



CITY COMMISSION MEETING
AGENDA FOR APRIL 25, 2017
5:30 P.M.
CITY HALL COMMISSION CHAMBERS
300 SOUTH FIFTH STREET

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

ADDITIONS/DELETIONS

PRESENTATION: Dogwood Trail Art Awards – Civic Beautification
Beaux Tie for the Arts – Bill Ford

Items on the Consent Agenda are considered to be routine by the Board of Commissioners and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Board member so requests, in which event the item will be removed from the Consent Agenda and considered separately. The City Clerk will read the items recommended for approval.

	I. <u>CONSENT AGENDA:</u>
	A. <u>MINUTES</u>
	B. <u>APPOINTMENTS</u>
	1. Civic Beautification Board
	2. Paducah Golf Commission
	3. Human Rights Commission
	C. <u>MOTION</u>
	1. R & F Documents
	D. <u>MUNICIPAL ORDER(S)</u>
	1. Personnel Actions
	2. Authorizing an Architectural & Engineering Services Agreement w/Marcum Engineering for City Hall Improvements - CITY MGR
	3. MOU Designating Agent for Convention Center Improvements – CITY MGR

	II.	<u>ORDINANCE(S) – ADOPTION</u>
		A. Rezoning of 4231 Pecan Drive – J. SOMMER
	III.	<u>ORDINANCE(S) – INTRODUCTION</u>
		A. Ordinance Establishing Guidelines for Food Trucks – J. SOMMER
		B. Authorizing the City to Enter Into a Partnership Agreement with the Department of the Army for the Ohio River Shoreline Reconstruction Project – R. MURPHY
	IV.	<u>COMMENTS</u>
		A. Comments from the City Manager
		B. Comments from the Board of Commissioners
		C. Comments from the Audience
	V.	<u>EXECUTIVE SESSION</u>

APRIL 18, 2017

At a Regular Meeting of the Board of Commissioners, held on Tuesday, April 18, 2017, at 5:30 p.m., in the Commission Chambers of City Hall located at 300 South 5th Street, Mayor Harless presided, and upon call of the roll by the City Clerk, the following answered to their names: Commissioners Abraham, Holland, Wilson and Mayor Harless (4). Commissioner Rhodes was absent (1).

INVOCATION

Commissioner Abraham gave the invocation.

INTRODUCTION

Mayor Harless introduced Jay Hall, Executive Director of the Kentucky Office of Film & Development. Mr. Hall is in charge of administering film incentives in trying to get Kentucky on the radar with other states for being used as a filming location. This can be a great economic benefit to the state.

MINUTES

Commissioner Abraham offered motion, seconded by Commissioner Holland, that the reading of the Minutes for the April 11, 2017, City Commission meeting be waived and that the Minutes of said meeting prepared by the City Clerk be approved as written.

Adopted on call of the roll, yeas, Commissioners Abraham, Holland, Wilson, and Mayor Harless (4).

ORDINANCE(S)-ADOPTION

AMENDMENT TO CABLE TELEVISION FRANCHISE AGREEMENT WITH COMCAST

Commissioner Holland offered motion, seconded by Commissioner Abraham, that the Board of Commissioners adopt an Ordinance entitled, "AN ORDINANCE OF THE CITY OF PADUCAH, KENTUCKY GRANTING COMCAST CABLE, HEARTLAND REGION FORMERLY KNOWN AS COMCAST OF THE SOUTH, L.P. A FRANCHISE EXTENSION THROUGH OCTOBER 11, 2017." This Ordinance is summarized as follows: The Franchise Agreement between the City of Paducah and Comcast Cable, Heartland Region formerly known as Comcast of the South, L.P., is hereby amended by extending the term of the Franchise from April 11, 2017 through and including October 11, 2017.

Adopted on call of the roll, yeas, Commissioners Abraham, Holland, Wilson, and Mayor Harless (4). ORD #2017-4-8482; BK 35

AUTHORIZE CHANGE ORDER FOR FINAL QUANTITIES FOR OLIVET CHURCH ROAD IMPROVEMENT PROJECT

Commissioner Wilson offered motion, seconded by Commissioner Abraham, that the Board of Commissioners adopt an Ordinance entitled, "AN ORDINANCE APPROVING CHANGE ORDER NO. 1 FOR THE OLIVET CHURCH ROAD IMPROVEMENT PROJECT." This Ordinance is summarized as follows: The Mayor is hereby authorized and directed to execute Change Order 1 for an overall price reduction in the amount of \$114,000.95 for the City of Paducah's Olivet Church Road Improvement Project, henceforth, decreasing the total contract price to \$6,266,136.09.

Adopted on call of the roll, yeas, Commissioners Abraham, Holland, Wilson, and Mayor Harless (4). ORD #2017-4-8483; BK 35

PRE-BUDGET WORKSHOP

City Manager Pederson and Finance Director Jon Perkins held a pre-budget workshop to give an overview of the General Fund Major Revenues, Investment Fund and Capital Projects. The four major revenue sources are payroll, insurance premium, property taxes and business licenses. The projected combined total for revenue sources is \$27.9 million, with payroll tax being the top source.

