or (iii) is developed by the Recipient independently of Confidential Information received from the Discloser, as documented by the Recipient's business records. Notwithstanding the obligations of confidentiality and non-use set forth in Section 11, the Recipient may use and disclose Confidential Information as may be reasonably required by it in order for the Recipient to perform its obligations and to exercise its rights under this Agreement. The Recipient may disclose Confidential Information: (a) to its employees, directors, agents, consultants, advisors, or other third parties for the performance of its obligations and exercise of its rights hereunder, provided such entities are under an obligation of confidentiality with respect to such information that is no less stringent than those of this Section 11; and (b) to the extent necessary to comply with a court order, or as otherwise required by law or by a regulatory agency or government body, provided that the Recipient shall first give notice to the Discloser (so long as such notice is not prohibited by law) and assist the Discloser, at the Discloser's expense, to block such disclosure and/or obtain a protective order to protect the confidentiality of such information. If the Recipient is nevertheless required to make such disclosure, the Recipient agrees to disclose only that portion of the Confidential Information that it is legally required to disclose, provided, however, the Recipient shall continue to be bound by the confidentiality and non-use provisions of Section 11 with respect to any Confidential Information disclosed by the Recipient pursuant to this Section 11. The Recipient shall immediately notify the Discloser of any actual or suspected unauthorized disclosure of Confidential Information. The parties agree that a breach or threatened breach of this Section 11 would result in irreparable harm to the Discloser and that a monetary award or a breach would be inadequately

compensated by money damages. Accordingly, the non-breaching party may, in addition to any other legal remedies that may be available, seek injunctive relief, including, without limitation, preliminary injunctive relief, prohibiting or enjoining any such actual or threatened breach of this Section 11. The parties agree that the non-breaching party will not be required to post a bond in seeking such injunctive relief.

12. Force Majeure. No delay or failure in performance by either party hereto, except for the payment for Services previously performed, shall constitute default hereunder or give rise to any claim for damages, if, and to the extent, such delay or failure is caused by an occurrence beyond the reasonable control and without the fault or negligence of the party affected and which said party is unable to prevent or provide against by exercise of reasonable diligence, including, but not limited to, acts of God or the public enemy, unavoidable casualties, expropriation or confiscation of facilities, changes in applicable law, court orders, acts, orders or regulations of any governmental agency, revocation or modification of governmental permits or other required licenses or approvals, war, rebellion, sabotage or riots, unavailability of labor, equipment, supplies, materials or work, floods, adverse weather conditions, fires, explosions, or other catastrophes, strikes or any other considered acts of employees, lockouts or similar occurrences (collectively, "Force Majeure").
13. Independent Contractor. Heritage is and shall perform this Agreement as an independent contractor and, as such, shall have and maintain complete control over all of its employees and operations. Neither Heritage nor anyone employed by it shall be, represent, act, purport to act, or be deemed to be the agent, representative, employee, or servant of County.
14. Notice.
  - a. All notices required or permitted to be given under this Agreement shall be in writing and addressed or delivered by certified mail or overnight courier with tracking capabilities to the parties at the following addresses:
 

<p>Heritage Health Solutions, Inc. 750 Canyon Dr. Suite 120 Coppell, Texas 75019 Attn: Director, Contract Management</p>	<p>Anderson County Sheriff's Office</p>
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  - b. County will give written notice to Heritage of a claim for indemnification under Section 8 promptly following the County's first knowledge of the event or occurrence which gives rise to that claim. Upon receipt of notice, and determination by Heritage that County has a valid claim for indemnification, Heritage shall have the right to retain counsel to defend, negotiate, adjust, and/or settle a claim against County. Heritage has no obligation to indemnify County when County does not provide timely notice of a claim, allowing Heritage the timely opportunity to defend, negotiate, adjust, and/or settle the claim. For avoidance of doubt, Heritage's defense, negotiation, adjustment, and/or settlement of a claim against County shall not constitute an admission or acceptance of any duty or obligation of Heritage to indemnify County, and shall be deemed to be subject to a reservation of rights by Heritage to dispute such duty or obligation.
15. Assignment or Delegation. Heritage may delegate, assign, or subcontract its rights and/or responsibilities under this Agreement without the consent of County. County may not assign or subcontract its rights and/or responsibilities under this Agreement without Heritage's prior written approval.

16. **Governing Laws.** This Agreement shall be governed by the State of Texas and the venue for all disputed matters shall be the State of Texas without regard for choice of law or conflict of law provisions.
17. **Defined Terms.** All defined terms herein, designated by initial capitalization, shall have the meaning so ascribed, said meaning being equally applicable to both singular and plural forms or to grammatical variations (including but not limited to masculine, feminine, and neuter pronouns), as the case may be. The paragraph headings in this Agreement are inserted for the convenience of the parties only and shall not in any manner define, limit, or describe the intent or scope or in any manner affect this Agreement.
18. **Waiver.** Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provisions or conditions.
19. **Severability.** If any section of this Agreement shall be found to be unenforceable, such finding shall not affect the enforceability of any other section or the Agreement as a whole.
20. **Electronic Signature.** This Agreement may be executed and delivered by facsimile transmission, email, PDF, electronic signature or other similar electronic means, and such signature shall create a valid and binding obligation of the party executing with the same force and effect as if such signature page were an original thereof.

IN WITNESS WHEREOF, the parties have read, understand, and agree to be bound by the terms of this Agreement and have executed this Agreement by their duly authorized representatives as of the date first written above.

**HERITAGE HEALTH SOLUTIONS, INC.**

**ANDERSON COUNTY SHERIFF'S OFFICE**

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

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

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

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

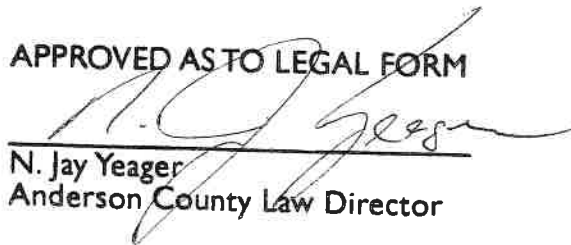
Title: \_\_\_\_\_

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM**

  
**N. Jay Yeager**  
**Anderson County Law Director**

## ATTACHMENT A - SERVICES

Heritage will manage medical claims administration, provider network contracting, and provider payment for all Outpatient, Emergency Room, and Hospital Inpatient claims when residents leave the County's detention facilities for medical services that are the financial responsibility of the County.

- Heritage will be responsible for medical claims processing of all off-site medical claims.
- Heritage will negotiate with local providers to participate in our Heritage Network.
- Heritage will pay providers at our negotiated contract rates.
- Heritage will pay in-network providers within 45 calendar days of receiving a valid claim.
- Heritage will invoice the County monthly for the previous month's processed claims.
- Heritage will provide a toll-free phone line with a customer service call center.
- Heritage will provide an account manager to assist with day-to-day issues or questions.
- Heritage will confirm eligibility and authorization of service prior to payment of claims based on information supplied by the County and/or jail facility. Claims that don't meet approval requirements will be denied.
- Heritage will manage the appeals process with providers.
- For full transparency, the Heritage invoice will include the billed amount from the provider, the Medicare price, and the invoiced amount to the County.
- Heritage shall notify providers and facilities of the change in third party administrator if applicable.
- Heritage will provide a Standard Operating Procedure during the implementation phase of the Services.

### Invoicing:

- Monthly invoicing is based on the processed date of the claim and will reflect all claims that are processed within a given period. Once the monthly invoicing process is finalized, invoices are issued for payment. If "paid" claims are later identified as invalid, the reversal and credit for those claims will be included on the monthly invoice in which the reversal is processed. Since invoicing is based on processed date, once a period is closed, modifications to the invoice cannot be made. Any adjustments to previously processed claims will be made in subsequent periods and will be reflected on the invoice for the period the adjustment was processed.

### Reporting:

- Standard and Ad Hoc reporting will be provided.
- Data management and exchange including eligibility files and off-site authorization files.
- Invoices will be delivered via secure email or uploaded to our secure FTP site where the County can access them.
- As part of this service, if the County can provide a weekly off-site visit report that would make it apparent which off-site visits have been authorized, Heritage will use that information to produce a monthly accrual report. The accrual report will identify estimated costs associated with visits that have occurred, but for which claims have not yet been received. The accrual report will be delivered at the same time as the monthly invoice.
- Heritage will include a monthly claim detailed report with each monthly invoice that indicates the processed claims during that check cycle.
- The monthly claim detail report will include all processed claims paid in the claim cycle with supporting details including:

• Claim Number	• Member DOB	• Primary Diagnosis	• Billed Amount
• Member Name	• Provider Name	• Diagnosis Description	• Invoice Amount
• Member ID	• Provider Tax ID	• Date(s) of service	

## ATTACHMENT B – PRICE OFFERING

Heritage will adjudicate and pay all the medical claims that occur outside the jail for the County. Heritage will negotiate, in good faith, with providers, to secure and maintain a comprehensive, countywide medical preferred provider network (PPN) to provide accessible offsite inpatient and outpatient healthcare to County inmates.

Processing Fee per claim:

- Fully Processed and Denials ..... \$40.00

All claims will be invoiced at 195% of the Medicare Allowable Amount as of the date of service. County shall reimburse Heritage at the invoiced amount for all claims in addition to the processing fee referenced above.

Exceptions to invoiced amounts referenced above:

- Critical Access Hospitals (“CAH”) will be reimbursed according to the rate in place with the Centers for Medicare and Medicaid Services (“CMS”). If the reimbursement rate to the hospital is greater than the invoice amount to County, the rate will be passed through to the County;
- If any state mandates a reimbursement rate that is greater than the invoice amount, the rate will be passed through to the County;
- For select providers that will not accept the applicable Medicare or Medicaid pricing, rates paid will be passed through to the County.

## ATTACHMENT C - MEDICAL CLAIMS PROCESSING STANDARD OPERATING PROCEDURES

### A. Background

Heritage is responsible for adjudicating healthcare claims for off-site medical services. Internal reports will be generated daily, weekly, and monthly to produce the month-end invoice reporting.

### B. Medical Claims Reprocessing and Pricing

Heritage will utilize a claims adjudication system to process and reprice valid claims for healthcare services provided to contracted facilities prisoners/patients.

- a) Heritage will maintain a list of in-network and out-of-network providers. A change date will be included on the list of providers to easily identify changes/updates.
- b) Contracted providers indicated with "Y" on the list will be indicated as In Network
- c) Heritage monitors financial error rates (providers paid incorrect amounts) quarterly. This report includes any claims paid in error (i.e., duplicate claims).
- d) Error rate will be less than 3% annually.

### C. Service Metrics

- a) Heritage will process 99% of clean claims within 8 business days.
- b) Heritage will maintain a financial accuracy > 98%
- c) Heritage will respond to appeals within 14 days of receipt.

### D. County Requirements

- a) To ensure proper claims processing, reporting and management, County will provide the following reports on a daily, or no less than weekly basis:
  - a. Eligibility File will be provided in a mutually agreeable format to identify all prisoners in custody as of the date of the report.
  - b. Authorization Log will be provided in a mutually agreeable format to identify all off-site medical visits that have been authorized by the appropriate personnel at the facility.

### E. Received Claims

- a) Claims will be scanned within 24 business hours of receipt.
- b) Heritage will receive, prepare, and process clean claims within 8 business days from receipt on average.

### F. Processing Claims

Clean valid claims up to but not including the last two business days of each calendar month are to be processed and included for payment consideration for the upcoming payment cycle. Claims are to meet the approved criteria of eligibility and authorization to be considered valid.

- a) Heritage will provide the SFTP site for the County to load daily eligibility files. Heritage will retrieve eligibility files from the SFTP site daily. Eligibility files should have a start/arrested date for each prisoner. If there is no end/release date populated, Heritage will "term by absence", thus creating an end date effective the last date of the file the prisoner was present on.

- b) Authorization logs will be reviewed and loaded into claims adjudication system as Heritage receives them from facility. The goal is to obtain authorization logs from facilities at least weekly. Authorization logs will be in a consistent format and include an Admit and Discharge date. If logs are incomplete, this may cause a claim to be pended for further review and clarification. Authorization Files should be cumulative. Retroactive authorizations will be added to the spreadsheet with the date of the authorized visit. Authorizations that are to be considered for the current month's claims are to be received by end of day on the last business day of the month.
- c) Clean valid claims will be entered and processed within 8 business days on average. Once Claims are processed, they will be visible in the Heritage daily claims file.
- d) If claims do not meet the criteria for processing, Heritage will hold/pend the claim. Heritage reviews a pended claim report at least weekly to attempt to resolve whatever issues are preventing the claim from being processed. Heritage will work with the County to obtain information needed to determine whether the claim should be paid or denied. The claim will then be paid/denied within the pay cycle. If the required information is not received prior to the last two business days of the month, the claims in question will be pended and not included in that month's payment cycle.

#### G. Daily Claims Inventory

Heritage will produce claims inventory reporting Monday-Friday during each monthly cycle.

- a) Heritage will pull the reports daily to start the review process.
- b) Heritage will confirm Prisoner eligibility against the provided eligibility files when claim is entered into the system. Due to receiving multiple eligibility records, a secondary check is completed at month end and prior to preparing draft reports.
- c) On average, within 8 business days clean claims will be processed to include repricing. The details of any claim may change upon receipt of additional information, retrospective review or due to other reasons.

#### H. Invoicing

- a) Claims processing will be complete, and a master data file will be produced on business day 5 for the claims processed in the previous month. Data will be considered final unless Heritage identifies modifications that need to be made prior to invoicing, but no later than business day 8. After Heritage approves the data file, the payment cycle will be completed, check register generated, and all reports will be finalized no later than 5:00pm CST on business day 9.
- b) Heritage will endeavor to send finalized invoices to the County on business day the 10th of each month.
- c) Claim detail report that accompanies County invoice will include: claim number, prisoner/patient name, prisoner/patient ID, DOB, pre-booking status, network status, service from and to dates, billed amount, Medicare and/or Medicaid amount and invoice charges for each claim processed.
- d) Monthly invoicing is based on the processed date of the claim and will reflect all claims that are processed within a given period. Once the monthly invoicing process is finalized, invoices are issued for payment. If "paid" claims are later identified as invalid, the reversal and credit for those claims will be included on the monthly invoice in which



the reversal is processed. Since invoicing is based on processed date, once a period is closed, modifications to the invoice cannot be made. Any adjustments to previously processed claims will be made in subsequent periods and will be reflected on the invoice for the period the adjustment was processed.

- e) Heritage will also prepare and maintain the accrual log for pre-booking, or prior to booking, and non-pre-booking per fiscal year for each applicable facility upon approval of the master data file. If alternate formats are required those parameters will be provided during implementation.
- I. Provider Funding
- Upon the final review and approval of the master data file, Heritage will fund the appropriate bank account for payment to providers, and receive a confirmation email that payment processing has been released and payments issued within 24 – 48 business hours later.
- J. Portal Platform
- a) All Provider payments will be visible to Heritage customer service staff on a payment platform. The payment platform will also provide the Explanation of Benefits (EOB).
  - b) It is Heritage's intent to make the payment information available to the County and providers on a proprietary portal platform at a future date.
- K. Appeals Process
- a) Heritage will receive, review, and respond to all appeals received within 14 days of receipt.
  - b) Appeals will be logged to account for receipt of appeal, response date of appeal and resolution date.
- L. Duplicate Claims
- a) Heritage has developed internal controls to prevent/minimize duplicate claims payment.
    - a. Any claim entered/loaded into the system is matched against an existing claim with the same provider tax id, prisoner number and dates of service. If a match is made the claim is flagged as a possible duplicate and an internal note is appended to identify the claim(s) that it may be a duplicate of. The supervisor or manager will review the claims and make the determination if the claim is a duplicate or not and annotate reasoning why it is not a duplicate.
    - b. A secondary process of reviewing a duplicate claim report that includes all claims processed and flagged for possible duplicates is completed prior to posting of estimates and draft master data file.
  - b) If a duplicate claim is paid:
    - a. Heritage will send out a series of up to three (3) recoupment letters at day 30, 60, 90. If no response within 30 days of the first letter, Heritage will call the provider to ensure the overpayment letter and back up documentation were received.
    - b. If allowable under the provider agreement, Heritage will withhold the overpayment amount from a future provider payment.
    - c. County will be credited the overpayment amount on the next regularly scheduled invoice cycle.

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- d. Claim detail report that accompanies the monthly invoice will show a negative claim count and negative payment adjustment to previous paid claim that will credit the original charge.
- e. Duplicate claims shall not exceed 0.1% of total claims processed per year.

M. Claim Adjustments

- a) If the previously paid amount on a claim needs to be adjusted, the new claim detail report will show a negative claim count and negative payment adjustment to previous paid claim that will credit the original charge. A separate line item with the adjusted invoice amount and positive claim count will be included to reflect that the claim has been reprocessed at a new invoice amount.
- b) Heritage will list adjustments on the claim detail report that accompanies the monthly County invoices as the adjustments are processed, and in accordance with the normal invoice cycle timeline. Claims that are adjusted after the close of an invoice cycle will appear on the next regularly scheduled invoice.

## ATTACHMENT D - BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**Agreement**") is entered into between Anderson County Sheriff's Office ("**Covered Entity**") and Heritage Health Solutions, Inc., a Texas corporation. ("**Business Associate**"), with an effective date of \_\_\_\_\_ ("**Effective Date**"). This Agreement sets out the responsibilities and obligations of Business Associate as a business associate of Covered Entity under the Health Insurance Portability and Accountability Act ("**HIPAA**") and the Health Information Technology for Economic and Clinical Health Act ("**HITECH Act**").

### RECITALS

**A.** Covered Entity and Business Associate are parties to an agreement or arrangement pursuant to which Business Associate provides certain services to Covered Entity ("**Services**").

**B.** In conjunction with Services, Covered Entity may make available to Business Associate Protected Health Information of Individuals, which Business Associate may only Use or Disclose in accordance with this Agreement.

### AGREEMENT

Business Associate and Covered Entity agree to the terms and conditions of this Agreement in order to comply with the rules on handling of Protected Health Information under the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E ("**Privacy Rule**"), the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C ("**Security Rule**"), and the HIPAA Breach Notification Regulations, 45 C.F.R. Part 164, Subpart D ("**Breach Notification Rule**"), all as amended from time to time.

#### **1. Definitions.**

1.1. **Terms Defined in Regulation.** Unless otherwise provided in this Agreement, all capitalized terms in this Agreement will have the same meaning as provided under the Privacy Rule, the Security Rule and the Breach Notification Rule.

1.2. **Protected Health Information or PHI.** Protected Health Information ("**PHI**") means PHI that is received from Covered Entity, or created, maintained or transmitted on behalf of Covered Entity, by Business Associate.

#### **2. Uses and Disclosures of Protected Health Information.**

2.1. **Performance of Services.** Business Associate will Use or Disclose PHI only for those purposes necessary to perform Services, or as otherwise expressly permitted in this Agreement or Required by Law, and will not further Use or Disclose such PHI.

2.2. **Subcontractors.** Business Associate agrees that, in accordance with 45 C.F.R. § 164.502(e)(1), if Business Associate's Subcontractor creates, receives, maintains or transmits PHI on behalf of Business Associate, Business Associate will enter into an agreement with such Subcontractor that contains substantially the same restrictions and conditions on the Use and Disclosure of PHI as contained in this Agreement.

2.3. **Business Associate Management, Administration and Legal Responsibilities.** Business Associate may Use PHI for Business Associate's management and administration, or to carry

out Business Associate's legal responsibilities. Business Associate may Disclose PHI to a third party for such purposes only if: (1) the Disclosure is Required by Law; or (2) Business Associate secures written assurance from the receiving party that the receiving party will: (i) hold the PHI confidentially; (ii) Use or Disclose the PHI only as Required by Law or for the purposes for which it was Disclosed to the recipient; and (iii) notify the Business Associate of any other Use or Disclosure of PHI.