The Investment Fund, a quarter of the 2% payroll tax and established in 2006, is to fund economic development, neighborhood redevelopment/revitalization, and capital improvements/infrastructure. The Fund’s projected income for FY2018 is \$5.45 million and is proposed to be used as follows:

Debt Service	\$1,753,080
Streets/Sidewalks	\$1,031,350
Historic Commitments	\$1,147,500
Ongoing Commitments	\$ 778,750
Small Capital Projects	\$739,320, of that, \$364,320 is available for other projects

The 5-year Capital Project Ranking list is as follows:

- | | | | |
|----|--|----|---|
| 1 | 911 Infrastructure Phase I | 11 | Street Light Replacement (LED) |
| 2 | 911 Infrastructure Phase II | 12 | Fire Station #4 Garage |
| 3 | City Hall Phase I | 13 | Health Park Phase II |
| 4 | Fountain Avenue Storm water/
Sidewalk Improvements | 14 | Stuart Nelson Park Road
Improvements |
| 5 | Riverfront Commons Area | 15 | Fire Training Field |
| 6 | Broadway / Jefferson Conversion
with Bike Lanes | 16 | Generators |
| 7 | Replacement of Parks Roof | 17 | Broadway Streetscape Improvements |
| 8 | Partial Rehab of 2 nd Street
Parking Lot | 18 | Stuart Nelson Park Softball
Field Improvements |
| 9 | Noble Park Tennis Court
Resurfacing | 19 | Dolly McNutt Plaza Renovations
and Repairs |
| 10 | Greenway Trail Phase III | 20 | 3 rd & Kentucky Parking Lot Beautification |

The E911 Phase I Project estimated cost is \$3,900,000. \$900,000 in cash from the Radio Depreciation Fund, accumulated from user fees, will be used and the remaining \$3,000,000 potentially funded through a future bond issue. 911 Infrastructure – Phase II is estimated to cost \$8 million. No funding has been identified for it at this time.

The estimated cost for City Hall Phase I is \$ 4,857,000. For this project, \$1,220,000 has been set aside in project cash, \$487,000 (estimated) may be funded through historic tax credits with

APRIL 18, 2017

\$2,000,000 coming from the Solid Waste Fund Reserve and \$1,150,000, coming from the General Fund Reserve.

How to spend the remaining \$364,320 in the Investment Fund was discussed. No decisions were made by the Board.

COMMENTS

COMMENTS FROM CITY MANAGER

The City Manager informed the Board that Strand Associates, Inc., the Comprehensive Stormwater Master Plan consultant, has recommended a Citizens Stormwater Advisory Committee be comprised of 10 to 12 people that will meet periodically with the consultants and the technical advisory group to provide some guidance and input on the process of plan development. He asked the Board if they had anyone they wanted to recommend to let him know as soon as possible.

COMMENTS FROM THE BOARD OF COMMISSIONERS

No comments

ADJOURN

Mayor Harless offered motion, seconded by Commissioner Wilson, that the meeting be adjourned at approximately 6:50 p.m. All in favor. Motion carried.

ADOPTED: April 25, 2017

City Clerk

Mayor

APRIL 25, 2017

I move that the following documents be received and filed:

DOCUMENTS

1. Certificate of Liability Insurance for Gill Family Properties, LLC
2. Deeds:
 - a. Quitclaim Deed with Russell & Julie Wagner for closing of High Street between Sherwood Road and Alameda Drive (MO # 1955)
 - b. Quitclaim Deed with Icy L. Gardner for closing of High Street between Sherwood Road and Alameda Drive (MO # 1955)
 - c. Deed with Brent Lindsey for 1319 Park Avenue (MO # 1930)
3. Contracts/Agreements:
 - a. Franchise Extension Agreement with Comcast Cable (ORD # 2017-4-8482)
 - b. Agreement with International Association of Fire Fighters IAFF for Fire Ground Survival (ORD # 2017-2-8475)
 - c. Contract for Services with Paducah-McCracken County Convention & Visitors Bureau (MO # 1962)
 - d. Encroachment Agreement with Musselman Properties, LLC for a portion of Labelle Avenue adjacent to 3121 Broadway (MO # 1951)
4. City of Paducah Financial Report for Period Ending January 31, 2017

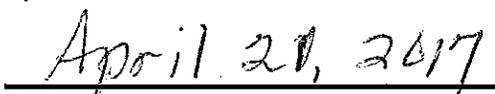
CITY OF PADUCAH
April 25, 2017



Upon the recommendation of the City Manager, the Board of Commissioners of the City of Paducah order that the personnel changes on the attached list be approved.



City Manager's Signature



Date

**CITY OF PADUCAH
PERSONNEL ACTIONS
April 25, 2017**

PAYROLL ADJUSTMENTS/TRANSFERS/PROMOTIONS/TEMPORARY ASSIGNMENTS

<u>PARKS SRVCS - RECREATION</u>	<u>PREVIOUS POSITION AND BASE RATE OF PAY</u>	<u>CURRENT POSITION AND BASE RATE OF PAY</u>	<u>NCS/CS</u>	<u>FLSA</u>	<u>EFFECTIVE DATE</u>
Clark, Morgan	Summer Camp Coordinator \$9.14/Hr	Summer Camp Coordinator \$9.50/Hr	NCS	Non-Ex	May 4, 2017
Dew, Caroline A	Lifeguard \$8.24/Hr	Lifeguard \$8.25/Hr	NCS	Non-Ex	May 4, 2017
Draffen, Mya S	Lifeguard \$8.24/Hr	Lifeguard \$8.25/Hr	NCS	Non-Ex	May 4, 2017
Hill, Courtney C	Lifeguard \$8.24/Hr	Lifeguard \$8.25/Hr	NCS	Non-Ex	May 4, 2017
Meier, Kevin C	Lifeguard \$8.24/Hr	Lifeguard \$8.25/Hr	NCS	Non-Ex	May 4, 2017
Elrod, Robert L	Pool Attendant \$7.62/Hr	Pool Attendant \$7.75/Hr	NCS	Non-Ex	May 4, 2017
Lowery, Claren	Pool Attendant \$7.62/Hr	Pool Attendant \$7.75/Hr	NCS	Non-Ex	May 4, 2017
McCallum, Anntoinette M	Pool Attendant \$7.61/Hr	Pool Attendant \$7.75/Hr	NCS	Non-Ex	March 30, 2017
Meier, Matthew C	Pool Attendant \$7.62/Hr	Pool Attendant \$7.75/Hr	NCS	Non-Ex	May 4, 2017
Newberry, Hannah M	Pool Attendant \$7.62/Hr	Head Pool Attendant \$8.00/Hr	NCS	Non-Ex	May 4, 2017
Raber, Grace F	Pool Attendant \$7.62/Hr	Pool Attendant \$7.75/Hr	NCS	Non-Ex	May 4, 2017
Seitz, Leigh Anne	Pool Attendant \$7.62/Hr	Pool Attendant \$7.75/Hr	NCS	Non-Ex	May 4, 2017
Smith, Ceriae A	Pool Attendant \$7.62/Hr	Pool Attendant \$7.75/Hr	NCS	Non-Ex	May 4, 2017
Smith, Jalisa M	Pool Attendant \$7.62/Hr	Pool Attendant \$7.75/Hr	NCS	Non-Ex	May 25, 2017
Smith, Joya S	Pool Attendant \$7.62/Hr	Pool Attendant \$7.75/Hr	NCS	Non-Ex	May 25, 2017
Archer, Raegan	Recreation Leader \$8.50/Hr	Recreation Leader \$8.25/Hr	NCS	Non-Ex	May 18, 2017
Cates, Tristan	Recreation Leader \$8.50/Hr	Recreation Leader \$8.25/Hr	NCS	Non-Ex	May 4, 2017
Griffin, Olivia	Recreation Leader \$8.24/Hr	Recreation Leader \$8.50/Hr	NCS	Non-Ex	March 30, 2017
Jez, Elise	Recreation Leader \$8.50/Hr	Recreation Leader \$8.25/Hr	NCS	Non-Ex	May 4, 2017
Lambert, Rianna	Recreation Leader \$8.50/Hr	Recreation Leader \$8.25/Hr	NCS	Non-Ex	May 4, 2017
Shell, Kaitlyn	Recreation Leader \$8.24/Hr	Recreation Leader \$8.25/Hr	NCS	Non-Ex	May 18, 2017
Stewart, Kelly	Recreation Leader \$8.24/Hr	Recreation Leader \$8.25/Hr	NCS	Non-Ex	May 18, 2017

CITY OF PADUCAH
PERSONNEL ACTIONS
April 25, 2017

PAYROLL ADJUSTMENTS/TRANSFERS/PROMOTIONS/TEMPORARY ASSIGNMENTS

	<u>PREVIOUS POSITION AND BASE RATE OF PAY</u>	<u>CURRENT POSITION AND BASE RATE OF PAY</u>	<u>NCS/CS</u>	<u>FLSA</u>	<u>EFFECTIVE DATE</u>
<u>PARKS SRVCS - RECREATION</u>					
Blakemore, Kaitlin A	Recreation Leader \$11.20/Hr	Recreation Leader \$8.25/Hr	NCS	Non-Ex	April 20, 2017
Bogard, Jason R	Recreation Leader \$11.20/Hr	Recreation Leader \$11.75/Hr	NCS	Non-Ex	April 17, 2017
<u>POLICE - SUPPORT SERVICES</u>					
Crowell, Justin P	Acting Detective Captain \$32.65/Hr	Detective Captain \$33.52/Hr	NCS	Ex	April 27, 2017

NEW HIRE - FULL-TIME (F/T)

	<u>POSITION</u>	<u>RATE</u>	<u>NCS/CS</u>	<u>FLSA</u>	<u>EFFECTIVE DATE</u>
<u>EPW - ENGINEERING SRVCS</u>					
Mansfield, Maegan L	Engineering Project Manager	\$34.00/Hr	NCS	Ex	May 15, 2017

TERMINATIONS - FULL-TIME (F/T)

	<u>POSITION</u>	<u>REASON</u>	<u>EFFECTIVE DATE</u>
<u>POLICE OPERATIONS</u>			
Wrye, Blair B	Police Patrol Officer	Resignation	April 10, 2017
<u>EPW - ENGINEERING SRVCS</u>			
Weeks, Angela G	Engineering Project Manager	Retirement	April 28, 2017