2.4. **Data Aggregation and De-Identification.** Business Associate may Use PHI to perform data aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B). Business Associate may also de-identify PHI in accordance with 45 C.F.R. § 164.514.

2.5. **Covered Entity Responsibilities.** To the extent Business Associate is to carry out Covered Entity's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity's compliance with such obligations.

### 3. **Safeguards for Protected Health Information.**

3.1. **Adequate Safeguards.** Business Associate will implement and maintain appropriate safeguards to prevent any Use or Disclosure of PHI for purposes other than those permitted by this Agreement, including administrative, physical and technical safeguards to protect the confidentiality, integrity, and availability of any electronic protected health information ("**ePHI**"), if any, that Business Associate creates, receives, maintains, and transmits on behalf of Covered Entity.

3.2. **Compliance with HIPAA Security Rule.** Business Associate will comply with the applicable requirements of the HIPAA Security Rule.

### 4. **Reports of Improper Use or Disclosure of Protected Health Information, Security Incidents and Breaches.**

4.1. **Use or Disclosure Not Permitted by This Agreement.** Business Associate will report in writing to Covered Entity any Use or Disclosure of PHI for purposes other than those permitted by this Agreement within ten (10) business days of Business Associate's learning of such Use or Disclosure.

4.2. **Security Incidents.** Business Associate will report in writing to Covered Entity any Security Incident of which Business Associate becomes aware. Specifically, Business Associate will report to Covered Entity any successful unauthorized access, Use, Disclosure, modification, or destruction of ePHI or interference with system operations in an information system containing ePHI of which Business Associate becomes aware within ten (10) business days of Business Associate learning of such Security Incident. Business Associate also will report the aggregate number of unsuccessful, unauthorized attempts to access, Use, Disclose, modify, or destroy ePHI or interfere with system operations in an information system containing ePHI, of which Business Associate becomes aware, provided that: (i) such reports will be provided only as frequently as the parties mutually agree, but no more than once per month; and (ii) if the definition of "Security Incident" under the Security Standards is amended to remove the requirement for reporting "unsuccessful" attempts to Use, Disclose, modify or destroy ePHI, the portion of this Section 4 addressing the reporting of unsuccessful, unauthorized attempts will no longer apply as of the effective date of such amendment.

4.3. **Breaches of Unsecured PHI.** Business Associate will report in writing to Covered Entity any Breach of Unsecured Protected Health Information, as defined in the Breach Notification Rule, within ten (10) business days of the date Business Associate learns of the incident giving rise to the Breach. Business Associate will provide such information to Covered Entity as required in the Breach Notification Rule.

## 5. Access to Protected Health Information.

5.1. **Covered Entity Access.** To the extent Business Associate maintains PHI in a Designated Record Set that is not duplicative of a Designated Record Set maintained by Covered Entity, Business Associate will make such PHI available to Covered Entity within ten (10) business days of a request by Covered Entity for access to such PHI.

5.2. **Individual Access.** If an Individual makes a request for access directly to Business Associate, Business Associate will within ten (10) business days forward such request in writing to Covered Entity. Covered Entity will be responsible for making all determinations regarding the grant or denial of an Individual's request for PHI and Business Associate will make no such determinations. Only Covered Entity will release PHI to an Individual pursuant to such a request, unless Covered Entity directs Business Associate to do so.

## 6. Amendment of Protected Health Information.

6.1. **Covered Entity Request.** To the extent Business Associate maintains PHI in a Designated Record Set that is not duplicative of a Designated Record Set maintained by Covered Entity, Business Associate will provide such PHI to Covered Entity for amendment within ten (10) business days of receiving a request from Covered Entity to amend an Individual's PHI. Alternatively, if Covered Entity's request includes specific instructions on how to amend the PHI, Business Associate will incorporate such amendment into the PHI it holds in a Designated Record Set within ten (10) business days of receipt of the Covered Entity's request.

6.2. **Individual Request.** If an Individual makes a request for amendment directly to Business Associate, Business Associate will within ten (10) business days forward such request in writing to Covered Entity. Covered Entity will be responsible for making all determinations regarding amendments to PHI and Business Associate will make no such determinations unless Covered Entity directs Business Associate to do so.

## 7. Accounting of Disclosures of Protected Health Information.

7.1. **Disclosure Records.** Business Associate will keep a record of any Disclosure of PHI that Business Associate makes, if Covered Entity would be required to provide an accounting to Individuals of such Disclosures under 45 C.F.R. § 164.528. Business Associate will maintain its record of such Disclosures for six (6) years from the date of the Disclosure.

7.2. **Data Regarding Disclosures.** For each Disclosure for which it is required to keep a record under paragraph 7(a), Business Associate will record and maintain the following information: (1) the date of Disclosure; (2) the name of the entity or person who received the PHI and the address of such entity or person, if known; (3) a description of the PHI Disclosed; and (4) a brief statement of the purpose of the Disclosure.

7.3. **Provision to Covered Entity.** Within ten (10) business days of receiving a notice from Covered Entity, Business Associate will provide to Covered Entity its records of Disclosures.

7.4. **Request by Individual.** If an Individual requests an accounting of Disclosures directly from Business Associate, Business Associate will forward the request and its record of Disclosures to Covered Entity within ten (10) business days of Business Associate's receipt of the Individual's request. Covered Entity will be responsible for preparing and delivering the accounting to the Individual.

Business Associate will not provide an accounting of its Disclosures directly to any Individual, unless directed by Covered Entity to do so.

#### **8. Access to Books and Records.**

Business Associate will make its internal practices, books and records on the Use and Disclosure of PHI available to the Secretary to the extent required for determining compliance with the Privacy Rule, the Security Rule, or the Breach Notification Rule. No attorney-client, accountant-client or other legal privilege will be deemed waived by Business Associate or Covered Entity as a result of this Section.

#### **9. Termination.**

Either party may terminate this Agreement upon the other party's material breach of this Agreement. The non-breaching party will provide the breaching party with written notice of the breach of this Agreement and will afford the breaching party the opportunity to cure the breach to the satisfaction of the non-breaching party within thirty (30) days of the date of such notice. If the breaching party fails to timely cure the breach, as determined by non-breaching party in its sole discretion, the non-breaching party may terminate this Agreement.

#### **10. Return or Destruction of Protected Health Information.**

10.1. **Return or Destruction of PHI.** Within thirty (30) days of termination of this Agreement, Business Associate will return to Covered Entity all PHI that Business Associate or its Subcontractors maintain in any form or format. Alternatively, Business Associate may, upon Covered Entity's consent, destroy all such PHI and provide Covered Entity with written documentation of such destruction.

10.2. **Retention of PHI if Return or Destruction is Infeasible.** If Business Associate believes that returning or destroying PHI at the termination of this Agreement is infeasible, it will provide written notice to Covered Entity within thirty (30) days of the effective date of termination of this Agreement. Such notice will set forth the circumstances that Business Associate believes makes the return or destruction of PHI infeasible and the measures that Business Associate will take for assuring the continued confidentiality and security of the PHI. Business Associate will extend all protections, limitations and restrictions of this Agreement to Business Associate's Use or Disclosure of the PHI retained after termination of this Agreement and will limit further Uses or Disclosures of such PHI to those purposes that make the return or destruction of the PHI infeasible.

#### **11. Miscellaneous.**

11.1. **Compliance with Laws.** The parties are required to comply with federal and state laws. If this Agreement must be amended to secure such compliance, the parties will meet in good faith to agree upon such amendments. If the parties cannot agree upon such amendments, then either party may terminate this Agreement upon thirty (30) days' written notice to the other party.

11.2. **Construction of Terms.** The terms of this Agreement will be construed in light of any applicable interpretation or guidance on the Privacy Rule, the Security Rule or the Breach Notification Rule issued by HHS.

11.3. **No Third Party Beneficiaries.** Nothing in this Agreement will confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

- 11.4. **Notices.** All notices required under the Agreement will be given in writing and will be delivered by (1) personal service, (2) first class mail, or (3) messenger or courier. All notices shall be addressed and delivered to the contact designated in the signature block, or other address provided by the party from time to time in writing to the other party. Notices given by mail will be deemed for all purposes to have been given forty-eight hours after deposit with the United States Postal Service. Notices delivered by any other authorized means will be deemed to have been given upon actual delivery.
- 11.5. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with regard to the Privacy Rule, the Security Rule and the Breach Notification Rule, there are no understandings or agreements relating to this Agreement that are not fully expressed in this Agreement and no change, waiver or discharge of obligations arising under this Agreement will be valid unless in writing and executed by the party against whom such change, waiver or discharge is sought to be enforced.
- 11.6. **Waiver of Default.** The waiver by either party of any one or more breaches or defaults of the other party will not be construed to operate as a waiver of any other future breaches or defaults, either under the same or different terms, conditions, or covenants contained in this Agreement or in written notice pursuant to this Agreement.
- 11.7. **Severability.** In the event any term or provision of this Agreement is rendered invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
- 11.8. **Written Agreement.** This Agreement will be considered an attachment to the underlying agreement or arrangement and is incorporated as though fully set forth within the underlying agreement or arrangement. This Agreement will govern in the event of conflict or inconsistency with any provision of the underlying agreement or arrangement.
- 11.9. **Counterparts and Signature.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and when taken together shall constitute one agreement. Facsimile and electronic signatures shall be deemed to be original signatures for all purposes of this Agreement.
- 11.10. **Choice of Law.** The validity, construction and effect of this Agreement will be governed by the laws of the State of Texas, without giving effect to that state's conflict of laws rules. Any Dispute will be resolved in a forum located in the State of Texas.

*[Signature Page Follows]*

**COVERED ENTITY**

**ANDERSON COUNTY SHERIFF'S  
OFFICE**

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

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

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

Date: \_\_\_\_\_

**BUSINESS ASSOCIATE**

**HERITAGE HEALTH SOLUTIONS, INC.**

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

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

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

Date: \_\_\_\_\_

**Contacts for Notices under this Agreement:**

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_



## MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING ("MOU")** is hereby made and provided by HealthPlan Freedom, Inc ("HPF") to Anderson County Detention Center ("Facility").

The purpose of this MOU is to establish a framework of cooperation between Facility and HPF for the purpose of implementing HPF's PRE-TRIIP program. The purpose of the PRE-TRIIP program is to help individuals who are either incarcerated but not yet convicted, or soon to be discharged from the Facility, to understand their health insurance options, identify the best available health insurance option based on the individuals specific healthcare needs and enrolled in the best available health insurance plan.

HPF's PRE-TRIIP program is designed to help Facility decrease its spend for external healthcare services by allowing HPF to obtain health insurance for as many Eligible Inmates as possible. pre-trial, but not yet convicted inmates and inmates that are soon to be discharged either by parole, pardon, plea agreement or completion of sentence.

As required condition to participate in HPF's PRE-TRIIP program is that the Facility understands, acknowledges and agrees to all of the following terms and conditions of the program:

- An Eligible Inmate(s) is defined as an inmate in a pre-trial not yet convicted status or an inmate to be released within the next 50 days. *Inmates who are convicted and incarcerated are not eligible for traditional health insurance through HPF's PRE-TRIIP program.*
- For the purposes of HPF's operational planning the Facility projects that \_\_\_\_ pre-trial inmates will be processed on a monthly basis and projects that \_\_\_\_ inmates are expected to be released due to parole, pardon, plea agreement or completion of sentence each month.
- HPF will be allowed a 3 year period in which to exclusively implement and administer our PRE-TRIIP program.
- HPF is NOT LIABLE in any way for services provided in relation to this MOU.
- HPF is in NO WAY assuming any responsibility and is NOT LIABLE for any healthcare expenses for any current or future inmates associated (for any reason) with the Facility. Under no circumstances will HPF be held liable for any healthcare costs incurred by any inmate associated with the Facility.
- HPF is an intermediary with expertise in helping individuals identify, understand and enroll in the best available health insurance option.
- HPF will not charge the Facility, the Sheriff or the associated County for the services provided in relation to this MOU.
- For any inmate enrolled in a health insurance plan, coverage will start the 1<sup>st</sup> of the month following enrollment.
- HPF's PRE-TRIIP program is subject to changes in state and or federal regulations. HPF has no control over these changes.
- HPF makes no guarantees of any kind with respect to the outcome or performance of services provided in this MOU.
- HPF will provide a PDF copy of materials to be used to create awareness of the PRE-TRIIP program. HPF will provide a dedicated phone number for people to call to speak with one of HPF's Specialists.
- HPF will work with Facility to implement the PRE-TRIIP program to obtain health insurance for the Facility's Eligible Inmate population.
- HPF will maintain compliance with all state and federal regulations governing the services provided in this MOU.
- HPF will appropriately staff its call center with licensed representatives Monday – Friday 8 AM to 5 PM EST.
- HPF will work with the Facility's medical service partner to optimize the impact of enrollments and cost savings.
- HPF will notify Facility of any changes made by governing authorities that will impact the Facility's benefit from the PRE-TRIIP program.
- HPF will collaborate with the Facility to identify and address opportunities for improvement in performance of services provided.

If in agreement with the terms and conditions set forth in this MOU, please sign below return it to HPF.

**Anderson County Detention Center**

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

Date: \_\_\_\_\_

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

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

Copyright 2023. Confidential Unpublished Property of Health Plan Freedom, Inc

APPROVED AS TO LEGAL FORM  
 N. Jay Yeager  
 Anderson County Law Director

# PRE-TRIIP

## Health Insurance

By HealthPlan Freedom

Call us to get qualified for a NO-COST traditional health plan!

866-224-5603

HealthPlan Freedom is pleased to offer high-quality, low-cost health insurance to pre-trial inmates and soon-to-be-released inmates.

[WWW.NOCOSTINSURANCE.COM](http://WWW.NOCOSTINSURANCE.COM)

Plans may include dental & vision coverage as well depending on qualification.

Plans typically include:

- \$0 Office Visit Copay
- \$0 Deductible
- \$0 Generic Drug Copay
- \$0 Annual Physical
- Broad Provider Network
- Include family coverage

\*\* Carriers & Plans vary by state and county.

UNDER HEALTHPLAN FREEDOM'S

## PRE-TRIIP PROGRAM

**You may qualify for a No  
Cost Insurance Plan.**

Call us today at 866-224-5603, or  
schedule an appointment on  
[www.nocostinsurance.com](http://www.nocostinsurance.com) to learn  
about your options.



# **MESSE**

---

## **Financial Group**

**Health**  
**FREEDOM**

*Essential Healthcare That Is  
Affordable*

24-0045

# Who is HealthPlan Freedom?

We are a premier health services organization that specializes in helping people and organizations identify and access the most affordable and highest quality healthcare.

- We are based in Charlotte, NC and have been in business since 2004.
- We work with over 700,000 individuals across the country.
- Have worked with over 5,500+ former inmates
- We have a call center staffed with licensed specialists ready to help people identify their options



24-0095

# Why?

- To help protect correctional facilities from large, unplanned budgetary expenses. We are perfectly positioned as we already offer these insurance programs to society as a whole nationwide.
- Society as a whole benefits if everyone is provided with access to resources necessary to successfully manage their health care needs, especially those with mental health conditions.
- Access to affordable essential healthcare is critical to reducing the high level of anxiety experienced during incarceration and when transitioning back into society.



24.0095



# Typical Monthly Premium & Benefits

Typical Monthly Premium - \$0

Potential Benefits (In Network)

- \$0 Office Visit Copay
- \$20 Specialist Visit Copay
- \$0 Deductible
- \$0 Generic Drug Copay
- Minimal Out of Pocket Maximum \$1,100

\*\*\*Benefit plans & insurance carriers vary by state, county and individual qualifications criteria

24.0095

## How does the process work?

### Key Access Points:

- Medical H&P Exam
- Initial Intake

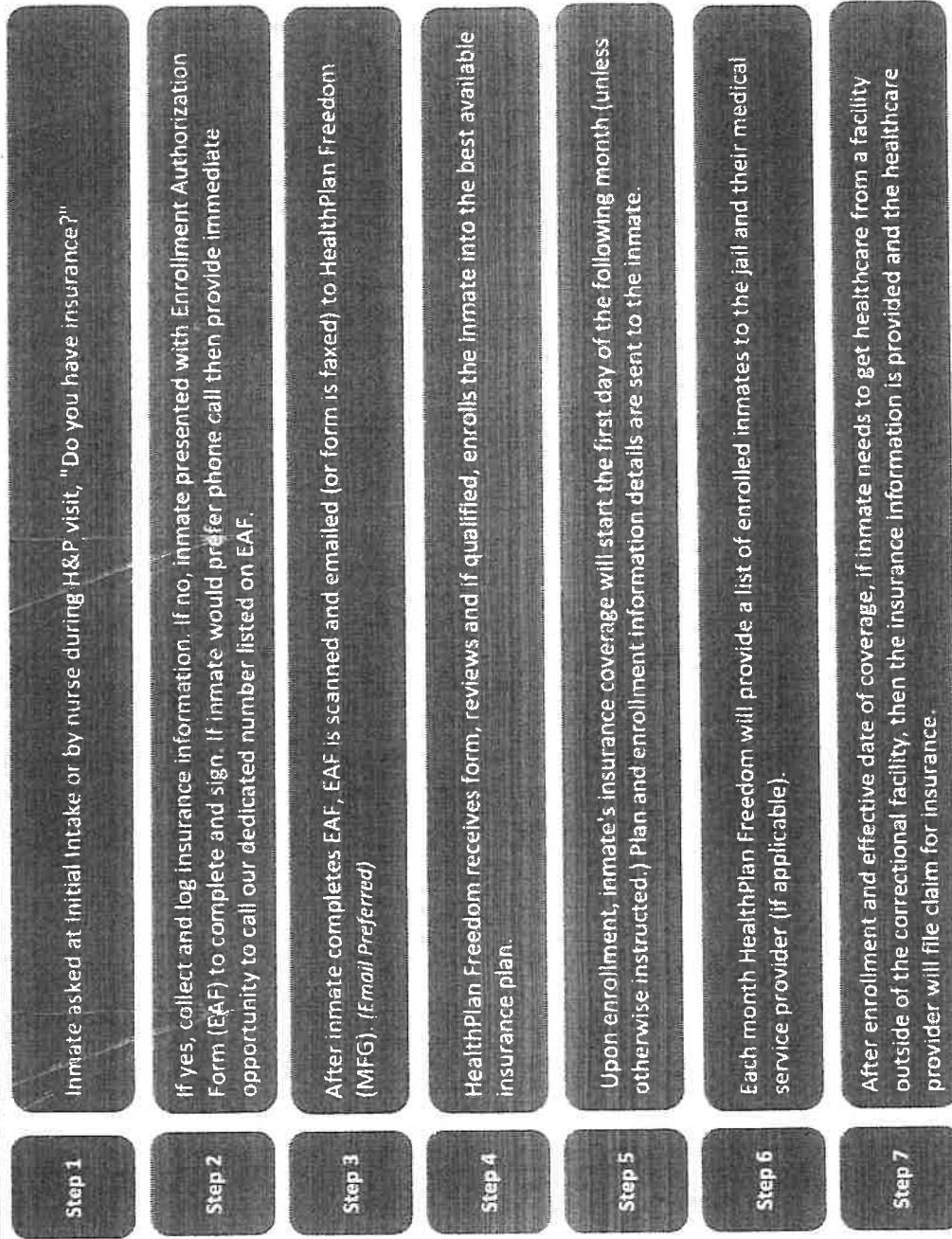
### Enrollment Methodologies:

Enrollment Authorization Form (EAF)

Dedicated phone line:  
**(866) 224-5603**

- Schedule an appointment through:

**[www.nocostinsurance.com](http://www.nocostinsurance.com)**



24-0095

## Key Information To Keep In Mind

- This solution is federally subsidized and does not cost the county, Sheriff, or jail anything.
- All policies are effective the 1st of the month following after enrollment. *If enrolled on 9/15, plan will most likely become effective on 10/1.*
- The Federal Program requires each carrier to resubmit their proposed plans and associated cost each year. New plans all start on January 1st. We handle all re-enrollments
- Available plans will vary by county and state. It can be substantial.
- Not everyone will qualify:
  - The monthly premium subsidy and benefit subsidy diminish with higher levels of income. People who make an annual income above the thresholds will not be eligible for any subsidy.
  - We help people over 65 years of age with their Medicare options as well.