NEW HIRES - PART-TIME (P/T)/TEMPORARY/SEASONAL

	<u>POSITION</u>	<u>RATE</u>	<u>NCS/CS</u>	<u>FLSA</u>	<u>EFFECTIVE DATE</u>
<u>PARKS SRVCS - RECREATION</u>					
Bruce, Meredith Allison	Recreation Leader	\$8.25/Hr	NCS	Non-Ex	May 18, 2017
Ertle, Kayla	Recreation Leader	\$8.25/Hr	NCS	Non-Ex	May 18, 2017
Fletcher, Jack Gavin	Lifeguard	\$8.25/Hr	NCS	Non-Ex	May 4, 2017
Grogan, Weston Lewis	Lifeguard	\$8.25/Hr	NCS	Non-Ex	May 4, 2017
Harned, Emme C	Lifeguard	\$8.25/Hr	NCS	Non-Ex	May 4, 2017
Hollar, Noah C	Lifeguard	\$8.25/Hr	NCS	Non-Ex	May 4, 2017
Hudspeth, Elijah Bradley	Lifeguard	\$8.25/Hr	NCS	Non-Ex	May 4, 2017
Jones, Victoria Paige	Lifeguard	\$8.25/Hr	NCS	Non-Ex	May 4, 2017
Lindley, Samantha Marie	Lifeguard	\$8.25/Hr	NCS	Non-Ex	May 4, 2017
McHaney, Rotajhania	Recreation Leader	\$8.25/Hr	NCS	Non-Ex	May 18, 2017
Morris, Esmond Tavar	Recreation Leader	\$8.25/Hr	NCS	Non-Ex	May 18, 2017
Williams, Taylor Shae	Recreation Leader	\$8.25/Hr	NCS	Non-Ex	May 18, 2017
<u>PARKS SRVCS - MAINTENANCE</u>					
Combs, Jason	Parks Maintenance Laborer	\$9.00/Hr	NCS	Non-Ex	May 4, 2017
Giraud-Cope, David P	Parks Maintenance Laborer	\$9.00/Hr	NCS	Non-Ex	May 4, 2017

Agenda Action Form Paducah City Commission

Meeting Date: April 25, 2017

Short Title: Contract with Marcum Engineering for Architectural and Engineering Services – Phase 1 – City Hall Project

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Jeff Pederson, City Manager
Presentation By: Jeff Pederson, City Manager

Background Information:

Following the formulation of two design concepts for City Hall that included both rehabilitation and a new build, the City Commission indicated a preference for a phased approach to rehabilitation of the existing City Hall. Over the past year, city staff has conducted a process to compile a list of critical building improvements in include in a Phase 1 project.

At the April 18 City Commission meeting, the City Manager presented a proposal for Phase 1 that included improvements to the roof, overhang, windows, heating system, cooling system and façade. A funding proposal was included that identified sources of funds to finance the estimated Phase 1 project cost of \$4,858,957.

Funds Available: Account Name:
Account Number:

Finance

Staff Recommendation:

A contract for architectural and engineering services for the Phase 1 project has been negotiated with Marcum Engineering in the amount of \$337,000. Monies for the contract are currently appropriated, and it is recommended that the City enter into the contract in order that the Phase 1 project might proceed.

Attachments: Municipal Order and Contract

Department Head	City Clerk	 City Manager
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MUNICIPAL ORDER NO. _____

A MUNICIPAL ORDER APPROVING AN AGREEMENT WITH MARCUM ENGINEERING, LLC FOR ENGINEERING AND ARCHITECTURAL PROFESSIONAL SERVICES FOR THE CITY HALL IMPROVEMENTS PHASE I PROJECT IN THE LUMP SUM OF \$337,000 PLUS REIMBURSABLE EXPENSES, AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT

BE IT ORDERED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The City hereby approves an agreement with Marcum Engineering, Inc., for engineering and architectural professional services for the City Hall Improvements Phase I project which includes canopy stabilization and façade repairs; roof replacement; window replacement; and HVAC source equipment replacement . Further, the Mayor of the City is hereby authorized to execute the Agreement.

SECTION 2. The City shall compensate Marcum in a lump sum amount of \$337,000 for the professional services plus reimbursable expenses. Said compensation paid by the City shall be funded through the City Hall Building Renovation – Phase I project account FP0076, account number 040-0102-511-2307.

SECTION 3. This Order will be in full force and effect from and after the date of its adoption.

Mayor

ATTEST:

Tammara S. Sanderson, City Clerk

Adopted by the Board of Commissioners, April 25, 2017
Recorded by Tammara S. Sanderson, City Clerk, April 25, 2017
\\mo\agree-arch & eng services-Phase I City Hall

AIA[®] Document B102[™] – 2007

Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

AGREEMENT made as of the Thirtieth day of March in the year Two Thousand and Seventeen

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

City of Paducah
300 South 5th Street
Paducah, KY 42003

and the Architect:

(Name, legal status, address and other information)

Marcum Engineering, LLC
500 South 17th Street
Paducah, KY 42003

NOTE: All further references to Architect shall be inferred to mean Engineer.

for the following Project:

(Name, location and detailed description)

Paducah City Hall Improvements – Phase 1
Paducah, Kentucky

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.

TABLE OF ARTICLES

- 1 ARCHITECT'S RESPONSIBILITIES
- 2 OWNER'S RESPONSIBILITIES
- 3 COPYRIGHTS AND LICENSES
- 4 CLAIMS AND DISPUTES
- 5 TERMINATION OR SUSPENSION
- 6 COMPENSATION
- 7 MISCELLANEOUS PROVISIONS
- 8 SPECIAL TERMS AND CONDITIONS
- 9 SCOPE OF THE AGREEMENT

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide the following professional services:

(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 9.2)

Engineering and Architectural professional services for the following improvements to City Hall: canopy stabilization and façade repairs; roof replacement; window replacement; and HVAC source equipment replacement

§ 1.2 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.

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

§ 1.4 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.

§ 1.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

See attached "Certificate of Liability Insurance"

.2 Automobile Liability

See attached "Certificate of Liability Insurance"

.3 Workers' Compensation

See attached "Certificate of Liability Insurance"

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.4 Professional Liability

See attached "Certificate of Liability Insurance"

ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 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 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.

§ 2.2 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.

§ 2.3 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 consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated 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 maintain professional liability insurance as appropriate to the services provided.

§ 2.4 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.

§ 2.5 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.

ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 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. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 3.2 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.

§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. 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 material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Sections 5.3 and 5.4, the license granted in this Section 3.3 shall terminate.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author 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

Init.

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 3.3.1.

§ 3.4 Except for the licenses granted in this Article 3, 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.

ARTICLE 4 CLAIMS AND DISPUTES

§ 4.1 GENERAL

§ 4.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement 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 4.1.1.

§ 4.1.2 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 A201-2007, General Conditions of the Contract for Construction, if applicable. 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.

§ 4.1.3 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 5.7.

§ 4.2 MEDIATION

§ 4.2.1 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.

§ 4.2.2 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 the Agreement. A request for mediation shall be made in writing, delivered to the other party to the 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.

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

§ 4.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, 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.)

Arbitration pursuant to Section 4.3 of this Agreement

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Litigation in a court of competent jurisdiction

Other (*Specify*)

§ 4.3 ARBITRATION

§ 4.3.1 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.

§ 4.3.1.1 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.

§ 4.3.2 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.

§ 4.3.3 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.

§ 4.3.4 CONSOLIDATION OR JOINDER

§ 4.3.4.1 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).

§ 4.3.4.2 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.

§ 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 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 Architect shall be paid 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.

§ 5.2 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

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User Notes:

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interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.3 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.

§ 5.4 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.

§ 5.5 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.

§ 5.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 5.7.

§ 5.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 5.8 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 3 and Section 6.3.

ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect for services described in Section 1.1 as set forth below, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.

(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)

Lump Sum Fee of \$337,000 (Three Hundred Thirty Seven Thousand Dollars and No Cents)

§ 6.2 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 6.2.1 Reimbursable Expenses are in addition to compensation for the Architect's professional 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 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

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

§ 6.3 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 5.5, or the Architect terminates this Agreement under Section 5.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of the Project as follows:

Not applicable.

§ 6.4 PAYMENTS TO THE ARCHITECT

§ 6.4.1 An initial payment of Zero (\$ 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.

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

One and One Half Percent % 1.5

§ 6.4.3 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.

§ 6.4.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 4.3.

§ 7.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 7.3 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.

§ 7.4 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.

§ 7.5 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.

§ 7.6 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.

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

information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 7.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 8 SPECIAL TERMS AND CONDITIONS

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

Not applicable.

ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 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 Owner and Architect.

§ 9.2 This Agreement is comprised of the following documents listed below:

- 1 AIA Document B102-2007, Standard Form Agreement Between Owner and Architect
- 2 AIA Document E201-2007, Digital Data Protocol Exhibit, if completed, or the following:
- 3 Other documents:
(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)

Certificates of Liability Insurance
2017 Professional Services Rate and Reimbursement Schedule

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

OWNER

(Signature)

(Printed name and title)

ARCHITECT



(Signature)

Baccus L. Oliver Principal/Engineer

(Printed name and title)

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MARCUM
ENGINEERING, LLC

500 South 17th Street
P.O. Box 120
Paducah, KY 42002-0120
Phone (270) 444-9274; Fax (270) 443-1904
www.marcumengineering.net

2017 PROFESSIONAL SERVICES RATE AND REIMBURSEMENT SCHEDULE

PRINCIPAL	\$130.00/HR
PROJECT MANAGER	\$120.00/HR
PROJECT ENGINEER I	\$ 86.00/HR
PROJECT ENGINEER II	\$ 80.00/HR
ENGINEER	\$ 70.00/HR
CONSTRUCTION ADMINISTRATOR	\$ 83.00/HR
SENIOR DESIGNER	\$ 88.00/HR
DESIGNER	\$ 73.00/HR
SENIOR DRAFTER	\$ 55.00/HR
DRAFTER	\$ 50.00/HR
CLERICAL	\$ 45.00/HR
MILEAGE – Subject to Change Based on IRS Guidelines	\$ 0.55/MI

PREAPPROVED TRAVEL EXPENSES (incl. mileage, lodging, and meals)	REIMBURSEMENT OF FURNISHED RECEIPTS
REPRODUCTION OF PLANS	\$ 0.30/FT. ² INHOUSE or PRINTER'S INVOICED AMOUNT PLUS 15%
REPRODUCTION OF SPECIFICATIONS	\$ 0.30/SHEET INHOUSE or PRINTER'S INVOICED AMOUNT PLUS 15%
COURIER SERVICE (UPS, FEDEX, ETC.)	INVOICED AMOUNT PLUS 15%
PLAN SETS FOR BUILDING CODE REVIEW	APPLICATION FEE PLUS 15% AND REPRODUCTION COSTS
SCANNED DOCUMENTS	\$3.50/SHEET

1. SCHEDULE IS EFFECTIVE BEGINNING JANUARY 1, 2017.
2. PREAPPROVED OVERTIME IS 1.5 TIMES RATE. SUNDAYS AND HOLIDAYS EXCLUDED.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/01/2017