# Any Questions?

## Contact Information:

Chris Baumgartner

423-805-0744

[cbaumgartner@messerfinancial.com](mailto:cbaumgartner@messerfinancial.com)

# Anderson County Government Employee Critical Care Paramedic School Tuition Agreement

This Agreement is made on \_\_\_\_\_ by and between,  
Devin Burnett (Employee) and Anderson County Emergency Medical Services (ACEMS).

Whereas Employee is an employee of ACEMS, and in order to enhance the skills of the Employee, the Employee is attending the critical care program at Roane State Community College (RSCC), beginning on or about MARCH 2024, ~~2023~~ and ending on or about MAY 2024, ~~2023~~.

## Witnesseth:

**Section 1: Tuition Payment.** ACEMS agrees to pay RSCC directly for the course cost, including fees and books in the amount of no more than \$1,500, as long as the Employee is actively full-time employed by ACEMS, AND, the employee and ACEMS agree to continue full-time employment for a period no less than one (1) year after obtaining of Critical Care Paramedic State EMS License. (ACEMS will not pay for testing fees, which are considered a separate cost from the school requirements). Should the employee leave during the period of the agreement, the employee will be required to repay the whole amount paid by ACEMS to RSCC.

**Section 2: Repayment Event.** Upon the occurrence of any of the following events ("Repayment Event"):

- a. Employment of the Employee at ACEMS terminates prior to the completion of the Program for any reason whatsoever, including resignation by Employee, or dismissal by Employer with cause; but excluding layoffs due to staff downsizing.
- b. Employment of the Employee at ACEMS terminates prior to the completion of the year after obtaining of Critical Care Paramedic State EMS License.
- c. Failure to complete/pass the Critical Care Paramedic program.
- d. Failure to obtain state Critical Care Paramedic license, once all testing opportunities have been exhausted.

**Section 3: Set-Off.** The Employee authorizes and directs ACEMS to set-off any and all amounts owing to ACEMS under this Agreement against any amount owing ACEMS to the Employee, including but not limited to salary, wages, vacation pay, etc.

**Section 4: Indemnity.** The Employee hereby indemnifies and saves harmless ACEMS from and against any and all suits, claims, actions, damages and other losses which ACEMS suffers or incurs as a result of any governmental taxing authority

assessing the reimbursement of the Tuition Payments hereunder as a benefit to the Employee.

**Section 8: Release.** Employee hereby agrees to release and hold County harmless from and against any and all claims, lawsuits, or the like associated with County's performance of this agreement, or as it relates to the past, present, or future financial condition of the County or the performance of Employee's services under this Agreement.

**Section 9: Default.** In the event of default by the Employee hereto, the County may bring suit against the Employee to enforce the terms of this Agreement. In such event, the prevailing party shall be entitled to recover any remedies available at law and/or equity including reasonable attorney's fees and costs associated with the default.

**Section 10: No Oral Modification.** No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding upon the Parties hereto unless made in writing and duly signed by all the parties.

**Section 11: Waiver.** A failure of any Party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder.

**Section 12: Entire Agreement.** This Agreement sets forth the entire understanding of the Parties as to the subject matter and may not be modified except in a writing executed by all Parties.

**Section 13: Severability.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

**Section 15: Exhibits.** Any Exhibits attached hereto or incorporated herein are made a part of this Agreement for all purposes. The expression "this Agreement" means the body of this Agreement and the Exhibits.

**Section 16: Multiple Counterparts; Effectiveness.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which shall be deemed, collectively, one Agreement. This Agreement shall become effective when executed and delivered by all the Parties.

**Section 17: Jurisdiction.** Each Party hereby irrevocably consents to the jurisdiction of all state courts sitting in Anderson County, Tennessee or all federal courts sitting in Knoxville, Tennessee and agrees that venue for any legal action brought in connection with this Agreement shall lie exclusively in such courts.

**Section 18: Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and upon their respective successors, heirs, or assigns.

24-0096

**Section 19: Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Tennessee.

**Section 20: Notice.** Any notice required or provided pursuant to this Agreement shall be in writing and sent or delivered to the Parties.

**Section 21: Titles and Subtitles.** Titles of paragraphs and subparagraphs are for convenient reference only and shall not have the effect of modifying, amending, or changing the express terms of this Agreement.

**Section 22: Assignment.** This Agreement is not assignable.

**Section 23: Further Documentation.** The Parties agree for themselves to execute any and all instruments in writing, which are or may become necessary or proper to carry out the employment relationship, purpose and intent of this Agreement.

**For Employee:**

Signature \_\_\_\_\_

Devin Burnett  
Print Full Name

Date: 1/24/24

Address: 8436 Wessel Lane

Rowell, TN 37849

\_\_\_\_\_

**For Anderson County:**

Nathan Sweet, Director of Emergency Medical Services  
Signature \_\_\_\_\_

Date: 1/25/24

Approved as to Form:

County Law Director  
Signature \_\_\_\_\_

# Mathspace Pricing Proposal

## Anderson County Schools

24-0098

# Pricing Overview

Name	Price	QTY	Subtotal
Mathspace TN - Digital Student License (5 years) <small>Access to Mathspace's standards-aligned content is included for five years</small>	\$70.00	1650	\$115,500.00
Total			\$115,500.00

## Additional Notes:

License Dates: July 1, 2024 - June 30, 2029

Digital teacher licenses included at no extra charge with purchase of student licenses.

Multi-year discount of 30% on regular price of \$20 per student per year.

Mathspace Inc.

[here.](#)

228 Park Ave S, #15992, New York, NY, 10003

[Access our W9 form.](#)

24-0098



**ANDERSON COUNTY GOVERNMENT**  
**SOLE SOURCE & EXCLUSIVE RIGHTS**  
**AND LICENSE JUSTIFICATION FORM**

Attachment 6

Revised 10/12/2015

**SUBMIT WITH REQUISITION TO PURCHASING DEPARTMENT**

DATE: 1-25-24

**CHECK ONE:**

- ☒ **Sole Source** – Product or service(s) is only available from a single vendor or supplier.
- ☐ **Exclusive Rights & License** – Vendor holds exclusive patents and/or license for this product. An Exclusive Rights letter with current date must accompany this request.
- ☐ **Upgrade or renewal to an existing software system** – Provide information regarding current software system.

Requisition Number: 56044 Requisition Amount: \$ 115,500.00

Vendor Name: Mathspace, Inc.

Vendor Address: 228 Park Ave. S. #15912 New York, NY 10003

Vendor Telephone #: 1-480-630-6425

Requesting Department: Curriculum & Instruction

Requesting Official: Suzi Schmidt

**JUSTIFICATION FOR THE REQUEST**

**What is the function of this product or service?**  
**Why is it needed? What makes it unique?**

This information will be used to approve or deny the purchase. PLEASE BE SPECIFIC. ATTACH MEMO IF ADDITIONAL SPACE IS NEEDED. Sole Source purchases that exceed the bid threshold will be noticed on vendor registry for 10 business days prior to purchase approval.

These math books are the adopted  
text of the District and are fully aligned  
to state math standards. These materials  
are needed to prepare students for graduation.  
We purchased 1 year last year and need additional  
years.

**NOTE:** We use the Google test to search for comparable products or services. If found, it is **NOT** considered a sole source product or service.

24-0098



**mathspace**

Mathspace Inc  
228 Park Ave. S. #15992  
New York, NY  
United States  
10003-1502  
Phone # 480-630-6425

January 10, 2024

To whom it may concern,

This letter is to confirm that Mathspace Inc. is the sole owner and developer of the Mathspace program and all copyrighted content and materials, patentable designs and process, trademarks and all intellectual property used in the program.

This letter also confirms that, although there are multiple authorized resellers who may sell the Mathspace program, all are bound by the same pricing and therefore cannot bid lower than Mathspace Inc.

Best regards,

A handwritten signature in black ink, appearing to read 'M. Jebara'.

Mohamad Jebara  
President





24-0098

vendor registry powered by multi-compare

## County of Anderson Sealed Solicitation

**Title:** Sole Source - Mathspace

**Deadline:** 2/8/2024 4:15 PM (UTC-05:00) Eastern Time (US & Canada)

**Status:** Open

**Description:** This is a public notice that the Anderson County Board of Education intends to enter into a sole source purchase with Mathspace for \$115,000.

### Documents:

[View Documents](#)

Math Space Sole Source Form.pdf

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Please see our [Privacy Policy](#) for more details. By continuing to use this site, you consent to our use of cookies

ACCEPT



# Mathspace Terms and Conditions

Effective date: July 31, 2021

Thank you for visiting our website. This website is owned and operated by Mathspace Inc. (EIN: 35 2505886). By accessing and/or using this website and our services, you agree to these terms and conditions, which include our Privacy Policy (available at <https://mathspace.co/us/privacy-policy> and attached) (Terms). You should review our Privacy Policy and these Terms carefully and immediately cease using our website or services if you do not agree to these Terms.

In these Terms, 'us', 'we' and 'our' means Mathspace Inc.

In these Terms, there are two categories of "subscriber":

1. Personal Users (Learners and parents/guardians who directly subscribe via the Mathspace website with no link to a school); and
2. School Users (Learners, educators and parents or guardians linked to a Mathspace for Schools account purchased by their school).

In the case of a Learner who is not at the time 18 years of age, permission must be sought by that Learner's school or by a parent, tutor, educator, guardian or carer of that Learner before signing up to this website or to use our services.

## Who is responsible for what you see and do on Mathspace?

Any information or content publicly posted or privately transmitted through our services is the sole responsibility of the person from whom such content originated, and you access all such information and content at your own risk. Mathspace will not be liable for any errors or omissions in that information or content or for any damages or loss you might suffer in connection with it.

Mathspace does not and cannot control the content of posts by individual users. As such, all users and subscribers release Mathspace from all liability unrelated to its actions or omissions which it cannot control and acknowledge that Mathspace does not have a duty to take action regarding how that content is interpreted.

Each subscriber accepts that if Mathspace becomes aware of any posts which may be considered inappropriate, it will remove them immediately without the consent of the user being obtained.

You, as a user, are responsible for the content you contribute to our website. You warrant to keep your registration information accurate and current.



24-0098



and acknowledges that it is their responsibility to advise Mathspace within seven (7) days of that information changing in any way including, but not limited to, updating email addresses by means of the relevant link.

Each subscriber will take, and where applicable will ensure that the relevant user takes, all reasonable steps to prevent the user's password becoming known to any other person. The subscriber will advise Mathspace immediately if the subscriber or the relevant user becomes aware of any unauthorized use of the password.

### Special provisions / Copyright

Each subscriber acknowledges that any website material is the property of Mathspace and is the copyright of Mathspace. Except as permitted by law or these Terms, the subscriber will not, and where applicable the subscriber will procure that the relevant user will not, allow any other person to use the website or reproduce or otherwise transmit any website material in any way whatsoever without first obtaining the written permission of Mathspace. Mathspace reserves its entitlements under Copyright Law of the United States (Title 17) and Related Laws Contained in Title 17 of the United States Code. [For information about Copyright Law of the United States (Title 17) and Related Laws Contained in Title 17 of the United States Code visit <http://www.copyright.gov/title17/>].

An educator user may use website material for classroom instructional purposes such as projecting it onto a whiteboard, displaying it by means of other electronic media or printing it and distributing it to his or her students. However, the use of the website materials by an educator user, for any purpose other than the instruction of the students in their class at a time when their right to use the website materials is current, will constitute a breach of these Terms.

### Disputes

Each subscriber and relevant user will resolve any claim, cause of action or dispute it has with us arising out of or relating to these Terms or Mathspace exclusively in the State of New York, and agrees to submit to the exclusive jurisdiction of such courts for the purpose of litigating all such claims. The laws of the State of New York will govern these Terms, as well as any claim that might arise between you and us, without regard to conflict of law provisions.

### Indemnity

Each subscriber agrees to indemnify and hold Mathspace, its affiliates, officers, agents, employees, contractors and partners harmless from and against any and all claims, liabilities, damages, losses and legal costs arising from or in any way related to any third party claims relating to (a) the user's and/or subscriber's use of our services (including any actions taken by a third party using the user's or subscriber's account), and (b) breach of these Terms. In the event of such a claim, suit or action

24-0098



Each subscriber acknowledges that circumstances may exist where damages are not an appropriate remedy and Mathspace is entitled to obtain injunctive relief.

If at any time a subscriber or relevant user is referred through our website to any other publication or information source, that referral will be made by Mathspace in good faith. However, Mathspace accepts no responsibility for any error in the information supplied by such other publication or source.

## Payments

There are three products on Mathspace: (1) Mathspace Digital Home Tutor Personal Accounts (2) Waypoints by Mathspace and; (3) Mathspace for Schools. The terms and conditions for each product vary. Please ensure you read the section that is relevant to you.

Each subscriber (on its own behalf and on behalf of the relevant user) acknowledges that Mathspace will collect personal information about subscribers and users which is disclosed in an application for the purposes of the operation of the website and provision of its services, as outlined in our Privacy Policy and authorizes Mathspace to do so.

Mathspace may terminate its arrangements with a subscriber or user immediately if at any time a subscriber or user is in breach of the subscriber's or user's obligations (including as a result of some act or omission by the subscriber or user).

## Personal Digital Home Tutor Subscriptions

A personal Digital Home Tutor subscription allows a student to access the eBook, the adaptive learning engine and we will track data on the student's progress. A subscription may be procured through the sign up or within the settings section of the Mathspace product. Subscriptions commence when we make them available to student for the duration of the calendar year. They incur an annual payment.

Credit/Debit card is the only accepted payment method for personal subscriptions. Where applicable, Mathspace will debit the credit card, particulars of which are given in an application, with a subscription fee as identified in the application. All payments are processed through Stripe's secure payment gateway. Mathspace does not directly collect or store any credit card information.

Each subscriber (on its own behalf and on behalf of the relevant user) acknowledges that Mathspace will collect personal information about subscribers and users which is disclosed in an application for the purposes of the operation of the website and provision of its services as outlined in the Privacy Policy, and authorizes Mathspace to do so.



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some act or omission by the subscriber or user).

### Waypoints by Mathspace Subscriptions

Waypoints by Mathspace gives students access to the adaptive assessment engine and we will track data on the student's progress and growth. A Waypoints subscription may be procured through the sign up section of the Mathspace product.

Each subscriber (on its own behalf and on behalf of the relevant user) acknowledges that Mathspace will collect personal information about subscribers and users which is disclosed in an application for the purposes of the operation of the website and provision of its services as outlined in the Privacy Policy, and authorizes Mathspace to do so.

Mathspace may terminate its arrangements with a subscriber or user immediately if at any time a subscriber or user is in breach of the subscriber's or user's obligations (including as a result of some act or omission by the subscriber or user).

### Mathspace for Schools Subscriptions

For our school customers we enter into separate / bespoke ordering arrangements. Please note that, in the United States, our services come with guarantees that cannot be excluded under United States consumer law. Nothing in these terms purports to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the Bureau of Consumer Protection and overseen by the Federal Trade Commission (FTC). Any and all other warranties or conditions which are not guaranteed by the Bureau of Consumer Protection and overseen by the Federal Trade Commission (FTC) are expressly excluded where permitted, including liability for incidental or consequential damages caused by breach of any express or implied warranty or condition.

### Linked sites

Our website may contain links to websites operated by third parties. Those links are provided for convenience and may not remain current or be maintained. Unless expressly stated otherwise, we do not endorse and are not responsible for the content on those linked websites and have no control over or rights in those linked websites.

### Termination

Each subscriber and/or user acknowledges that Mathspace is entitled to terminate its arrangement with them for cause if there has been a breach of these Terms, the Privacy Policy or otherwise there is a risk of possible legal exposure for us. You will be notified via email or the next time you attempt to access your account.



24-0098



Any notice given under these Terms must be in writing. Notices given to Mathspace should be forwarded to [legal@mathspace.co](mailto:legal@mathspace.co) and notices to be given to a subscriber or user will be forwarded to the email address specified in that person's application.

Mathspace will refund any subscriber payments upon receipt of a written submission from the subscriber that the website or services do not deliver that which they claim to provide. Refunds will not be given where the subscriber is using systems other than those identified in the 'Systems requirements' or where the subscriber is misusing the system.

### Unacceptable activity

You must not do any act that we would deem to be inappropriate, is unlawful or is prohibited by any laws applicable to our website, including but not limited to:

- any act that would constitute a breach of either the privacy (including uploading private or personal information without an individual's consent) or any other of the legal rights of individuals;
- using this website to defame or libel us, our employees or other individuals;
- uploading files that contain viruses that may cause damage to our property or the property of other individuals; or
- posting or transmitting to this website any non-authorized material including, but not limited to, material that is, in our opinion, likely to cause annoyance, or which is defamatory, racist, obscene, threatening, pornographic or otherwise or which is detrimental to or in violation of our systems or a third party's systems or network security

If we allow you to post any information to our website, we have the right to take down this information at our sole discretion and without notice.

### Warranties and disclaimers

To the maximum extent permitted by law, including the laws managed by the Bureau of Consumer Protection and overseen by the Federal Trade Commission (FTC), we make no warranties or representations about this website or its content, including but not limited to warranties or representations that they will be complete, accurate or up-to-date, that access will be uninterrupted or error-free or free from viruses, or that this website will be secure.

We reserve the right to restrict, suspend or terminate without notice your access to this website, any content, or any feature of this website at any time without notice and we will not be responsible for any loss, cost, damage or liability that may arise as a result.

### Liability



24-0098



any direct and indirect loss, damage or expense – irrespective of the manner in which it occurs – which may be suffered due to your use of our website and/or the information or materials contained on it, or as a result of the inaccessibility of this website and/or the fact that certain information or materials contained on it are incorrect, incomplete or not up-to-date.

### Reservation of Rights

Mathspace reserves the right to alter its product and pricing systems at any time.

### Changes and Updates to these Terms

Mathspace will contact users via email of any changes to these terms.

### Enquiries

All enquiries and comments regarding these Terms should be made to:

Mathspace Inc.  
EIN: 35 2505886  
[legal@mathspace.co](mailto:legal@mathspace.co)

©2024 MATHSPACE PTY LTD. ALL RIGHTS RESERVED.