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

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

PRODUCER Peel & Holland (CSG - P&C) P.O. Box 427 1120 Main Street Benton, KY 42025-0427	CONTACT NAME: Cindy Davis
	PHONE (A/C, No, Ext): 270 527-8621 FAX (A/C, No): 270-538-9158 E-MAIL ADDRESS: cdavis@peelholland.com
INSURED Bacon Farmer Workman Engineering & Test P.O. Box 120 Paducah, KY 42002	INSURER(S) AFFORDING COVERAGE INSURER A : SECURA Insurance NAIC# 22543
	INSURER B : Kentucky Employers Mutual Insur
	INSURER C : Zurich American Insurance Co.
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/>			20CP0032002735	12/26/2016	12/26/2017	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/>
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS			20A0032002746	12/26/2016	12/26/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION \$			20CU32002756	12/26/2016	12/26/2017	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	390260 Kentucky Only	03/03/2017	03/03/2018	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Workers Comp & Employers Liab			WC901530504 TN & IL Only	03/03/2017	03/03/2018	Each Acc \$1,000,000 Each Emp \$1,000,000 Pol Limit \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

** Supplemental Name **

First Supplemental Name applies to all policies - Bacon Farmer Workman Engineering & Testing; Geotech Engineering & Testing; Marcum Engineering LLC.; Key Largo Ventures; Marcum Energy Management Solutions LLC; Geotech Engineering & Testing; Marcum Engineering LLC.; Key Largo Ventures; Marcum Energy Management Solutions LLC; Bacon Farmer Workman Engineering & Testing.
(See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

City of Paducah
300 S 5th Street
Paducah, KY 42002

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

AUTHORIZED REPRESENTATIVE

Handwritten Signature

DESCRIPTIONS (Continued from Page 1)

Endorsement ILE1037 is included on the General Liability coverage part. When required by written contract and subject to all terms, provisions and conditions of the insurance policy : 1) Certificate holder is included as an Additional Insured for the purpose of the General Liability coverage part and/or 2) General Liability coverage part shall be primary and non-contributory.

Agenda Action Form Paducah City Commission

Meeting Date: April 25, 2017

Short Title: A MUNICIPAL ORDER APPROVING AND AUTHORIZING A MEMORANDUM OF UNDERSTANDING APPOINTING PADUCAH MCCRACKEN COUNTY CONVENTION CENTER CORPORATION AS AGENT FOR CITY FOR THE UNDERTAKING OF IMPROVEMENT TO THE JULIAN CARROLL CONVENTION CENTER

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Pederson
Presentation By: Pederson

Background Information:

In January, pursuant to an interlocal agreement with the McCracken County Fiscal Court, the city borrowed \$3 million dollars for improvements to the convention center. The funds will be repaid by the county's transient room tax. Nearly half of the funds were allocated to erect the pavilion dome in its current location. The city acted as the project manager for that asset which now belongs to the convention center. The remaining balance will be used for various capital improvements made to the convention center. The funds will generally follow the capital improvement plan adopted by the convention center's board of directors. The simple purpose of the MOU will be to allow the convention center board of directors to act as its own project manager going forward.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name:
Account Number:

Finance

Staff Recommendation: Approve

Attachments:

Department Head	City Clerk	City Manager
-----------------	------------	--------------

MUNICIPAL ORDER NO. _____

A MUNICIPAL ORDER APPROVING AND AUTHORIZING A MEMORANDUM OF UNDERSTANDING APPOINTING PADUCAH MCCRACKEN COUNTY CONVENTION CENTER CORPORATION AS AGENT FOR CITY FOR THE UNDERTAKING OF IMPROVEMENT TO THE JULIAN CARROLL CONVENTION CENTER

WHEREAS, City of Paducah has determined that it is necessary and desirable that additional improvements be undertaken to the Julian Carroll Convention Center, including related and appurtenant costs (the "Public Project"); and

WHEREAS, City has financed the Public Project through a General Obligation Lease Agreement in an aggregate principal amount not to exceed \$3,000,000 (the "Financing Lease") dated January 24, 2017 between City and Community Financial Services Bank pursuant to the provisions of Section 65.940 through 65.956, inclusive, of the Kentucky Revised States, as amended; and

WHEREAS, it is in the best interest of City to appoint Paducah McCracken County Convention Center Corporation ("CCC") to act as agent for and on behalf of City in the management and coordination of the Public Project; and

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

Section 1. Authorization. The Board of Commissioners of the City of Paducah hereby approves and the Mayor of the City of Paducah, Kentucky, is hereby authorized and directed to enter into a Memorandum of Understanding (this "Agreement") between City and CCC appointing CCC as Agent for and on behalf of City in the management and coordination of the Public Project in substantially the form attached hereto as Exhibit A and made a part hereof. It is hereby found and determined that this Agreement is to be entered into in furtherance of proper public purposes of City and that it is necessary and desirable and in the best interests of City to enter into this Agreement for the purposes therein specified.

Section 2. Severability. If any section, paragraph or provision of this Order shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Order.

Section 3. Compliance With Open Meetings Laws. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Order were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

Section 4. Conflicts. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed and the provisions

the provisions of this Order are, to the extent of such conflict, hereby repealed and the provisions of this Order shall prevail and be given effect.

Section 5. Effective Date. This Order shall be in full force and effect on and after the date as approved by the Board of Commissioners of the City of Paducah, Kentucky.