24-0098



**TAX EXEMPT PROPERTY:**  
**(OWNER)**  
**Anderson County**  
**c/o County Mayor**  
**100 N. Main St., Room 208**  
**Clinton, TN 37716**

**THIS INSTRUMENT PREPARED BY:**  
**N. Jay Yeager, County Law Director**  
**for Anderson County, Tennessee**  
**101 S. Main Street, Suite 310**  
**Clinton, TN 37716**

**Map/Parcel: 074 054.03 (11 074 074 05403 000)**

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## **TENNESSEE WARRANTY DEED**

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**THIS DEED OF CONVEYANCE**, executed and delivered by the **City of Clinton, TN**, a governmental entity and chartered municipality of the State of Tennessee, whose address is c/o City of Clinton Mayor, 100 North Bowling Street, Clinton, Tennessee 37716, hereinafter referred to as the “Grantor”, to **Anderson County, TN**, a governmental entity and political subdivision of the State of Tennessee, whose address is c/o County Mayor, 100 North Main Street, Room 208, Clinton, Tennessee 37716, hereinafter referred to as the “Grantee”;

### **WITNESSETH:**

That, for and in consideration of the sum of **Seventy Thousand Dollars and No/One Hundredths (\$70,000.00)**, cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, and pursuant to the approval of the City Council of Clinton, Tennessee, adopted at its regular meeting held on December 15, 2023, the said Grantor has this day bargained and sold and does by these presents hereby sell, transfer, and convey unto the said Grantee, its successors, and assigns, all of its right, title, and interest in and to certain real property situated in the FIRST (1<sup>st</sup>) Civil District of Anderson County, Tennessee, and described more particularly as follows, to-wit:

SITUATE in the First Civil District of Anderson County, Tennessee, within the City of Clinton, Tennessee, and being all of Lot 4R-2 of the Resubdivision of Lot



4 of Carden Farm Industrial Park as shown on the unrecorded final plat of same, and being more particularly described as follows:

BEGINNING on an existing 5/8<sup>th</sup> inch iron rod with cap (BWSC) in the southeasterly right-of-way line of Carden Farm Drive and approximately 40 feet from the center of said road, said rod marking the southwestern-most corner of the property described and being a corner to property of TVA (Tax Parcel No. 074-060.00), said point of beginning further located North 78° 05' 53" East 466.12 feet from the point of intersection of the rights-of-way of Carden Farm Drive and Norfolk Southern Railway; thence leaving the point of beginning and running with the southeasterly right-of-way of Carden Farm Drive along four (4) bearings and distances as follows: (1) along a curve turning to the left having a delta angle of 10° 14' 24", a radius of 449.28 feet, a tangent of 40.26 feet, an arc of 80.30 feet, and a chord of 80.19 feet at North 25° 42' 28" East to an existing 5/8<sup>th</sup> inch iron rod with cap (BWSC); (2) North 20° 34' 17" East 339.09 feet to an existing 5/8<sup>th</sup> inch iron rod with cap (BWSC) (witness existing TVA monument PT# 15-46 at Northing 626,011.6, Easting 2,552,364.8, located South 61° 56' 20" West 1,984.94 feet from said rod); (3) along a curve turning to the right having a delta angle of 33° 00' 25", a radius of 676.20 feet, a tangent of 200.34 feet, an arc of 389.54 feet, and a chord of 384.18 feet at North 36° 53' 56" East to an iron rod with cap (CCI) set; and (4) North 53° 34' 43" East 102.52 feet to an iron rod with cap (CCI) set, a corner to lot 4R-1 (property formerly owned by Robert L. Daugherty et ux, Tax Parcel No. 074-054.10); thence leaving the right-of-way of Carden Farm Drive and running with Lot 4R-1, South 36° 25' 17" East 400.37 feet to an iron rod with cap (CCI) set in the property line of TVA (Tax Parcel No. 074-060.00); thence running with the TVA property along three (3) bearings and distances as follows: (1) South 55° 10' 15" West 13.12 feet to an existing 5/8<sup>th</sup> inch iron rod with punch mark; (2) South 60° 02' 42" West 497.99 feet to an existing 5/8<sup>th</sup> inch iron rod with cap (BWSC); and (3) South 55° 38' 26" West 318.06 feet to an existing 5/8<sup>th</sup> inch iron rod with cap (BWSC), being the POINT OF BEGINNING, and containing 4.677 acres, more or less, according to the survey of Robert J. Lusby, Jr., RLS No. 1332, of Cannon and Cannon, Inc., dated August 15, 2006, Project No. 231-13.

BEING part of the property conveyed from the United States of America, by and through its legal agent, the Tennessee Valley Authority, to the Town of Clinton, Tennessee, by Special Warranty Deed dated February 15, 1985, and recorded February 15, 1985, in Deed Book E-16, page 610, in the Anderson County Register of Deeds Office.

This property is subject to all applicable land use regulations, easements and restrictions of record in the Anderson County Register's Office, including, without limitation, the Declaration of Restrictive Covenants recorded in Book 1636, Page 1846.

THIS INSTRUMENT HAS BEEN PREPARED SOLELY ON INFORMATION FURNISHED THE PREPARER WHO MAKES NO REPRESENTATION WHATSOEVER AS TO THE CORRECTNESS OF THE SAME OTHER THAN IT HAS BEEN ACCURATELY

TRANSCRIBED FROM INFORMATION PROVIDED AND THIS INSTRUMENT HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE OPINION.

**TO HAVE AND TO HOLD** the premises aforesaid, together with all appurtenances, hereditaments and immunities thereto pertaining, unto the said Grantee, and its representatives, successors, and assigns.

**GRANTOR COVENANTS** with the said Grantee, and its representatives, successors, and assigns: (1) That it is lawfully seized in fee of said premises; (2) That it has a good and perfect right to make this conveyance; (3) That said premises are unencumbered; and (4) That it will warrant and defend the title to said premises against the lawful claims and demands of all persons whomsoever. Property is exempt from property tax as of the date of transfer.

**POSSESSION** of the premises shall be given to Grantee with delivery of deed.

**IN TESTIMONY WHEREOF**, the Grantor has hereunto set its official signature(s), this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**For City of Clinton, Tennessee (Grantor):**

**City of Clinton, Tennessee**

By: \_\_\_\_\_  
**Scott Burton, Mayor**

.....  
STATE OF TENNESSEE  
COUNTY OF ANDERSON

Personally appeared before me, the undersigned Notary Public, **Scott Burton**, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself to be the **Mayor** of the **City of Clinton, Tennessee**, a municipal corporation, and that he as such officer, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation by himself as Mayor.

Witness my hand and official seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

.....

**Acceptance by Anderson County, TN (Grantee):**

\_\_\_\_\_  
**Terry Frank, Anderson County Mayor**

\_\_\_\_\_  
**H. Tyler Mayes, Chair, AC Commission**

\*\*\*\*\*

STATE OF TENNESSEE            )  
COUNTY OF ANDERSON         )

Before me, a Notary Public of the State and County aforesaid, personally appeared, **Terry Frank, Anderson County Mayor**, an authorized representative and agent of the within named Grantee, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that she has full legal authority to execute this Warranty Deed on behalf of the Grantee.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

\*\*\*\*\*

STATE OF TENNESSEE            )  
COUNTY OF ANDERSON         )

Before me, a Notary Public of the State and County aforesaid, personally appeared, **H. Tyler Mayes, Chair, Anderson County Board of Commissioners**, an authorized representative and agent of the within named Grantee, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he has full legal authority to execute this Warranty Deed on behalf of the Grantee.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

\*\*\*\*\*

**Affidavit of Consideration**

I, or we, hereby swear or affirm, that the actual consideration for this transfer, or value of the property or interest in property transferred, whichever is greater, is \$\_\_\_\_\_ which amount is equal to or greater than the amount which the property or interest in property transferred would command at a fair and voluntary sale.

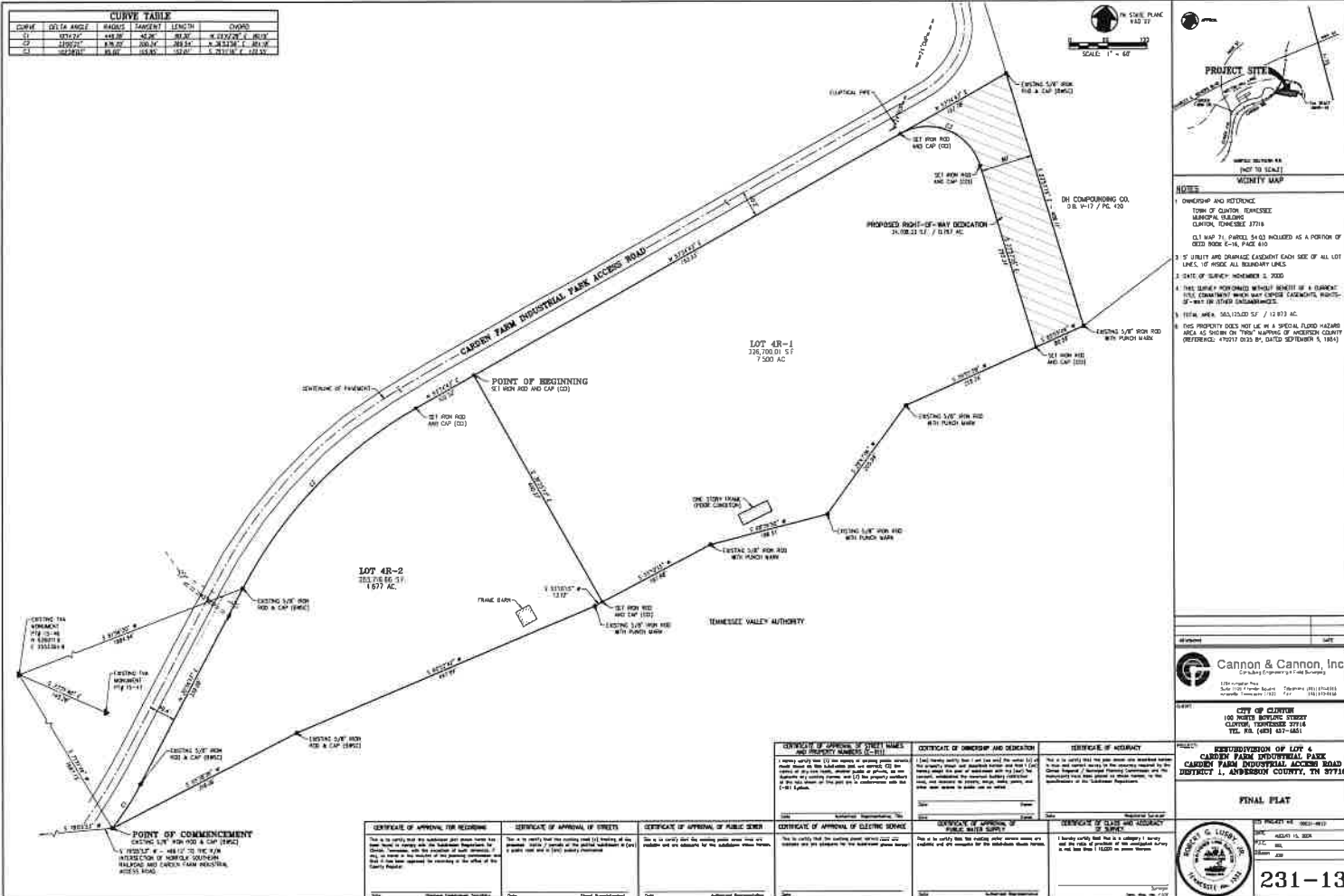
\_\_\_\_\_  
Affiant

Subscribed and sworn to before me, this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Curve	Chord Angle	Radius	Length	Area	Chord
1	90° 00' 00"	100.00	100.00	7,853.98	141.42
2	120° 00' 00"	100.00	100.00	11,781.63	173.21
3	150° 00' 00"	100.00	100.00	15,708.00	196.13



# MEMORANDUM

**TO:** Veronica Coleman, Fiscal Director  
Office of Business and Finance

**FROM:** Jennifer Brinkman, Director  
Office of Criminal Justice Programs

**CC:** Daina Moran, Deputy Director  
Ronald G. Williams, Asst. Director; Quality Assurance  
Wendy Heath, Asst. Director; Fiscal

**DATE:** February 5, 2024

**SUBJECT:** Distribution of Grant Funds

OCJP respectfully submits the enclosed completed Amendment for processing.

Grant Award Type: **VOCA**

DGA #: **77706 – VOCA/METH(End-6/30/2028)**

Authorized Agency: **Anderson County Government**

Edison ID#: **50974**

County Location: **01000**

Category #: **VOCA All 93140000 Support Services**

This grant has met all the requirements to receive grant funds as determined by the Office of Criminal Justice Programs, Department of Finance and Administration.

This grant includes indirect costs: ☐ Yes ☒ No

This is a VOCA grant that contains a National Emergency Pandemic Mandatory Match Waiver: ☒ Yes ☐ No

For questions or assistance regarding this contract, please contact **Chelsie Leonard**, at (615) 253-9952 or [Chelsie.Leonard@tn.gov](mailto:Chelsie.Leonard@tn.gov)

## STATE AGENCIES ONLY

### Match Source (select all that apply):

☐ Cash

☐ In-kind

☐ Miscellaneous Appropriations

### Positions (if applicable):

Number of Full-time: \_\_\_\_\_

Number of Part-time: \_\_\_\_\_

## POST OBF PROCESSING:

### Signed Grant Contract Attached to Edison DGA Transactional Page:

Attached By (Initials): \_\_\_\_\_

Date Attached: \_\_\_\_\_



## GRANT AMENDMENT

<b>Agency Tracking #</b> NA	<b>Edison ID</b> 50974	<b>Contract #</b> 50974	<b>Amendment #</b> 1
<b>Contractor Legal Entity Name</b> Anderson County Government			<b>Edison Vendor ID</b> 4143
<b>Amendment Purpose &amp; Effect(s)</b> Revises Clauses, Revises Budget, Increases Maximum Liability, and Extends Expiration Date			
<b>Amendment Changes Contract End Date:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>End Date:</b> 6/30/2024	
<b>TOTAL Contract Amount INCREASE or DECREASE <u>per this Amendment</u></b> (zero if N/A):			<b>+\$200,000.00</b>
<b>Funding —</b>			
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>TOTAL Contract Amount</b>
FY24		\$200,000.00	\$200,000.00
FY25		\$200,000.00	\$200,000.00
<b>TOTAL:</b>		<b>\$400,000.00</b>	<b>\$400,000.00</b>
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.		<b>OCR USE</b>	
<b>Speed Chart</b> FA00003360	<b>Account Code</b> County - 71301000		

**AMENDMENT 1  
OF GRANT CONTRACT 50974**

This Grant Contract Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Office of Criminal Justice Programs, hereinafter referred to as the "State" and Anderson County Government, hereinafter referred to as the "Grantee." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Grant Contract is hereby amended as follows:

1. Grant Contract section B.1. is deleted in its entirety and replaced with the following:
  - B.1. This Grant Contract shall be effective on 7/1/2023 ("Effective Date") and extend for a period of Twenty-Four (24) months after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.
2. Grant Contract section B.2. is added with the following:
  - B.2. Term Extension. It is understood and agreed that the State may extend the Term an additional period of time, not to exceed three hundred-sixty five (365) days beyond the expiration date of this Grant Contract, under the same terms and conditions. In no event, however, shall the maximum Term, including all extensions or renewals, exceed a total of sixty (60) months.
3. Grant Contract section C.1. is deleted in its entirety and replaced with the following:
  - C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed Two Hundred Thousand Dollars (\$400,000.00) ("Maximum Liability"). The Grant Budget attached and incorporated as Attachment A-1 for fiscal year 2024, and Attachment A-1 for fiscal year 2025, is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
4. Grant Contract section C.7. is deleted in its entirety and replaced with the following:
  - C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within forty-five (45) days of the Grant Contract end date, in form and substance acceptable to the State.
    - a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by Section C of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit said refund with the final grant disbursement reconciliation report.
    - b. The State shall not be responsible for the payment of any invoice submitted to the state after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
    - c. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for



reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.

- d. The Grantee must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.

8. Grant Contract Attachment A-1 is deleted in its entirety and replaced with the new attachment A-1 attached hereto.
9. Grant Contract Attachment B is deleted in its entirety and replaced with the new attachment B attached hereto.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective 04/30/2024. All other terms and conditions of this Grant Contract not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,**

**ANDERSON COUNTY GOVERNMENT:**

---

**GRANTEE SIGNATURE**

**DATE**

Terry Frank, County Mayor

---

**PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)**

**DEPARTMENT OF FINANCE AND ADMINISTRATION:**

---

**JIM BRYSON, COMMISSIONER**

**DATE**

GRANT BUDGET				
AGENCY NAME: Anderson County Government				
FUND SOURCE: VOCA				
SOLICITATION IDENTIFICATION TITLE: Family Justice Center				
The grant budget line-item amounts below shall be applicable only to expense incurred during the following Applicable Period: BEGIN: 07/01/2023 END: 06/30/2024				
POLICY 03 Object Line-item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY <sup>1</sup>	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
1, 2	Salaries, Benefits & Taxes <sup>2</sup>	\$151,492.00	\$0.00	\$151,492.00
4, 15	Professional Fee, Grant & Award <sup>2</sup>	\$0.00	\$0.00	\$0.00
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications <sup>2</sup>	\$37,773.00	\$0.00	\$37,773.00
11, 12	Travel, Conferences & Meetings <sup>2</sup>	\$3,300.00	\$0.00	\$3,300.00
13	Interest <sup>2</sup>	\$0.00	\$0.00	\$0.00
14	Insurance <sup>2</sup>	\$2,000.00	\$0.00	\$2,000.00
16	Specific Assistance To Individuals <sup>2</sup>	\$1,750.00	\$0.00	\$1,750.00
17	Depreciation <sup>2</sup>	\$0.00	\$0.00	\$0.00
18	Other Non-Personnel <sup>2</sup>	\$0.00	\$0.00	\$0.00
20	Capital Purchase <sup>2</sup>	\$0.00	\$0.00	\$0.00
22	Indirect Cost <sup>2</sup>	\$3,685.00	\$0.00	\$3,685.00
24	In-Kind Expense <sup>2</sup>	\$0.00	\$0.00	\$0.00
25	<b>GRAND TOTAL</b>	<b>\$200,000.00</b>	<b>\$0.00</b>	<b>\$200,000.00</b>

<sup>1</sup> Each expense object line-item shall be defined by the Department of Finance and Administration Policy 03, *Uniform Reporting Requirements and Cost Allocation Plans for Subrecipients of Federal and State Grant Monies, Appendix A.*  
(posted on the Internet at: [https://www.tn.gov/content/dam/tn/finance/ocjp/Appendix\\_J\\_Policy\\_03\\_Report.xls](https://www.tn.gov/content/dam/tn/finance/ocjp/Appendix_J_Policy_03_Report.xls))

<sup>2</sup> Applicable detail follows this page if line-item is funded.

**ATTACHMENT A-1**

Page 2

**GRANT BUDGET LINE-ITEM DETAIL:**

AGENCY NAME: ANDERSON COUNTY GOVERNMENT

FUND SOURCE: VOCA

SOLICITATION NUMBER: FAMILY JUSTICE CENTER

<b>SALARIES, BENEFITS &amp; TAXES</b>	<b>AMOUNT</b>
Position 1: Navigator \$52,000/\$23,746 (Annually, 100% time spent on the project, includes taxes, benefits, workers comp)	\$75,746.00
Position 2: CCR Coordinator \$52,000/\$23,746 (Annually, 100% time spent on the project includes taxes, benefits, workers comp)	\$75,746.00
<b>TOTAL</b>	<b>\$151,492.00</b>

<b>SUPPLIES (includes "Sensitive Minor Equipment"), TELEPHONE, POSTAGE &amp; SHIPPING, OCCUPANCY, EQUIPMENT RENTAL &amp; MAINTENANCE, PRINTING &amp; PUBLICATION</b>	<b>AMOUNT</b>
Occupancy: Lease payment & Utilities assistance	\$26,273.00
Supplies: Client database software, office needs (including but not limited to paper, pens, files, paper towels, toilet paper), emergency cell phones and service plans	\$10,000.00
All Other Items: Printing & Publication, web hosting, gsuite, domain	\$1,500.00
<b>TOTAL</b>	<b>\$37,773.00</b>

<b>TRAVEL, CONFERENCES &amp; MEETINGS</b>	<b>AMOUNT</b>
Local Travel: Estimated mileage and per diem for staff to travel throughout the county and state to attend trainings, visit other FJCs, and meeting with partners and the public. Rate will be the prevailing state rate or our local rate, whichever is less. Gas for vehicle (\$800 for 12 mo.)	\$1,800.00
Vehicle maintenance	\$1,500.00
<b>TOTAL</b>	<b>\$3,300.00</b>

<b>INSURANCE</b>	<b>AMOUNT</b>
Total cost of insurance (building and liability estimated at \$1,000 annually) (vehicle liability estimated at \$1,000 annually)	\$2,000.00
<b>TOTAL</b>	<b>\$2,000.00</b>

<b>Specific Assistance to Individuals</b>	<b>AMOUNT</b>
Payment of fees for emergency shelter in hotels, fees for transportation services	\$1,750.00
<b>TOTAL</b>	<b>\$1,750.00</b>

<b>Indirect Cost</b>	<b>AMOUNT</b>
Indirect cost associated with the grant	\$3,685.00
<b>TOTAL</b>	<b>\$3,685.00</b>

GRANT BUDGET				
AGENCY NAME: Anderson County Government				
FUND SOURCE: VOCA				
SOLICITATION IDENTIFICATION TITLE: Family Justice Center				
The grant budget line-item amounts below shall be applicable only to expense incurred during the following Applicable Period: BEGIN: 07/01/2024 END: 06/30/2025				
POLICY 03 Object Line-item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY <sup>1</sup>	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
1, 2	Salaries, Benefits & Taxes <sup>2</sup>	\$151,492.00	\$0.00	\$151,492.00
4, 15	Professional Fee, Grant & Award <sup>2</sup>	\$0.00	\$0.00	\$0.00
5, 6, 7, 8, 9, 10	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications <sup>2</sup>	\$35,000.00	\$0.00	\$35,000.00
11, 12	Travel, Conferences & Meetings <sup>2</sup>	\$4,623.00	\$0.00	\$4,623.00
13	Interest <sup>2</sup>	\$0.00	\$0.00	\$0.00
14	Insurance <sup>2</sup>	\$2,200.00	\$0.00	\$2,200.00
16	Specific Assistance To Individuals <sup>2</sup>	\$3,000.00	\$0.00	\$3,000.00
17	Depreciation <sup>2</sup>	\$0.00	\$0.00	\$0.00
18	Other Non-Personnel <sup>2</sup>	\$0.00	\$0.00	\$0.00
20	Capital Purchase <sup>2</sup>	\$0.00	\$0.00	\$0.00
22	Indirect Cost <sup>2</sup>	\$3,685.00	\$0.00	\$3,685.00
24	In-Kind Expense <sup>2</sup>	\$0.00	\$0.00	\$0.00
25	<b>GRAND TOTAL</b>	<b>\$200,000.00</b>	<b>\$0.00</b>	<b>\$200,000.00</b>

<sup>1</sup> Each expense object line-item shall be defined by the Department of Finance and Administration Policy 03, *Uniform Reporting Requirements and Cost Allocation Plans for Subrecipients of Federal and State Grant Monies, Appendix A.*  
(posted on the Internet at: [https://www.tn.gov/content/dam/tn/finance/ocip/Appendix\\_J\\_Policy\\_03\\_Report.xls](https://www.tn.gov/content/dam/tn/finance/ocip/Appendix_J_Policy_03_Report.xls))

<sup>2</sup> Applicable detail follows this page if line-item is funded.

**ATTACHMENT A-1**

Page 2

**GRANT BUDGET LINE-ITEM DETAIL:**

AGENCY NAME: ANDERSON COUNTY GOVERNMENT

FUND SOURCE: VOCA

SOLICITATION NUMBER: FAMILY JUSTICE CENTER

<b>SALARIES, BENEFITS &amp; TAXES</b>	<b>AMOUNT</b>
Position 1: Navigator \$52,000/\$23,746 (Annually, 100% time spent on the project, includes taxes, benefits, workers comp)	\$75,746.00
Position 2: CCR Coordinator \$52,000/\$23,746 (Annually, 100% time spent on the project includes taxes, benefits, workers comp)	\$75,746.00
<b>TOTAL</b>	<b>\$151,492.00</b>

<b>SUPPLIES (includes "Sensitive Minor Equipment"), TELEPHONE, POSTAGE &amp; SHIPPING, OCCUPANCY, EQUIPMENT RENTAL &amp; MAINTENANCE, PRINTING &amp; PUBLICATION</b>	<b>AMOUNT</b>
Occupancy: Lease payment (\$1,000 monthly payment, for 12 months, at 100% charged to the grant) & utilities assistance (Projected maximum electricity \$1,200/month for 12 months)	\$26,400.00
Supplies: Client database software, office needs (including but not limited to paper, pens, files, paper towels, toilet paper), Ring Central phone expenses (\$350/month for 12 months)	\$6,000.00
All Other Items: Printing & Publication, web hosting, gsuite, domain	\$2,600.00
<b>TOTAL</b>	<b>\$35,000.00</b>

<b>TRAVEL, CONFERENCES &amp; MEETINGS</b>	<b>AMOUNT</b>
Local Travel: Estimated mileage and per diem for staff to travel throughout the county and state to attend trainings, visit other FJCs, and meeting with partners and the public. Rate will be the prevailing state rate or our local rate, whichever is less. Gas for vehicle (\$900 for 12 mo.)	\$2,100.00
Training and Conferences Implemented by Agency: Estimated cost for staff to host trainings for partners and the community which includes but is not limited to appropriate speaker fees	\$1,023.00
Vehicle maintenance	\$1,500.00
<b>TOTAL</b>	<b>\$4,623.00</b>

<b>INSURANCE</b>	<b>AMOUNT</b>
Total cost of insurance (building and liability estimated at \$1,700 annually) (vehicle liability estimated at \$500 annually)	\$2,200.00
<b>TOTAL</b>	<b>\$2,200.00</b>

<b>Specific Assistance to Individuals</b>	<b>AMOUNT</b>
Payment of fees for emergency shelter in hotels, fees for transportation services, postage, emergency needs, emergency cell phones and service plans (\$500)	\$3,000.00
<b>TOTAL</b>	<b>\$3,000.00</b>

<b>Indirect Cost</b>	<b>AMOUNT</b>
De minimus of Modified Total Direct Costs. Full de minimus amount is not being charged, only \$3,685 expected to be charged to the grant.	\$3,685.00
<b>TOTAL</b>	<b>\$3,685.00</b>

**ATTACHMENT B****federal Award identification Worksheet**

Subrecipient's name (must match name associated with its Unique Entity Identifier (SAM))	Anderson County Government
Subrecipient's Unique Entity Identifier (SAM)	FYPENE4ABBG6
Federal Award Identification Number (FAIN)	2020-V2-GX-0012
Federal award date	9/17/2020
Subaward (Federal Award) Period of Performance Start and End Date	10/1/2019,9/30/2023 Ext:09/30/2024
Subaward (Federal Award) Budget Period Start and End Date	10/1/2019,9/30/2023 Ext:09/30/2024
Assistance Listing number (formerly known as the CFDA number) and Assistance Listing program title.	16_575; Victims of Crime Act
Grant contract's (Sub-Recipient) begin date	7/1/2023
Grant contract's (Sub-Recipient) end date	6/30/2025
Amount of federal funds obligated by this grant contract	\$400,000.00
Total amount of federal funds obligated to the subrecipient	\$400,000.00
Total amount of the federal award to the pass-through entity (Grantor State Agency)	\$34,273,320.00
Federal award project description (as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA))	FJC
Name of federal awarding agency	Office for Victims of Crime
Name and contact information for the federal awarding official	DOJ: Attorney General Merrick B. Garland <b>202-514-2000</b>
Name of pass-through entity	State of Tennessee: Finance & Administration; Office of Criminal Justice Programs
Name and contact information for the pass-through entity awarding official	Chelsie Leonard Chelsie.Leonard@tn.gov
Is the federal award for research and development?	<b>No</b>
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	<b>10%</b>

**ENERGY RELATED SERVICES, ENGINEERING,  
AND EQUIPMENT INSTALLATION CONTRACT**

THIS ENERGY RELATED SERVICES, ENGINEERING, AND EQUIPMENT INSTALLATION CONTRACT (herein sometimes "Agreement" and sometimes "Contract"), made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Board of Education of Anderson County Schools, Clinton, Tennessee, (hereinafter called "District" or "Owner") and Energy Systems Group, LLC, an Indiana limited liability company (hereinafter called "Contractor" or "ESG"),

WITNESSETH, That:

WHEREAS, the Owner previously evaluated and selected Contractor, with due consideration given Contractor's recognized competency and integrity in the provision of energy-related services that include both engineering services and the provision of equipment, to implement energy and operational savings measures for the purpose of reducing energy costs in facilities owned by Owner and located in Anderson County, Tennessee (herein the "Facilities") pursuant to Tennessee Code Annotated § 12-4-110 and § 49-2-203;

WHEREAS, following such selection, Contractor and Owner entered into a certain Guaranteed Energy Savings Performance Contract (the "Phase I Contract"), which Phase I Contract achieved Final Acceptance on or about June 10, 2015;

WHEREAS, following Contractor's successful performance under the Phase I Contract, Contractor and Owner entered into a certain Guaranteed Energy Savings Performance Contract (the "Phase 2 Contract"), which Phase 2 Contract achieved Final Acceptance on or about June 10, 2020;

WHEREAS, following Contractor's successful performance under the Phase 2 Contract, Contractor and Owner entered into a certain Energy Related Services, Engineering and Equipment Installation Contract (the "Phase 3 Contract"), which Phase 3 Contract achieved Final Acceptance on or about June 12, 2023.

WHEREAS, Contractor and Owner have a satisfactory existing working relationship for energy-related services and the Owner now desires to expand upon the scope of those services, which are within the technical competency of the Contractor;

WHEREAS, Owner wishes to accept Contractor's proposal to perform a fourth phase of work described in Exhibit A Scope of Work (hereinafter the "Project"), and Owner and Contractor desire to enter into this Agreement to memorialize their respective agreements and undertakings with respect to the Project.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree as follows:

1. Contract Documents. The parties hereby incorporate by reference, as if fully set forth herein, the following documents and instruments, all of which together with this Agreement are herein referred to as the "Contract Documents":

- Schedule 1 - Final Acceptance Certificate
- Schedule 2 - Partial Acceptance Certificate
- Exhibit A - Scope of Work
- Exhibit B - Energy Impact
- Exhibit C - Opinion of Owner's Counsel
- Exhibit D - State Specific Statutory Requirements

The Contract Documents also shall include any permissible change orders issued pursuant to this Agreement.

If there is a conflict between the provisions of this Agreement and any other Contract Document, the provisions of this Agreement shall control with respect to the subject matter hereof.

2. Scope of Project. For purposes hereof, the term "Project" shall mean and include the installation of the energy conservation measures and related upgrades ("ECMs" or "Measures") at Owner's Facilities, which are defined in Exhibit A, Scope of Work.

2.1 Dodd-Frank Municipal Advisor Rule Statement: ESG is retained by Owner as an engineering and energy services firm to design and deliver energy-related and other infrastructure solutions described in the Scope of Work. Owner acknowledges that ESG is not a financial advisor or municipal advisor as contemplated under the U.S. securities laws, is not providing recommendations regarding any municipal financial product or the issuance of municipal securities, and does not owe a fiduciary duty to Owner under section 15B of the Securities Exchange Act, or otherwise. Owner acknowledges that as a commercial entity ESG is influenced by its own interests, which will not always be the same as Owner's. Owner has had the opportunity to retain and consult with such financial, municipal, legal or other advisors as it may deem appropriate regarding this Project.



3. General Obligations and Rights of Contractor. Contractor shall do all acts and provide all things necessary to perform and complete the Project properly, in a good and workmanlike manner, and in compliance with all applicable laws and regulations. Contractor shall apply for, secure, and obtain all necessary permits and licenses which may be required in connection with the Project.

3.1 Warranty. Contractor hereby warrants to Owner that all materials furnished by Contractor, if any, and all workmanship performed by Contractor in connection with the Project, shall be in accordance with the general industry standards of the construction industry; shall be performed in a competent, good and workmanlike manner and in compliance with the Contract Documents, and all pertinent laws, rules and regulations; and shall be free from any and all faults or defects in material and workmanship. Contractor shall promptly remedy any and all defective materials or workmanship furnished by Contractor or any subcontractor upon receipt of written notice thereof from Owner. If required by Owner, Contractor shall furnish satisfactory evidence as to kind and quality of materials and equipment used in connection with the Project.

The warranty set forth herein shall continue to be effective for a period of one year following Owner's acceptance or beneficial use of each ECM, acceptance of a particular Facility, or acceptance of the Work, whichever comes first. Owner shall give Contractor written notice of all defective Work, specifically detailing the deficiencies to be corrected, and Contractor shall repair or otherwise remedy such defective Work in an expeditious manner.

CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ESG makes no warranty or representation of any kind regarding reducing, preventing, eliminating or inhibiting the transmission or spread of contaminants or pathogens (including COVID-19 and any other virus) in connection with the Work or services provided under this Agreement. To the extent possible, Contractor shall assign to Owner all warranties that Contractor receives from its vendors and/or subcontractors for any materials or equipment, which are or are to become permanent features of the Project, which shall be in addition to the other warranties provided herein.

3.2 Approvals. Upon completion of the Work, Contractor shall obtain all required approvals of the installation of the Measures constituting the Work.

3.3 Indemnification. Contractor shall indemnify, defend, and hold harmless Owner, the agents, officers, employees, and representatives of Owner (herein the "Indemnified Owner Parties") against all liability and loss including reasonable attorney's fees and expenses to the extent resulting from the negligence or willful misconduct in connection with the Project by Contractor, any subcontractor, or the agents, employees, or representatives of Contractor or any subcontractor, including any injury (including death) sustained by or any damage to the property of, any person; provided however, that Contractor shall not be responsible for any injury (including death), damage, or loss (including reasonable attorneys fees and expenses) that is caused by the sole negligence of an Indemnified Owner Party, nor shall Contractor be held responsible for the concurrent negligence of an Indemnified Owner Party.

Contractor agrees to indemnify, defend and hold Owner, its successors and assigns, and any assignee of Contractor, harmless from the payment of any sum of money whatsoever (including reasonable attorneys fees and expenses) on account of any laborer's, mechanic's, materialmen's or any other lien against Owner's property related to Contractor's performance of the Project, unless the lien is caused by some fault of Owner or some person or entity acting on Owner's behalf.

Owner shall indemnify, defend and hold harmless Contractor, and the agents, officers, shareholders, directors, and employees of Contractor and any assignee of Contractor (herein the "Indemnified Contractor Parties") against all liability and loss including reasonable attorney's fees and expenses to the extent resulting from the negligence or willful misconduct in connection with the Project by Owner and agents, employees or representatives of Owner, including any injury (including death) sustained by or any damage to the property of, any person; provided, however, that Owner shall not be responsible for any injury (including death), damage or loss (including reasonable attorneys fees and expenses) which is caused by the sole negligence of an Indemnified Contractor Party, nor shall Owner be held responsible for the concurrent negligence of an Indemnified Contractor Party.

Contractor acknowledges that the Owner is a political subdivision of the State of Tennessee, and is governed by the provisions of the Tennessee Governmental Tort Liability Act, T.C.A. §29-20-101 et seq., for causes of action sounding in tort and, therefore, no contract provision requiring the Owner to indemnify or hold harmless Contractor beyond the liability imposed by law is enforceable because it appropriates money and nullifies governmental immunity without the authorization of the General Assembly of the State of Tennessee.

As a condition precedent to the duties to indemnify, defend and/or hold harmless (collectively "Indemnification") established in this Contract, the indemnified party must provide prompt notice to the indemnitor of a claim or matter for which Indemnification is sought, must allow the indemnitor to select counsel and control the defense, must cooperate with indemnitor at indemnitor's expense, and must allow the indemnitor to settle the matter at its expense.

3.4 Bonds. Before entering upon the performance of this Agreement, Contractor shall execute for the benefit of Owner, a Performance Bond and Payment Bond, in form acceptable to Owner. Each bond shall be in an amount equal to the Contract Price (as defined below in Section 5 of this Agreement).

The Performance Bond shall also be a guarantee for the repair or replacement of any portion of the Work that is defective to and including the date of Owner's Final Acceptance of the Work. The Payment Bond shall be a guarantee for the payment for labor, materials and equipment furnished for use in the performance of Contractor's obligations hereunder. The Performance and Payment Bond will cease effective the date of Owner's Final Acceptance of the Work. Effective immediately after, a Maintenance Bond will be provided for the one-year period commencing on the date of Owner's Final Acceptance of the Work in the amount of 10% of the total Contract Price. The surety which executes the Performance Bond and Payment Bond will waive any right to independent notice under this Agreement if Contractor receives such notice, and consents to any extensions of time, modification, waiver, forbearance, or change which may be made in any of the terms and conditions of the Agreement by the parties or by their successors or assigns. Notwithstanding any other provision of this Agreement or the bonds, in no event and in no manner shall coverage under the Performance Bond and Payment Bond extend to Section 3.5, Energy Savings Guarantee or any related provisions.

3.5 Energy Savings. The Project will result in energy savings and operational savings, however, Owner has elected not to include an Energy Savings Guarantee and Measurement and Verification Plan in this Agreement.

### 3.6 Limitation of Liability.

3.6.1 To the extent allowed by Tennessee law, the total liability of Contractor on all claims, whether in contract, warranty, tort, strict liability, indemnity, or otherwise, arising out of the performance of this Agreement, shall not exceed the Contract Price. NOTWITHSTANDING ANY OTHER PROVISION HEREIN TO THE CONTRARY, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, SPECULATIVE, PUNITIVE, OR REMOTE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, AND DOWN TIME COST.

3.6.2 Airborne pathogens and/or contaminants may be transmitted in a variety of ways and circumstances, the aspects of which are currently not completely known. The effectiveness of HVAC systems, products, services and other offerings in reducing the spread of pathogens or contaminants (e.g., COVID-19), including through indoor air, has not been tested. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH) OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO AIRBORNE PATHOGENS, CONTAMINANTS AND/OR COVID-19 (INCLUDING THE TRANSMISSION, SPREAD OR CONTAMINATION THEREOF) (COLLECTIVELY, "PATHOGEN CLAIMS") AND THE PARTIES HEREBY EXPRESSLY RELEASE EACH OTHER FROM ANY SUCH PATHOGEN CLAIMS.

### 3.7 Insurance.

3.7.1 Obtaining Proper Insurance. Contractor shall not commence performance hereunder until (i) it has obtained and Owner has approved all insurance coverage required by this Section 3.7; and (ii) Owner has been furnished with a certificate of insurance properly evidencing and confirming that Owner is an additional insured on Contractor's public liability and automobile liability policies. In the event that subcontractors are not covered by Contractor's policies of insurance, each subcontractor shall secure policies of insurance which meet the requirements of this Section 3.7, with consideration given to the value and risk associated with performance of the subcontracted work.

3.7.2 Amount of Insurance. Contractor shall take out and maintain, at its sole cost and expense, the following insurance coverage during the term of this Agreement and all other times during which Contractor, its employees, agents, or subcontractors shall be present at the Facilities, whether performing or correcting any portion of the Project:

(A) Worker's Compensation, Employer's Liability, and Occupational Disease Insurance. Statutorily required worker's compensation insurance, including employer's liability and occupational disease coverage, to the extent mandated by applicable state law, on all of Contractor's employees engaged in the Project;

(B) Public Liability. Commercial general liability insurance (including contractual, independent contractors, explosion, and product/completed operations coverages) against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than One Million Dollars (\$1,000,000.00) in one occurrence, and to the limit of not less than Two Million Dollars (\$2,000,000.00) annual aggregate;

(C) Automobile Liability. Automobile liability insurance against damage because of bodily injury, including death, or damage to property of others as the result of the operation of any automobile owned or hired by Contractor, with such insurance to afford protection to the limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for any one person, not less than One Million Dollars (\$1,000,000.00) in respect to any one accident, and not less than One Hundred Thousand Dollars (\$100,000.00) for property damage.

3.8. Builder's Risk Insurance. Contractor shall purchase and maintain a builder's risk insurance policy, providing coverage for the risk of physical loss or damage to the Measures in an amount equal to the completed value of the Work contracted hereunder. This builder's risk insurance policy shall be maintained by Contractor until Substantial Completion of the Work ("Substantial Completion", as used in this Agreement, means that the Work or a designated portion thereof is sufficiently complete so that the Owner can utilize the Work for its intended use). Such builder's risk

insurance policy shall not insure against damage to existing Owner property, but only the Measures installed pursuant to this Agreement. If any of the Measures are damaged or destroyed after they are installed to Owner's Facilities, but prior to Substantial Completion of the Work, the proceeds of such insurance shall be utilized by Contractor to repair or replace such Measures. If any of the Measures are damaged or destroyed after Substantial Completion of the Work, Owner shall be obligated to promptly repair or replace the damaged or destroyed Measures at its sole cost and expense. The Owner as well as Contractor's subcontractors shall be considered "Additional Insureds," insofar as their interests appear, pursuant to ESG's builder's risk insurance policy.