Mayor Brandi Harless

ATTEST:

City Clerk, Tammara Sanderson

Adopted by the Board of Commissioners, April 25, 2017

Recorded by City Clerk, April 25, 2017

\\mo\MOU-Convention Center Improvements

Agenda Action Form

Paducah City Commission

Meeting Date: April 11, 2017

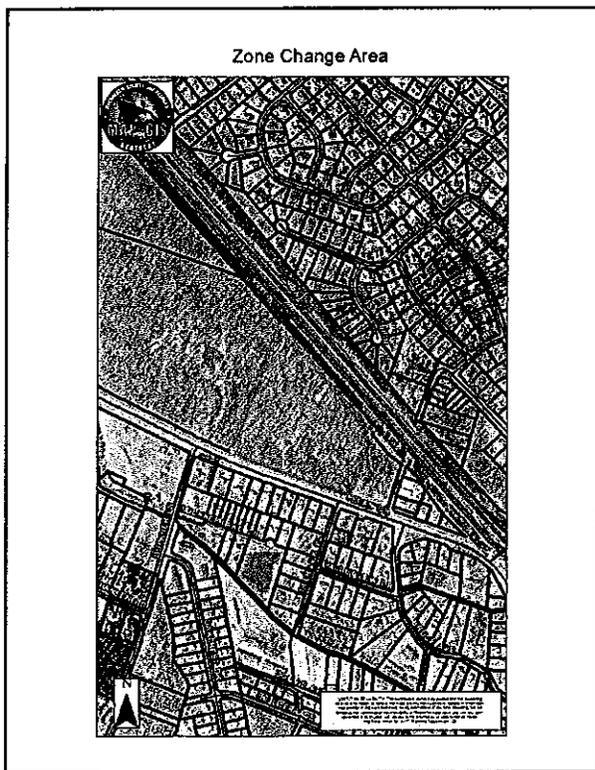
Short Title: CDB Service Finance, LLC Zone Change

Ordinance Emergency Municipal Order Resolution

Staff Work By: Joshua P. Sommer

Presentation By: Joshua P. Sommer

Background Information:



Key Components:

The applicant, CDB Service Finance, LLC, is requesting a zone change for 4231 Pecan Drive from R-1 (Low Density Residential Zone) to R-4 High Density Residential Zone.

A new skilled nursing facility is proposed for this site. Skilled nursing facilities are principally permitted in the R-4 Zone, pursuant to Section 126-105 (1) (c) of the Paducah Zoning Ordinance.

Site Data:

Area: 18.246 acres

Public Utilities: Adequate water and sewer service available.

Public Services: Sanitation, police and fire service available.

Physical Characteristics: This site is wooded and vacant.

Development Plan:

A 77,300 square foot skilled nursing facility is proposed that will have 100 beds. Staff has reviewed the plan and relayed to the Engineer that:

- The parking stalls will need to be 10' X 18'

- The total number of stalls needed is 129, based on one stall per 600 feet of gross floor area.

These comments will not impede the submittal of a final site plan.

Land Use Patterns:

This parcel was once considered for a campus for Mid-Continent University. After the University ceased operations, the property was sold. Interstate 24 provides the north boundary and Pecan Drive the south boundary. Single-family homes are located on the south side of Pecan Drive.

Adjacent Properties:

North: Interstate 24.

East: Vacant wooded lot.

South: Pecan Drive and single-family homes.

West: Large lot with one single-family home.

Zoning:

R-1 Low Density Residential Zone on all four sides. The parcel is proposed to be rezoned to R-4 High Density Residential as follows:

Sec. 126-105. High Density Residential Zone, R-4.

The purpose of this zone is to provide an area that will combine compatible residential and business uses in such a manner that it will buffer low-density residential property from high density and commercial uses.

- (1) Principal permitted uses.
 - a. Any use permitted in the R-3 zone
 - b. Multi-family dwellings
 - c. Nursing homes
 - d. Professional office buildings (yard requirements for office buildings shall be the same as the B-1 zone requirements)
 - e. Day-care nurseries
 - f. Cemeteries
 - g. Assisted care dwellings (yard and lot requirements shall be the same as 126-104 (7)).
 - h. Bed and breakfast
 - i. Places of worship

- j. Any other use not listed which, in the Commission's opinion, would be compatible with the above uses in the R-4 zone.
- (2) Conditionally permitted uses.
- a. List of uses.
 - 1. Commercial greenhouses
 - 2. Funeral homes
 - 3. Home occupations
 - 4. Hotels or motels
 - 5. Beauty shops and barbershops
 - 6. Mobile home parks.
 - b. Board of Adjustment approval. The conditionally permitted uses listed above shall be considered as business uses and shall meet the requirements of the B-1 zone. All plans will be submitted to the Planning Commission prior to Board approval and the Commission shall require such conditions as are necessary to maintain the character of this zone. The Board may grant dimensional variances to businesses when lot requirements cannot be met.
- (3) Single and two-family dwellings. Single-family dwellings and two-family dwellings shall comply with the requirements of the R-3 zone.
- (4) Multi-family dwellings and town houses.
- a. Minimum yard requirements.
 - 1. Front yard: 25 feet.
 - 2. Side yard, each side: Six feet.
 - 3. Rear yard: 25 feet.
 - b. Minimum area requirements.
 - 1. Minimum lot area, per unit: 2,000 square feet.
 - 2. Minimum lot width: 50 feet.
 - c. Maximum building height. None.
 - d. Public parking area. Same as section 126-104 (5) (e).