### 3.9. Waiver of Rights Relating to Insurance.

Owner and Contractor hereby release each other and each other's employees, agents, and subcontractors from any and all liability for any loss of or damage to property arising during the Project by reason of fire or other casualty or any other risk or cause which is or which is required to be insured against under this Agreement, regardless of cause, including the negligence of Owner or Contractor and their respective employees, agents, and subcontractors, and agree that all insurance carried by either of them shall contain a clause whereby the insurer waives its right of subrogation against the other party. Because the provisions of this paragraph are intended to preclude the assignment of any claim mentioned herein by way of subrogation or otherwise to an insurer or any other person, each party to this Agreement shall give to each insurance company which has issued to it one or more policies of insurance required by this Agreement notice of the provisions of this paragraph and have such insurance policies properly endorsed, if necessary, to prevent the invalidation of such insurance by reason of the provisions of this paragraph.

4. Title and Risk of Loss. Risk of Loss for all equipment and materials provided by Contractor or any subcontractor pursuant to this Agreement shall transfer to Owner upon installation of such equipment and materials to Owner's Facilities. Title to a Measure shall vest with Owner upon the earlier occurrence of (i) installation and payment for such Measure(s) to Contractor; (ii) the Owner's written acceptance of a particular Measure or Facility, as the case may be, in the form of Schedule 2 (the "Partial Acceptance Certificate"); or (iii) the Owner's written acceptance of the entire Project in the form of Schedule 1 (the Owner's "Final Acceptance Certificate"). It is the intent of all parties that any transfer of title to Owner pursuant to this Agreement shall occur automatically without the necessity of any bill of sale, certificate of title, or other instrument of conveyance.

Owner shall be responsible for operating and maintaining all Measures that are installed. Owner shall also be responsible for any real or personal property taxes related to the ECMs. Further, Owner represents that it is a governmental entity and that it will cooperate with Contractor and will provide the same with appropriate documentation so that the Contractor may establish that it shall not be required to pay taxes, fees, assessments, or other charges of any character which may be imposed or incurred by any governmental or public authority as an incident to title to, ownership of, or operation of the ECMs installed during this Project.

4.1 Apportionment of Fault. Contractor acknowledges that Owner is self-insured and is governed by the provisions of the Tennessee Governmental Tort Liability Act, T.C.A. §29-20-101 et seq.

5. Contract Price and Payments.

5.1 Contract Price. In consideration of Contractor's performance of the Work necessary for the completion of the Project, Owner shall pay Contractor the sum of One Million Eight Hundred Fifty-Four Thousand Dollars (\$1,854,000.00) (herein the "Contract Price"), in accordance with the provisions of this Section 5.

5.2 Concerning Payment of the Contract Price. The following provisions shall apply to payment of the Contract Price:

5.2.1 Applications for Payment. Payment of the Contract Price shall be made in monthly installments based upon Contractor's progress in completing the installation of the Work, except that Contractor shall be paid an "Initial Payment" equal to 10% of the Contract Price, which shall compensate Contractor for preconstruction work and services performed at Contractor's sole cost and risk prior to the execution of this Agreement. The request for such Initial Payment shall be submitted to Owner upon the execution and delivery of this Agreement. Contractor shall not submit to Owner any additional invoices until such time as Contractor has performed Work with a cumulative value in excess of the Initial Payment described herein.

With respect to monthly progress payments, Contractor shall submit to Owner each month, an application for payment on a form mutually agreeable to Contractor and Owner.

Owner shall pay or cause to be paid invoice for such payments within 30 days of receipt. For payments not timely made, interest shall accrue at 10% per annum.

5.2.2 Completion and Inspection; Acceptance. When Contractor reasonably believes that an ECM, a Facility or the entire Project is substantially complete, it shall notify Owner that such ECM, Facility or the entire Project is ready for inspection and acceptance (or, ESG's "Notice of Substantial Completion"). Within five business days following such notification, the Owner shall commence to conduct such inspections as it deems necessary or appropriate in order to determine that the ECM, Facility, or the entire Project, as the case may be, is free from defects and that the installation of the ECM, Facility, or the entire Project, as the case may be, has been completed in conformity with the Contract Documents. If any aspect of the ECM, Facility, or the entire Project, as the case may be, shall be incomplete as of the date of such inspection, Owner shall notify Contractor in writing as to the items that render the ECM, Facility, or the entire Project, as the case may be, incomplete (such writing herein referred to as the "Punch List").

Contractor shall, at its expense and without further cost to Owner, undertake to perform such work as will complete the Punch List in compliance with the Contract Documents as soon as practicable. Contractor retains the right to dispute that an item or items on the Punch List is required by the Contract Documents. If Contractor does not satisfactorily complete the Punch List agreed to by Owner and Contractor by a date 30 days following Owner's submission of the agreed to Punch List (herein the "Completion Date"), Owner shall have the right to order Contractor to stop any further work in respect of the particular ECM, Facility, or the entire Project, as the case may be, and Owner shall be entitled to complete the Punch List. In such event, Contractor shall be responsible for all costs incurred by Owner in completing the Punch List and Owner shall have the right to deduct all such costs from any payment then or thereafter due to Contractor. If such cost exceeds the balance of the Contract Price then or thereafter due Contractor, Contractor shall pay such excess to Owner within 10 days following Owner's demand therefor.

Periodically during the performance of the Project, the Owner agrees to provide Contractor with written notice of the Owner's acceptance of a particular ECM or Facility, as the case may be, in the form of Schedule 2 (the "Partial Acceptance Certificate"). Following



Contractor's completion of all Work and completion of the agreed to Punch List, Owner agrees to provide Contractor prompt written notice of its acceptance of the entire Project by executing and delivering Schedule 1 to the Contractor (the Owner's "Final Acceptance Certificate") upon satisfaction of the following conditions:

- A. Contractor shall have completed the agreed to Punch List to Owner's reasonable satisfaction and Contractor shall have corrected any other non-conforming items or condition, if any, reported to it by Owner;
- B. Contractor shall have furnished to Owner's reasonable satisfaction, evidence that all equipment and labor costs incurred or accrued in connection with a particular ECM or Facility have been or will be promptly paid; and
- C. Contractor shall have delivered to Owner all drawings and documents required to be furnished by Contractor pursuant to the Contract Documents.

If Owner is required to complete the agreed to Punch List, the date of Final Acceptance shall be extended to the date upon which the Project is completed by Owner, or any person retained by Owner, in accordance with the Contract Documents.

5.2.3 Final Payment. Any sums due and owing in respect of the Contract Price shall be payable to Contractor within 10 calendar days after the date Owner delivers a signed Schedule 1 to the Contractor, signifying the Owner's Final Acceptance of the entire Project.

6. Independent Contractor. It is understood and agreed by the parties hereto that Contractor shall perform the Project according to its own means and methods and shall for all purposes be an independent contractor. All persons employed by Contractor in connection with the Project shall be paid directly by Contractor, and shall be subject to Contractor's orders and supervision.

7. Inspection; Defective Work. Contractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the Work by Owner. It shall, within forty-eight hours after receiving written notice from Owner to that effect, proceed to remove from the Facilities all materials that fail to conform to the Contract Documents.

## 8. Termination.

8.1 Owner's Right to Terminate. Should Contractor fail to perform any material term or condition of the Contract Documents, Owner shall be at liberty, after 30 days written notice to Contractor and Contractor's failure to remedy the problem within that time period, to terminate this Agreement and to enter upon the Facilities and take possession of the equipment and materials for the purpose of completing the Work to be done under this Contract, to use all materials of Contractor available for such Work, and to employ any other person or persons to finish the Work and to provide such additional materials therefor as may be necessary; and in case of such termination of the employment of Contractor, Contractor shall not be entitled to receive any further payment under this Contract until the Work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under the Contract shall exceed the expense incurred by Owner in finishing the Work, such excess shall be paid by Owner to Contractor, but if such expense shall exceed such unpaid balance, Contractor shall pay the excess to Owner. The expenses incurred by Owner as herein provided, either for the furnishing of materials or for finishing the Work, and any damage incurred through such fault of Contractor shall be certified by Owner, and payment shall be made upon such certification.

8.2 Contractor's Right to Terminate or Stop Work. Should Owner fail to perform any material term or condition of the Contract Documents, Contractor shall be at liberty, after 30 days written notice to Owner and Owner's failure to remedy the problem within that time period, to terminate this Agreement or stop Work. The Parties agree Owner's withholding of payments that are disputed shall not constitute a failure to perform a material term or condition of this Agreement. If Contractor elects to stop Work, Contractor shall not be required to recommence Work until such time as Owner has completely remedied its breach.

9. Delays. Should Contractor be obstructed or delayed in the prosecution or completion of the Project by the act, negligence, delay, or default of Owner or by any other damage, act or cause beyond the reasonable control of Contractor or any subcontractor, including but not limited to, an act of god; war (declared or undeclared); sabotage; riot; epidemic/pandemic or quarantine; government action; insurrection; civil unrest or disturbance; terrorism; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought;

the binding order of any governmental authority; or the failure to act on the part of any governmental authority, then the time herein fixed for the completion of Contractor's obligations specified in the Agreement shall be extended for a period equivalent to the time lost by reason of such event. If Contractor is delayed by actions or inactions of Owner or its agents or employees, Owner shall be required to reimburse Contractor for its additional costs incurred as a result of such delay.

10. Contractor to Furnish Required Statements. Contractor shall provide all statements, affidavits, waivers, and other instruments required by applicable state or federal law or regulation or by applicable local ordinances or rules, at such times and in the form required by said laws, regulations, ordinances, or rules, and Contractor hereby acknowledges receipt of notice from Owner to furnish same.

11. Nondiscrimination in Hiring Employees.

- A. Contractor, any subcontractor, any supplier or any sub-supplier of a party to this Contract shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to his or her hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, sexual orientation, gender identity, disability, national origin, or ancestry or military status. Breach of this provision may be regarded as a material breach of this Contract.
- B. Since this Contract involves the construction, alteration, or repair of a public building or public work, Contractor agrees:
  - (1) That in the hiring of employees for the performance of Work under this Contract or any subcontract hereunder, Contractor, subcontractor or any person acting on behalf of Contractor or subcontractor shall not, by reason of race, religion, color, sex, sexual orientation, gender identity, national origin, or ancestry, discriminate against any citizen of the State of Tennessee who is qualified and available to perform the Work to which the employment relates. Further, Contractor, a subcontractor, or any person on his or their behalf shall not, in any manner, discriminate against or intimidate any employee hired for the

performance of Work under this Contract on account of race, religion, color, sex, sexual orientation, gender identity, national origin, or ancestry.

12. Miscellaneous Provisions.

12.1. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Tennessee. Any dispute arises out of or related to this Agreement, the Facilities, the ECMs or the Project shall be determined by a court of competent jurisdiction in Knox County, Tennessee. The parties hereby submit to the personal jurisdiction of such courts and waive any objections or defenses thereto.

12.2. Notices. Unless otherwise specifically provided herein, any notice, consent, request, demand, report or statement (herein "Notice"), which is required or permitted to be given to or served upon either party hereto by the other party hereto under any of the provisions of this Agreement shall be in writing and deemed to be duly delivered when (i) personally delivered to Contractor, or personally delivered to Owner in the case of a Notice to be given to Owner, or (ii) deposited in the United States mail, registered or certified, postage prepaid, and properly addressed as follows:

If to Owner:	Dr. Tim Parrott, Director of Schools Anderson County Schools 101 South Main St, Suite 500 Clinton, Tennessee 37716 E: [Insert email address]
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If to Contractor:	Steven C. Craig, President Energy Systems Group, LLC 9877 Eastgate Court Newburgh, Indiana 47630
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Either party may change its address or its designated representative for receipt of notices by submitting a notice in compliance with this Section.

If Owner has questions about billing, invoices or any other accounting or related administrative issues, it can make contact (which will not constitute Notice) with:

Geoff Wilde, Vice President, Chief Financial Officer  
 Energy Systems Group, LLC  
 9877 Eastgate Court  
 Newburgh, IN 47630  
 P: (812) 492-3754  
 E: gwilde@energysystemsgroup.com

12.3. Allocation of IRC 179D or Similar Income Tax Deduction Benefits. As a result of ESG's design and implementation of this Project, a federal income tax deduction under Section 179D of the Internal Revenue Code ("IRC 179D") may become available to ESG as the party primarily responsible for designing energy efficiency improvements implemented at Owner's Facilities. Congress provided in IRC 179D(d)(4) for government owners, which do not pay income tax and are thus ineligible to use this deduction, to allocate the deduction to the party primarily responsible for designing the energy efficiency improvements, here ESG. Owner hereby agrees to allocate to ESG such deduction and any similar deduction enacted by Congress to replace IRC 179D. Owner agrees to cooperate with ESG by executing annually during the construction of the Measures, and promptly returning to ESG, a written allocation and declaration required by IRC 179D. ESG will prepare and is responsible for the accuracy of any allocation documents and all accompanying documentation supplied for Owner's signature. Notwithstanding anything to the contrary herein, Owner makes no representation concerning the availability or applicability of any such tax deduction benefits or of their ability to be allocated to or claimed by ESG. ESG assumes all risk related to such allocation and deduction.

12.4. Claims for Damages. Any claims by either party hereto for bodily injury or damage to personal property caused by any act or omission of the other party hereto or by any of such party's employees or agents or others for whose acts it is legally liable shall be made in writing to such other party within a reasonable time after the occurrence or first knowledge of such injury or damage.

12.5. Assignment. Neither party shall assign, transfer, pledge, or grant any security interest in, or otherwise dispose of, this Agreement or the equipment or any interest in this Agreement or the equipment without first obtaining the other party's written consent. Subject to the foregoing,

this Agreement shall inure to the benefit of and is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

12.6. Waivers. The failure of either party hereto to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provision or the relinquishment of any such rights unless such waiver is in writing and signed by both parties.

12.7. Remedies Cumulative. Each remedy provided for by the Contract shall be cumulative and in addition to every other remedy provided for herein, by law or in equity. Upon the occurrence of a default, hereunder, either party, or its assignee, may, at its option, exercise any right, remedy, or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate court action to enforce the terms of this Agreement, and (ii) recover damage for breach of this Agreement. Notwithstanding the exercise of any right, remedy or privilege, the parties shall remain liable for all covenants and indemnities under this Agreement.

12.8. Tests. If the Contract Documents or the laws, ordinances, rules, or regulations of any public authority having appropriate jurisdiction require inspection, testing, or approval of any of the Work, Contractor shall give Owner timely notice of Contractor's readiness for such inspection, testing, or approval and of the date thereof so that Owner may be present to observe such inspection, testing, or approval by such public authority. Contractor shall be responsible for and pay all costs for any such inspection, testing, or approval unless otherwise provided for herein. All required licenses, permits, or certificates applicable to any such inspection, testing, or approval shall be obtained by Contractor and promptly delivered to Owner.

12.9. Hazardous Materials. Prior to the performance of Work, the Owner provided to Contractor a Hazardous Materials report, which Contractor evaluated in the development of its Scope of Work. If during the performance of the services related to the Project, the presence of Hazardous Materials not otherwise expressly referenced within Contractor's Hazardous Material Evaluation is discovered or reasonably suspected, Contractor shall notify Owner of such discovery or suspicion and shall be permitted to immediately cease all Work that may require contact with or exposure to such hazardous materials until Owner has inspected the same and Owner has made arrangements

for the removal of the same at its expense. Contractor shall be entitled to an extension of the time fixed for the completion of the Work equivalent to the time required to remediate such Hazardous Material. "Hazardous Materials" includes all hazardous or toxic substances or materials as may be so designated by federal, state or local governmental entities, including, without limitation, asbestos, mold, lead paint and soil or water contamination of any kind, unless expressly included within the Scope of Work.

12.10. Background Checks. For any Work to be performed on or about the Owner's Facilities that are also school grounds, Contractor shall comply with Public Chapter 587 of 2007, as codified in Tennessee St. § 49-5-413, which requires contractors to facilitate a criminal history records check conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation for its own employees prior to permitting the employee to have contact with students or enter school grounds when students are present.

12.11 Dispute Resolution. Any claims, dispute and/or other matters in controversy which arise out of or are related to this Agreement, or the performance or breach thereof, or the relationship of the parties hereto, may be submitted to and decided by a court of competent jurisdiction only after an in-person mediation is conducted in good faith between the parties. Such mediation shall be overseen by a mutually agreed upon mediator, and the mediator's fee shall be split equally between the parties. The mediator selected by the parties must be duly authorized pursuant to Rule 31, Section 14 of Tennessee Supreme Court Rules as a mediator approved by the Tennessee Alternative Dispute Resolution Commission. If the parties are unable to agree upon the selection of a mediator, either party may petition a court of competent jurisdiction to nominate such person in conformance with Section 4 of Rule 31 of the Tennessee Supreme Court Rules.

12.12. Concealed Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner in no event later than 21 days after first observance of the conditions

and, if appropriate, the Contract Price and/or Contract Time, shall be adjusted by Change Order signed by both parties.

12.13. Approvals. Owner has obtained any and all approvals, waivers, and other instruments required by applicable state or federal departments or agencies with respect to the funding sources Owner intends to use to pay for the Work under this Agreement. Owner's failure or inability to comply with any requirements related to the funding shall not diminish or excuse Owner's obligation to pay ESG for the Work in accordance with the terms of this Agreement.

12.14. Amendments. No amendment, supplement, or modification hereof shall be effective for any purpose unless the same is in writing and signed by both parties hereto.

12.15. Headings. The headings of sections and subsections of this Agreement are for convenience of reference only and shall not affect the meaning or construction of any provision hereof.

12.16. Entire Agreement. This Agreement, together with the Contract Documents, represents the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, representations and agreements whether written or oral.

12.17. Review by Counsel. This Contract has been reviewed by counsel selected by the Owner, who has issued an opinion consistent with the form Opinion of Owner's Counsel, identified within Exhibit C, hereto.



12.18. Authority to Execute Contract. This Contract is executed by Owner pursuant to a resolution of Owner duly adopted at its regular meeting called and held on the 11<sup>th</sup> day of January, 2024.

12.19. Signatories' Authority. The individuals below have the power and authority to execute this Agreement on behalf of the entities they represent.

[Remainder of page intentionally left blank; signature page to follow.]

**ANDERSON COUNTY SCHOOLS, TENNESSEE**

By \_\_\_\_\_

Its \_\_\_\_\_

**ENERGY SYSTEMS GROUP, LLC**

By \_\_\_\_\_

Its \_\_\_\_\_

**SCHEDULE 1**

**FINAL ACCEPTANCE CERTIFICATE**

Energy Systems Group, LLC  
9877 Eastgate Court  
Newburgh, IN 47630

Re: Energy Related Services, Engineering, and Equipment Installation Contract, dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Agreement"), between Energy Systems Group, LLC (the "Contractor") and Anderson County Schools (the "Owner").

Ladies and Gentleman:

In accordance with the Agreement, Owner hereby certifies and represents to, and agrees with, Energy Systems Group, LLC as follows:

The entire Project (as defined in the Agreement) has been delivered, installed, and accepted as of \_\_\_\_\_ (the "Final Acceptance Date").

Owner has conducted such inspection and/or testing of the entire Project, as it deems necessary and appropriate, and hereby acknowledges that it accepts the entire Project for all purposes.

No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, a default or breach of contract exists at the date hereof.

Sincerely,

**ANDERSON COUNTY SCHOOLS, TENNESSEE**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Anderson County Schools (TN) Ph 4 – TRI00025

**SCHEDULE 2**

**PARTIAL ACCEPTANCE CERTIFICATE**

Energy Systems Group, LLC  
9877 Eastgate Court  
Newburgh, IN 47630

Re: Energy Related Services, Engineering, and Equipment Installation Contract, dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Agreement"), between Energy Systems Group, LLC (the "Contractor") and Anderson County Schools (the "Owner").

Ladies and Gentleman:

In accordance with the Agreement, Owner hereby certifies and represents to, and agrees with, Energy Systems Group, LLC as follows:

The ECM (or ECMs), Facility (or Facilities), as the case may be, (as defined in the Agreement) have been delivered, installed, and accepted as of \_\_\_\_\_ (the "Acceptance Date").

Owner has conducted such inspection and/or testing of the ECM (or ECMs), Facility, as the case may be, as it deems necessary and appropriate and hereby acknowledges that it accepts the ECM (or ECMs), Facility, as the case may be, for all purposes.

No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, a default or breach of contract exists at the date hereof.

Sincerely,

**ANDERSON COUNTY SCHOOLS, TENNESSEE**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Anderson County Schools (TN) Ph 4 – TRI00025

## EXHIBIT A

### SCOPE OF WORK

#### General Provisions

1. ESG will provide all labor and materials to install the items specifically listed in the following scope of work. Items that are not specifically listed in this Scope of Work are not included in the Project.
2. Equipment submittals will be provided to the Owner for review and comment prior to the Contractor ordering equipment.
3. Contractor will be responsible to secure all local construction permits; provided, if a permit requires information maintained by the Owner and not otherwise easily attained by Contractor, the Owner agrees to provide reasonable assistance in retrieving or providing information to the Contractor.
4. Unless specified otherwise within this scope, existing equipment or material removed by the Contractor in order to achieve the Work will become property of the Contractor once removed from the Owner's Facilities. Contractor shall properly dispose all such equipment or material.
5. If at any time during performance of the Work the presence of hazardous materials is discovered or reasonably suspected, work will stop in that area and the Owner will be notified. The Owner will be responsible for the abatement of any hazardous material discovered during construction.
6. ESG will produce maintenance and operating manuals for all work listed in this scope. These manuals will document all equipment installed, provide manufacturer's operating and maintenance details, include any as-built drawings required for installation and define manufacturers' warranty provisions and instructions. ESG will provide the O&M manuals in electronic format.
7. ESG will provide training for the work listed in this scope. This training will transfer at minimum the information required for the inspection, maintenance and operation of installed equipment including the timing of and scope of inspections, needed and recommended routine maintenance, and proper operation of all installed equipment.
8. Abbreviations used in this scope of work
  - a. WWTP – Wastewater Treatment Plant
  - b. NPDES – National Pollutant Discharge Elimination System
  - c. TDEC – Tennessee Department of Environment and Conservation
  - d. MBBR – Moving Bed Biofilm Reactor
  - e. BES – Briceville Elementary School
  - f. DVES – Dutch Valley Elementary School
  - g. GPD – Gallons Per Day

The following attachments will support this exhibit:

**Attachment #1: Septic System**

**Attachment #2: Lockdown Notification**

**Attachment #3: Mechanical**

**Attachment #4: Manufacturer's Warranty and Product Specifications**

The Scope of Work includes the following:

**BES Wastewater Treatment Plant**

**DVES Septic System**

**Security Window Film**

**Lockdown Notification System**

**Lake City Elementary School Mechanical**

**BRICEVILLE ELEMENTARY SCHOOL ("BES") WASTEWATER TREATMENT PLANT**

**Future plant replacement preparation:**

ESG has investigated a septic system design with the necessary preliminary soil testing to determine if this would be a viable option at BES. The soil testing results proved that a septic field was not an option for this facility. Therefore, ESG has performed preliminary engineering of a new package waste water treatment plant for Briceville Elementary School. This preliminary plant design and associated site investigation work will help prepare the Owner for replacement of the current WWTP if at some point in the future it is determined that the current plant no longer functions acceptably or meets TDEC requirements for permitting. This preliminary engineering design will be completed and provided as a preliminary design report.

**Current Plant Inspection:**

- The existing plant will be pumped out and an inspection of the key electrical and mechanical components of the plant will be completed and a report presented to the Owner. Inspection will be coordinated with the Owner as zero flow from the school and library will be required to perform inspection. Included in the report will be recommendations on the most cost-effective way to address plant deficiencies.

## **DUTCH VALLEY ELEMENTARY SCHOOL SEPTIC SYSTEM**

ESG will install a new septic system in place of the existing wastewater treatment plant at Dutch Valley Elementary School. Refer to **Exhibit A - Attachment #1: Septic System** for additional details and a list of the equipment included in this project.

Summary of installation:

1. Soil testing and design
2. Earthwork
3. Piping and pumping
4. Startup and commissioning
5. Existing plant will be de-commissioned and to remain as the reserve per design requirements of TDEC.
  - a. The Owner will need to continue to have the NPDES permit required for this plant although zero flow reports can be submitted by the Owner.

The Dutch Valley Elementary School septic system will be designed to meet TDEC requirements for school discharge for the projected 225-person school capacity. The septic system selection will be based on soil characteristics and site availability.

System design is dependent upon TDEC approval. If modifications are required by TDEC in the approval process from what is proposed herein ESG reserves the right to adjust price and scope based on TDEC modifications.

## **SECURITY WINDOW FILM**

Basis of design: 3M Safety and Security Film Ultra Night Vision S25 (25% light transmittance reflective tint) & Impact Protection Adhesive

ESG will install the product on the interior surface of glass of select windows and doors listed below. A quarter inch bead of impact protection adhesive will be applied around the edge of the new security film attaching it to the window frame and covering the existing window caulk or seal.

Stickers, decals, or other decoration on the interior surface of window will be removed by the District prior to installation. Anything obstructing access to glass will be removed by the District. ESG is not responsible for damaged items left on or in front of the surface of window at the time of installation.

The 3M Safety and Security Film Ultra Night Vision S25 provided is described in Exhibit A - Attachment 4. The manufacturer's warranty in Attachment 4 will be provided direct from the manufacturer, Owner will contact the manufacturer for all warranty issues. ESG shall not be responsible for the effectiveness or ability of the window film to perform as designed.

This scope does not include abatement of asbestos, lead, or other hazardous material. The adhesive will be applied to the existing frame, caulk and/or seal and ESG shall not be responsible in the event the caulk or seal is disturbed.

Any non-glass surfaces are excluded including but not limited to plexiglass, fiberglass panels, clear plastic sheets, cracked glass.

Windows and doors seven feet and below at the following facilities totaling the below quantities.

Total Number of Doors – 507  
 Total Number of Windows - 2,542

Anderson High School	Dutch Valley Elementary
Anderson County Career and Tech Center	Fairview Elementary
Clinch River Community School	Grand Oaks Elementary
Andersonville Elementary	Lake City Elementary
Briceville Elementary	Lake City Middle
Claxton Elementary	Norris Elementary
Clinton High	Norris Middle
Clinton Middle	Norwood Elementary
	Norwood Middle

### **LOCKDOWN NOTIFICATION SYSTEM**

ESG will install a lockdown notification system at each of the below facilities:

Anderson High School	Dutch Valley Elementary
Anderson County Career and Tech Center	Fairview Elementary
Clinch River Community School	Grand Oaks Elementary
Andersonville Elementary	Lake City Elementary
Briceville Elementary	Lake City Middle
Claxton Elementary	Norris Elementary
Clinton High	Norris Middle
Clinton Middle	Norwood Elementary
	Norwood Middle

ESG will install blue lights at each school per included floor plans in **Exhibit A - Attachment 2: Lockdown Notification**.

ESG will install a single panic button in the front office of each school.

The panic button will be hardwired to the Continental door access system along with other associated work. The panic button will initiate a predetermined threat level as defined by the District and according to the door access procedures which have been defined by the District within the Continental Access Control System.

Based on the District's security protocols, blue lights will be activated when a panic button is depressed or a threat level in the Access Control System is activated. The system will be integrated with the PA system to play a pre recorded message or messages.

Additionally, the system will integrate with an automated dialing system to contact law enforcement resources.

ESG is not responsible for the operation of the Lockdown Notification System and shall not be responsible for any failure of the system to operate as intended. ESG is not responsible for any



sequence of operation as it pertains to Security Protocols. Upon completion and final acceptance of the installation, the hardware, software, controls, maintenance, operation, and testing will be the full responsibility of the District as it pertains to security.

**LAKE CITY ELEMENTARY SCHOOL MECHANICAL**

ESG will complete HVAC upgrades at Lake City Elementary School.

1. Lake City Elementary School
  - a. Furnish and install Qty. 2 new heat pump mini-split systems.
  - b. Drain water from existing fan coil units.
  - c. Abandon existing fan coil units and pipe in place.
  - d. Insulate and seal outdoor air vent.
  - e. Valve off hydronic piping to wing with existing isolation valve.
  - f. Drain water from wing for freeze protection.
  - g. See **Exhibit A – Attachment #3: Mechanical** for additional details.

## **ATTACHMENTS TO EXHIBIT A**

The following Attachments to Exhibit A are included as separate attachments:

Attachment 1 – Septic System

Attachment 2 – Lockdown Notification

Attachment 3 – Mechanical

Attachment 4 – Manufacturer's Warranty and Product Specifications

**EXHIBIT B****ENERGY IMPACT**

In consideration of the magnitude of the net expected impact on energy consumption of this Project, the Owner has agreed that savings will not be calculated. As Owner has an ongoing Guarantee for previous phases of work (Phase 1 and Phase 2), in which savings are measured using utility bills, any impact on energy consumption may appear in the verified savings for these prior projects. As the impact of the ECMs in the prior Phase 3 and this Phase 4 are small, ESG and Owner plan not to include Non-Routine Adjustments for these changes in the Phase 1 and 2 savings verification. If the scope is changed such that there is a greater than anticipated impact on energy consumption, Non-Routine Adjustments may be discussed and applied as appropriate.

Anticipated energy impact of each measure in this Phase 4:

Briceville Elementary Wastewater Treatment Plant

Utility increases or decreases are not expected as a result of this scope of work.

Dutch Valley Elementary Septic System

The new septic system will be designed to operate more efficiently than the current wastewater treatment plant, however, in the event it is necessary to add a lift station, it will increase the number of pumps. Although the new system should result in operating cost reductions, the potential addition of a pump may reduce the energy efficiency gains to approximately the same energy consumption as the pre-existing condition.

Security Window Film

This measure is expected to decrease energy consumption, as the addition of window film will increase the thermal barrier. Savings are expected to be small relative to the energy consumption of the facilities and savings from prior phases.

Lockdown Notification System

This measure is being installed for safety purposes, and is expected to have negligible energy impact. While additional electrical equipment is being installed, (i.e., blue LED warning lights) the hours for which these will be on annually make the additional energy consumed by this equipment negligible.

Lake City Elementary School Mechanical

This measure is expected to reduce energy consumption. Due to the limited nature of this scope, the savings are expected to be small compared to previous savings at the facility.

ESG and Owner are both aware that these changes may impact energy consumption. As ESG and Owner have ongoing Measurement & Verification utilizing utility bills for the affected facilities, the Measures installed may affect Verified Savings related to Phases 1 and 2. ESG and Owner agree the magnitude of the impact of this Phase 4 relative to the savings for Phase 1 and 2 is such that any additional savings Owner receives as a benefit of this project may be shown as savings in the Phase 1 and Phase 2 Energy Services Guarantee Report.

[Remainder of page intentionally left blank; signature page to follow.]

**ANDERSON COUNTY SCHOOLS, TENNESSEE**

By \_\_\_\_\_

Its \_\_\_\_\_

**ENERGY SYSTEMS GROUP, LLC**

By \_\_\_\_\_

Its \_\_\_\_\_

**EXHIBIT C****OPINION OF OWNER'S COUNSEL  
(TO BE TYPED ON COUNSEL'S LETTERHEAD)**

Energy Systems Group, LLC  
And Its Assignee  
9877 Eastgate Court  
Newburgh, IN 47630

Ladies and Gentlemen:

I am counsel for the Anderson County Schools, Tennessee ("Owner"). In order to render this opinion I have reviewed the Energy Related Services, Engineering, and Equipment Installation Contract (the "Agreement"), dated as of \_\_\_\_\_, 20\_\_\_\_ between Owner and Energy Systems Group, LLC ("Contractor"), and other documents and instruments related to the Agreement or otherwise necessary to render this opinion, as well as all proceedings taken by Owner in connection with the Agreement. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement. Based upon the foregoing it is my opinion that:

1. Owner is a duly organized and validly existing political subdivision of the State of Tennessee and is a political subdivision within the meaning of Section 103 of the Internal Revenue Code and related regulations and rulings.
2. Owner has the power and authority to execute and perform the Agreement and to purchase ECMs from Contractor thereunder.
3. The Agreement and related instruments and documents:
  - (a) Have been duly authorized by appropriate resolutions;
  - (b) Do not contravene and will not violate or result in a default under any charter, certificate of incorporation, by-laws, indenture, or any other agreement or instrument by which Owner or its property is bound or to which Owner is a party;
  - (c) Meets the requirements of and complies with all applicable laws, rules, codes, ordinances, and regulations, including, without limitation, applicable federal uniform grant and procurement requirements.
  - (d) The Agreement has been duly executed by the duly authorized officers of Owner, and does and will constitute the legal, valid, and binding obligations of Owner enforceable against Owner in accordance with their respective terms.
4. No approval or consent is required from any governmental authority with respect to the entering into or performance by Owner of the Agreement and the transactions contemplated thereby or if any such approval is required it has been duly obtained.
5. No litigation or other proceedings are pending or, to the best of my knowledge, threatened against Owner which would adversely affect Owner's legal title to the ECMs or, if decided adversely to Owner, would materially affect its financial condition.

This opinion is for the benefit of the addressee and any Assignee, and you and such Assignee and any counsel engaged by you or such Assignee shall be entitled to rely hereupon, including such counsel's reliance hereupon in giving its opinion addressed to other persons.

Very truly yours,

## **EXHIBIT D**

### **STATE SPECIFIC STATUTORY REQUIREMENTS**

Owner and Contractor agree that the following statutory requirements shall be applicable to this Agreement:

1. Pursuant to Tennessee Code Annotated § 12-4-110 and § 49-2-203, Owner is authorized to enter into contracts that include both engineering services and equipment, and have as their purpose the reduction of energy costs in public facilities, which contracts shall be awarded on the basis of recognized competence and integrity and shall not be competitively bid.
2. Owner represents and warrants that it has retained Contractor, has a satisfactory working relationship with Contractor and is entering into this Agreement in compliance with all the requirements specified in Tennessee Code Annotated § 49-2-203 and § 12-4-110, as applicable.



# AIA® Document B101® – 2017

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the First day of February in the year Two Thousand and Twenty-Four  
(In words, indicate day, month, and year.)

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

Anderson County School Board  
101 S. Main Street  
Clinton, TN 37716

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

MBI Companies, Inc.  
299 N. Weisgarber Road  
Knoxville, TN 37919

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

A new school for: Claxton Elementary School  
105 Fellowship Lane  
Powell, TN 37849  
MBI Comm. Number: 230042-02

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

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

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



Init.

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User Notes:

February 2024 Purchasing Agenda

(1783256690)



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## ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

A new STEM elementary school of 124,000 sf +/- to include 4 classrooms each for K-5, Administration area, Cafeteria, Gymnasium, Auditorium, Media Center, CDC, STEM, Art, Music, Daycare, and common core.

§ 1.1.2 The Project's physical characteristics:

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

Claxton Elementary School will be located at 105 Fellowship Lane, Powell, TN 37849. The auditorium and possibly the cafeteria/kitchen of the existing church will remain and the rest of the buildings will be demolished.

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

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

Twenty Million Dollars (\$20,000,000.00)

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

Init.

**.1 Design phase milestone dates, if any:**

Contract Review and Approval	February 16, 2024
Preliminary Design Package: (This will include the Program Document, Spatial Block Diagrams, and Engineering Narratives)	March 1, 2024- March 29, 2024
Schematic Design Package:	April 1, 2024- May 22, 2024
Design Development Package:	May 27, 2024- July 26, 2024
Construction Document Package:	July 29, 2024- November 18, 2024

**.2 Construction commencement date:**

**.3 Substantial Completion date or dates:**

**.4 Other milestone dates:**

Twenty four to thirty four months (approximately July 2026)

**§ 1.1.5** The Owner intends the following procurement and delivery method for the Project:  
(Identify methods such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Bid

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

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

**§ 1.1.7** The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address, and other contact information.)

Clay McKamey  
101 S Main Street  
Clinton, TN  
865-388-7814

**§ 1.1.8** The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
(List name, address, and other contact information.)

**§ 1.1.9** The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

Init.

**.1 Geotechnical Engineer:**

S & ME Inc.  
6515 Nightingale Ln  
Knoxville, TN 37909

**.2 Civil Engineer:**

Chris Triko  
299 N. Weisgarber Road  
Knoxville, TN 3719  
865-584-0999

**.3 Other, if any:**

*(List any other consultants and contractors retained by the Owner.)*

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

Danielle Hemsley  
299 N. Weisgarber Road  
Knoxville, TN 37919  
865-584-0999  
danielleh@mbicompanies.com

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

**§ 1.1.11.1 Consultants retained under Basic Services:****.1 Structural Engineer:**

Nick Deal  
299 N. Weisgarber Road  
Knoxville, TN 37919  
865-584-0999

**.2 Mechanical Engineer:**

John Buchanan  
299 N. Weisgarber Road  
Knoxville, TN 37919  
865-584-0999

**.3 Electrical Engineer:**

Mark Newlin  
299 N. Weisgarber Road  
Knoxville, TN 37919  
865-584-0999

**§ 1.1.11.2 Consultants retained under Supplemental Services:**

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

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

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

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

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

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

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

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

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

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

**§ 2.5.1** Commercial General Liability with policy limits of not less than one million dollars (\$ 1,000,000.00) for each occurrence and two million dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

**§ 2.5.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles, along with any other statutorily required automobile coverage.

Init.

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

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than State required (\$ ) each accident, State required (\$ ) each employee, and State required (\$ ) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors, and omissions in the performance of professional services with policy limits of not less than one million dollars (\$ 1,000,000.00) per claim and one million dollars (\$ 1,000,000.00) in the aggregate.

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

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

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

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

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

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

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

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

### § 3.2 Schematic Design Phase Services

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

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

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

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

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

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

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

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

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

### § 3.3 Design Development Phase Services

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

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

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

### § 3.4 Construction Documents Phase Services

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

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

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

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

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

### § 3.5 Procurement Phase Services

#### § 3.5.1 General

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

#### § 3.5.2 Competitive Bidding

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

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

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

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

#### § 3.5.3 Negotiated Proposals

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

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

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,

- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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

## § 3.6 Construction Phase Services

### § 3.6.1 General

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

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

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

### § 3.6.2 Evaluations of the Work

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

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

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.



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

**§ 3.6.3 Certificates for Payment to Contractor**

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

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

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

**§ 3.6.4 Submittals**

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

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

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

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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

### § 3.6.5 Changes in the Work

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

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

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

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

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

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

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

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

## ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

### § 4.1 Supplemental Services

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

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

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Architect / Owner

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<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.2 Multiple preliminary designs	N/A
§ 4.1.1.3 Measured drawings	N/A
§ 4.1.1.4 Existing facilities surveys	N/A
§ 4.1.1.5 Site evaluation and planning	Architect
§ 4.1.1.6 Building Information Model management responsibilities	Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	N/A
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	N/A
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	N/A
§ 4.1.1.13 On-site project representation	N/A
§ 4.1.1.14 Conformed documents for construction	N/A
§ 4.1.1.15 As-designed record drawings	N/A
§ 4.1.1.16 As-constructed record drawings	N/A
§ 4.1.1.17 Post-occupancy evaluation	N/A
§ 4.1.1.18 Facility support services	N/A
§ 4.1.1.19 Tenant-related services	N/A
§ 4.1.1.20 Architect's coordination of the Owner's consultants	N/A
§ 4.1.1.21 Telecommunications/data design	Architect / Owner
§ 4.1.1.22 Security evaluation and planning	N/A
§ 4.1.1.23 Commissioning	N/A
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	N/A
§ 4.1.1.25 Fast-track design services	N/A
§ 4.1.1.26 Multiple bid packages	N/A
§ 4.1.1.27 Historic preservation	N/A
§ 4.1.1.28 Furniture, furnishings, and equipment design	Owner
§ 4.1.1.29 Other services provided by specialty Consultants	N/A
§ 4.1.1.30 Other Supplemental Services	N/A

#### § 4.1.2 Description of Supplemental Services

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

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

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

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

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

## **§ 4.2 Architect's Additional Services**

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

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

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

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;

- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

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

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Thirty Six ( 36 ) visits to the site by the Architect during construction
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion.

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

§ 4.2.5 If the services covered by this Agreement have not been completed within thirty six ( 36 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements within ten (10) days after receipt of written request from the Architect, the Owner shall furnish the requested information.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

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

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User Notes:

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

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

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

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

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

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

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

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

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

## ARTICLE 6 COST OF THE WORK

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

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

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction

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are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume, or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

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

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

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

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

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

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

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

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

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

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

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

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

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

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

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

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

### **§ 8.2 Mediation**

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

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

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



**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box.)*

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

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

### **§ 8.3 Arbitration**

#### **§ 8.3.1**

##### **§ 8.3.1.1**

#### **§ 8.3.2**

#### **§ 8.3.3**

### **§ 8.3.4 Consolidation or Joinder**

#### **§ 8.3.4.1**

#### **§ 8.3.4.2**

#### **§ 8.3.4.3**

### **§ 8.4**

## **ARTICLE 9 TERMINATION OR SUSPENSION**

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

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

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

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

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

**§ 9.6** If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to

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termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

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

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

.1 Termination Fee:

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

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

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

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

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

**§ 10.8.1** The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

## **ARTICLE 11 COMPENSATION**

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

**.1** Stipulated Sum  
(Insert amount)

**.2** Percentage Basis  
(Insert percentage value)

Six percent (6%) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

**.3** Other  
(Describe the method of compensation)

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

Fees for Supplemental Services will be billed at the Architects Hourly Rates.

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

Fees for Additional Services will be billed at the Architects Hourly Rates.

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

*(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

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

Schematic Design Phase	twenty five	percent (	25	%)
Design Development Phase	thirty	percent (	30	%)
Construction Documents Phase	twenty	percent (	20	%)
Procurement Phase	five	percent (	5	%)
Construction Phase	twenty	percent (	20	%)
Total Basic Compensation	one hundred	percent (	100	%)

**§ 11.6** When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work.

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

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

Employee or Category	Rate (\$0.00)
Administrative Assistant / Accounting	\$ 75.00
CAD Technician	\$ 112.00
CAD Technician Designer	\$ 132.00
Architect / Engineer – Intern	\$ 140.00
Architect / Engineer – Registered	\$ 160.00
Architect / Engineer – Registered II	\$ 178.00
Interior Designer	\$ 146.00
Project Manager	\$ 150.00
Principal / Surveyor	\$ 198.00
Senior Principal	\$ 215.00

\*These rates are subject to change as we adjust our hourly rates periodically to reflect the advancing experience, capabilities and seniority of our professionals and staff, as well as general economic factors

#### **§ 11.8 Compensation for Reimbursable Expenses**

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;

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- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

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

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

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

#### § 11.10 Payments to the Architect

##### § 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero dollars (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

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

##### § 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty five ( 45 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

1 % monthly 12% APR

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

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

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

§ 12.1 **Limitation of Liability.** In order for the Owner to receive the benefits of a fee which includes a lesser allowance for risk funding, the Owner agrees to limit Architect's liability for any cause or combination of causes

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arising from Architect's or Architect's Consultants' professional acts, errors or omissions, such that the total aggregate liability of Architect shall not exceed five (5) times Architect's fees paid for the services rendered on this project, or \$50,000 whichever is greater, not including reimbursable expenses, Architect's Consultants' fees or value added and entitlement success fees where applicable. The Owner further agrees that no shareholder, officer, director, partner, principal or employee of Architect shall be personally liable under any provisions of this agreement for any causes of action arising out of or related to the professional services provided in connection with the Project. The limitations of liabilities contained herein will survive the termination of this agreement.

**§ 12.2 Accessibility:** The Owner acknowledges that the requirements of the Americans with Disabilities Act (ADA), Fair Housing Act (FHA) and other federal, state, and local accessibility laws, rules, codes, ordinances and regulations will be subject to various and possibly contradictory interpretations. Architect, therefore, will use its reasonable professional efforts and judgment to interpret applicable accessibility requirements in effect as of the date of the execution of this Agreement to the extent those statutes apply to the Project. Architect, however, cannot and does not warrant or guarantee that the Owner's Project will comply with all possible interpretations of the accessibility requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project, and Architect shall, accordingly, not have any liability to the Owner in connection with same.

**Code Compliance:** Architect shall put forth reasonable professional efforts to comply with applicable laws, codes and regulations in effect as of the date of the execution of this Agreement. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle Architect to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Agreement.

**§ 12.3 Betterment:** If, due to Architect's omission, a required item or component of the Project is omitted from Architect's construction documents, Architect shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project. Professional services provided by Consultant and its consultants, if any, shall be provided consistent with and limited to the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances. Consultant shall perform its services as expeditiously as is consistent with such professional skill and care.

**§ 12.4 Certificate of Merit:** The Client shall not make any claim for professional negligence, either directly or in a third-party claim, against Consultant unless the Client has first provided Consultant with a written certification, executed by an independent Consultant, currently practicing in the same discipline as Consultant, who is principal of a bona fide firm, and licensed in the State of Tennessee. This certification shall: a) identify the name and license number of the certifier; b) specify each and every act, error, or omission that the certifier contends is a violation of the standard of care expected of an engineer performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act, error, or omission constitutes such a violation. This certificate shall be provided to Consultant not less than thirty (30) calendar days prior to the presentation of any claim or legal action.

## ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this agreement.)*

- .3 Exhibits:

*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

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- [ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this agreement.)*
- [ ] Other Exhibits incorporated into this Agreement:  
*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)*

- .4** Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

This Agreement entered into as of the day and year first written above.

**Anderson County Schools**

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
 Dr. Tim Parrott, Ed.D.

\_\_\_\_\_  
*(Printed name and title)*

**MBI Companies Inc.**

\_\_\_\_\_  
**ARCHITECT** *(Signature)*

\_\_\_\_\_  
 Erin Harlow, AIA, Vice President-Architecture

\_\_\_\_\_  
*(Printed name, title, and license number, if required)*

**MBI Companies Inc.**

\_\_\_\_\_  
**ARCHITECT** *(Signature)*

\_\_\_\_\_  
 M. Edward Jett, PE, SE, CEO

\_\_\_\_\_  
*(Printed name, title, and license number, if required)*

## Additions and Deletions Report for AIA® Document B101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:08:38 ET on 02/06/2024.

### PAGE 1

**AGREEMENT** made as of the First day of February in the year Two Thousand and Twenty-Four  
(In words, indicate day, ~~month~~ month, and year.)

...

(Name, legal status, ~~address~~ address, and other information)

Anderson County School Board  
101 S. Main Street  
Clinton, TN 37716

...

(Name, legal status, ~~address~~ address, and other information)

MBI Companies, Inc.  
299 N. Weisgarber Road  
Knoxville, TN 37919

...

(Name, ~~location~~ location, and detailed description)

A new school for: Claxton Elementary School  
105 Fellowship Lane  
Powell, TN 37849  
MBI Comm. Number: 230042-02

### PAGE 2

A new STEM elementary school of 124,000 sf +/- to include 4 classrooms each for K-5, Administration area, Cafeteria, Gymnasium, Auditorium, Media Center, CDC, STEM, Art, Music, Daycare, and common core.

...

Claxton Elementary School will be located at 105 Fellowship Lane, Powell, TN 37849. The auditorium and possibly the cafeteria/kitchen of the existing church will remain and the rest of the buildings will be demolished.

...

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

Twenty Million Dollars (\$20,000,000.00)



PAGE 3

<u>Contract Review and Approval</u>	<u>February 16, 2024</u>
<u>Preliminary Design Package:</u>	<u>March 1, 2024- March 29, 2024</u>
<u>(This will include the Program Document, Spatial Block Diagrams, and Engineering Narratives)</u>	
<u>Schematic Design Package:</u>	<u>April 1, 2024- May 22, 2024</u>
<u>Design Development Package:</u>	<u>May 27, 2024- July 26, 2024</u>
<u>Construction Document Package:</u>	<u>July 29, 2024- November 18, 2024</u>

...

Twenty four to thirty four months (approximately July 2026)

...

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

#### Competitive Bid

...

Clay McKamey  
101 S Main Street  
Clinton, TN  
865-388-7814  
**PAGE 4**

S & ME Inc.  
6515 Nightingale Ln  
Knoxville, TN 37909

...

Chris Triko  
299 N. Weisgarber Road  
Knoxville, TN 3719  
865-584-0999

...

Danielle Hemsley  
299 N. Weisgarber Road  
Knoxville, TN 37919  
865-584-0999  
danielleh@mbicompanies.com

...

Nick Deal  
299 N. Weisgarber Road  
Knoxville, TN 37919  
865-584-0999

...

John Buchanan  
299 N. Weisgarber Road  
Knoxville, TN 37919  
865-584-0999

...

Mark Newlin  
299 N. Weisgarber Road  
Knoxville, TN 37919  
865-584-0999

## PAGE 5

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

...

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

...

§ 2.5.1 Commercial General Liability with policy limits of not less than ~~(\$ ) for each occurrence and (\$ ) one million dollars (\$ 1,000,000.00) for each occurrence and two million dollars (\$ 2,000,000.00)~~ in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than ~~(\$ ) one million dollars (\$ 1,000,000.00)~~ per accident for bodily injury, death of any person, and property damage arising out of the ownership, ~~maintenance-maintenance~~, and use of those motor vehicles, along with any other statutorily required automobile coverage.

## PAGE 6

§ 2.5.5 Employers' Liability with policy limits not less than State required (\$ ) each accident, State required (\$ ) each employee, and State required (\$ ) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, ~~errors-errors~~, and omissions in the performance of professional services with policy limits of not less than ~~(\$ ) per claim and (\$ ) one million dollars (\$ 1,000,000.00) per claim and one million dollars (\$ 1,000,000.00)~~ in the aggregate.

## PAGE 7

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

...

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, ~~mechanical-mechanical~~, and electrical

systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

**PAGE 8**

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

...

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

**PAGE 9**

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

**PAGE 10**

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

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§ 4.1.1.1	Programming	<u>Architect / Owner</u>
§ 4.1.1.2	Multiple preliminary designs	<u>N/A</u>
§ 4.1.1.3	Measured drawings	<u>N/A</u>
§ 4.1.1.4	Existing facilities surveys	<u>N/A</u>
§ 4.1.1.5	Site evaluation and planning	<u>Architect</u>
§ 4.1.1.6	Building Information Model management responsibilities	<u>Architect</u>
§ 4.1.1.7	Development of Building Information Models for post construction use	<u>N/A</u>
§ 4.1.1.8	Civil engineering	<u>Architect</u>
§ 4.1.1.9	Landscape design	<u>Architect</u>
§ 4.1.1.10	Architectural interior design	<u>Architect</u>
§ 4.1.1.11	Value analysis	<u>N/A</u>
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	<u>N/A</u>

§ 4.1.1.13 On-site project representation	<u>N/A</u>
§ 4.1.1.14 Conformed documents for construction	<u>N/A</u>
§ 4.1.1.15 As-designed record drawings	<u>N/A</u>
§ 4.1.1.16 As-constructed record drawings	<u>N/A</u>
§ 4.1.1.17 Post-occupancy evaluation	<u>N/A</u>
§ 4.1.1.18 Facility support services	<u>N/A</u>
§ 4.1.1.19 Tenant-related services	<u>N/A</u>
§ 4.1.1.20 Architect's coordination of the Owner's consultants	<u>N/A</u>
§ 4.1.1.21 Telecommunications/data design	<u>Architect / Owner</u>
§ 4.1.1.22 Security evaluation and planning	<u>N/A</u>
§ 4.1.1.23 Commissioning	<u>N/A</u>
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	<u>N/A</u>
§ 4.1.1.25 Fast-track design services	<u>N/A</u>
§ 4.1.1.26 Multiple bid packages	<u>N/A</u>
§ 4.1.1.27 Historic preservation	<u>N/A</u>
§ 4.1.1.28 Furniture, furnishings, and equipment design	<u>Owner</u>
§ 4.1.1.29 Other services provided by specialty Consultants	<u>N/A</u>
§ 4.1.1.30 Other Supplemental Services	<u>N/A</u>

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- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Thirty Six ( 36 ) visits to the site by the Architect during construction
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion.

...

§ 4.2.5 If the services covered by this Agreement have not been completed within thirty six ( 36 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

...

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site ~~requirements~~. requirements within ten (10) days after receipt of written request from the Architect, the Owner shall furnish the requested information.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; ~~and, and~~ (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

...

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

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

...

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

...

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

...

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

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

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§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, ~~altering~~altering, and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's

consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

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

...

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

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

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[ X ] Litigation in a court of competent jurisdiction

...

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

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

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

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

...

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

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

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

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

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

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~~(Six percent (6%)~~ % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

...

Fees for Supplemental Services will be billed at the Architects Hourly Rates.

...

Fees for Additional Services will be billed at the Architects Hourly Rates.

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

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Schematic Design Phase	<u>twenty five</u>	percent (	<u>25</u>	%)
Design Development Phase	<u>thirty</u>	percent (	<u>30</u>	%)
Construction Documents Phase	<u>twenty</u>	percent (	<u>20</u>	%)
Procurement Phase	<u>five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>twenty</u>	percent (	<u>20</u>	%)

...

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

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

...

<u>Administrative Assistant / Accounting</u>	<u>\$ 75.00</u>
<u>CAD Technician</u>	<u>\$ 112.00</u>
<u>CAD Technician Designer</u>	<u>\$ 132.00</u>
<u>Architect / Engineer – Intern</u>	<u>\$ 140.00</u>
<u>Architect / Engineer – Registered</u>	<u>\$ 160.00</u>
<u>Architect / Engineer – Registered II</u>	<u>\$ 178.00</u>
<u>Interior Designer</u>	<u>\$ 146.00</u>
<u>Project Manager</u>	<u>\$ 150.00</u>
<u>Principal / Surveyor</u>	<u>\$ 198.00</u>
<u>Senior Principal</u>	<u>\$ 215.00</u>

\*These rates are subject to change as we adjust our hourly rates periodically to reflect the advancing experience, capabilities and seniority of our professionals and staff, as well as general economic factors

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

...

**§ 11.10.1.1** An initial payment of zero dollars ( \$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

...

**§ 11.10.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty five ( 45 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

1 % monthly 12% APR

...

**§ 12.1 Limitation of Liability.** In order for the Owner to receive the benefits of a fee which includes a lesser allowance for risk funding, the Owner agrees to limit Architect's liability for any cause or combination of causes arising from Architect's or Architect's Consultants' professional acts, errors or omissions, such that the total aggregate liability of Architect shall not exceed five (5) times Architect's fees paid for the services rendered on this project, or \$50,000 whichever is greater, not including reimbursable expenses, Architect's Consultants' fees or value added and entitlement success fees where applicable. The Owner further agrees that no shareholder, officer, director, partner, principal or employee of Architect shall be personally liable under any provisions of this agreement for any causes of action arising out of or related to the professional services provided in connection with the Project. The limitations of liabilities contained herein will survive the termination of this agreement.

**§ 12.2 Accessibility:** The Owner acknowledges that the requirements of the Americans with Disabilities Act (ADA), Fair Housing Act (FHA) and other federal, state, and local accessibility laws, rules, codes, ordinances and regulations will be subject to various and possibly contradictory interpretations. Architect, therefore, will use its reasonable professional efforts and judgment to interpret applicable accessibility requirements in effect as of the date of the execution of this Agreement to the extent those statutes apply to the Project. Architect, however, cannot and does not warrant or guarantee that the Owner's Project will comply with all possible interpretations of the accessibility requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project, and Architect shall, accordingly, not have any liability to the Owner in connection with same.



**Code Compliance:** Architect shall put forth reasonable professional efforts to comply with applicable laws, codes and regulations in effect as of the date of the execution of this Agreement. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle Architect to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Agreement.

**§ 12.3 Betterment:** If, due to Architect's omission, a required item or component of the Project is omitted from Architect's construction documents, Architect shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project. Professional services provided by Consultant and its consultants, if any, shall be provided consistent with and limited to the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances. Consultant shall perform its services as expeditiously as is consistent with such professional skill and care.

**§ 12.4 Certificate of Merit:** The Client shall not make any claim for professional negligence, either directly or in a third-party claim, against Consultant unless the Client has first provided Consultant with a written certification, executed by an independent Consultant, currently practicing in the same discipline as Consultant, who is principal of a bona fide firm, and licensed in the State of Tennessee. This certification shall: a) identify the name and license number of the certifier; b) specify each and every act, error, or omission that the certifier contends is a violation of the standard of care expected of an engineer performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act, error, or omission constitutes such a violation. This certificate shall be provided to Consultant not less than thirty (30) calendar days prior to the presentation of any claim or legal action.

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

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**Anderson County Schools**

**MBI Companies Inc.**

...

Dr. Tim Parrott, Ed.D.

Erin Harlow, AIA, Vice President-Architecture

...

**MBI Companies Inc.**

**ARCHITECT (Signature)**

M. Edward Jett, PE, SE, CEO

(Printed name, title, and license number, if required)

**Certification of Document's Authenticity****AIA® Document D401™ – 2003**

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:08:38 ET on 02/06/2024 under Order No. 4104248304 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*

## ANDERSON COUNTY GOVERNMENT PROPERTY DISPOSITION AND SURPLUS RECORD

- Property declared to be surplus may be transferred to another Anderson County office or be sold at internet auction.
- The IT Department will manage the disposition of hard drives.
- The Vehicle Inspection Form is to be used to sell vehicles. A police report must accompany this form if the property was stolen.
- Transferring property to an Entity outside of Anderson County requires Purchasing Committee and County Commission approval.
- This form should be emailed to [Surplus@andersontn.org](mailto:Surplus@andersontn.org)

Sheriff's Department  
(Department) \_\_\_\_\_ requests to surplus property as detailed below.

 \_\_\_\_\_ 2/1/2024  
Signature of Department Head/Elected Official Date

Asset Tag Number (N/A if no Tag).	Property Description (Vehicles - list Year, Make, Model and Location)	Serial Number/ VIN Number (N/A if no Serial No.)	Property Condition (Working, inoperable, unknown)
Acso-1501	2011 Ford Crown Victoria	2FABP7BV7BX132124	
			Runs and drives, has front end damage

Attach additional sheet(s) if necessary.

### Property Disposition Method (check applicable box)

<b>Internet Auction</b>  Fund #: _____ Fund Description: _____ (Attach photos of item(s) to record)	<b>Purchasing Office Use Only</b> Govdeals ID#: _____ Date: _____ Sale Amount: \$ _____ Date removed from Asset Listing: _____
<b>Transfer Property</b>  To: _____ (Department)  Signature of Receiving Department Head/Elected Official _____ Date _____	
<b>Trade In</b> Purchase Order Number of Trade in: _____	
<b>Stolen or Lost</b> (Attach copy of Police Report)	
<b>Property Destroyed</b> (Attach explanation)	

Received by Purchasing Office: \_\_\_\_\_  
(Date)

Deputy Purchasing Agent Signature: \_\_\_\_\_