Findings required for map amendment:

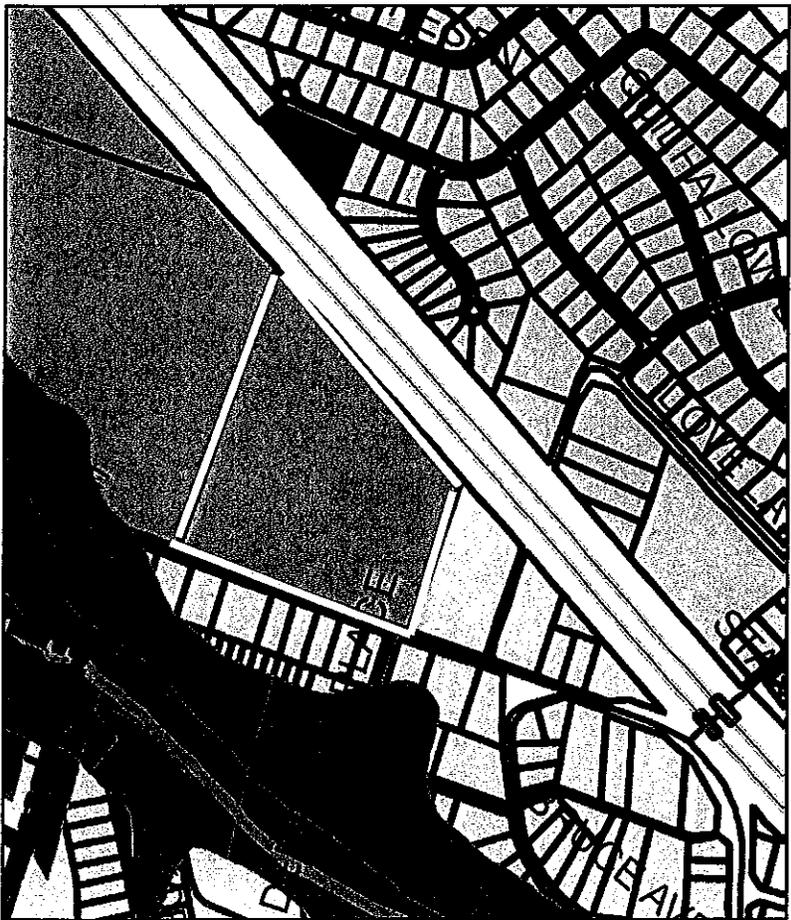
KRS – 100.213 Before any map amendment is granted, the Planning Commission must find that the map amendment is in agreement with the comprehensive plan, or in the absence of such a finding, that one or more of the following apply and such findings shall be recorded in the minutes and records of the Planning Commission and City Commission:

That the existing zoning classification given to the property is inappropriate and the proposed zoning classification is appropriate; or

That there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the comprehensive plan and which have substantially altered the basic character of the area.

Staff Analysis – The area proposed to be re-zoned is in compliance with the Future Land Use Map. The Future Land Use Map shows the area to be zoned “Urban Residential”. A skilled nursing facility is a principal permitted use. Staff is supportive of this zone change request

because a higher-density development is optimal along major arterials. The development would have ease of access onto Pecan Drive, traffic won't congest City streets, this development would not be adversely affected by noise generated by I-24 and the lot is large (18.24 acres).



At the April 3, 2017 Planning Commission meeting, a recommendation to change the zoning to R-4 (High Density Residential Zone) was forwarded to the City Commission.

At the meeting, several concerns were raised about storm water, specifically about storm water runoff resulting from the widening of Pecan Drive. The developer's engineer was present and showed the attendants on a color rendering where storm water detention ponds were proposed. He explained to the attendees that pursuant to City Ordinance, storm water cannot leave the site in a larger quantity than what it currently does. Prior to the site being constructed, a final site plan must be submitted to and approved by the Planning and Engineering Departments. As part of the final site plan, storm water management must be reviewed and approved.

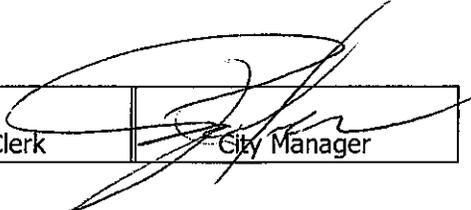
Funds Available: Account Name: N/A
 Account Number: N/A

Finance

Motion:

Attachments:

Planning Commission Resolution
Zone Change Map/Development Plan

Department Head	City Clerk	 City Manager
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Agenda Action Form

Paducah City Commission

Meeting Date: April 25, 2017

Short Title: Establish Section 126-88 Mobile Food Vehicles in the Paducah Zoning Ordinance

Ordinance Emergency Municipal Order Resolution

Staff Work By: Joshua P. Sommer

Presentation By: Joshua P. Sommer

Background Information:

On April 17, 2017; the Paducah Planning Commission held a public hearing and made a positive recommendation to the Paducah City Commission on establishing Section 126-88 Mobile Food Vehicles in the City of Paducah Zoning Ordinance. The purpose of this new section is to provide for mobile food vehicles in the City. The new Section will guide how and where mobile food vehicles can operate.

Following is the new Section 126-88 of the Paducah Zoning Ordinance:

Section 126-88 Mobile Food Vehicles

A. Purpose and intent

In order to promote a new dynamic for the citizens of Paducah, create new jobs, increase quality of life and diversify dining options; this section of the zoning ordinance has been adopted to allow Mobile Food Vehicles to operate under specific guidelines.

B. Definitions

The definitions contained in this sub-section shall govern the construction, meaning and application of words and phrases used in this section.

1. "Mobile Food Vehicle" shall mean a vehicle-mounted, vehicle-towed or vehicle-carried food service establishment that engages in the sale and preparation of food or beverages in individual portions to the general public.
2. "Mobile Food Vendor" shall mean a person or persons that prepare or serve food or beverages to the general public from a Mobile Food Vehicle.

3. "Mobile Food Administrator" shall mean the Director of Planning or his/her designee. The Administrator shall be responsible for the administration, oversight and enforcement of the provisions under this section.

C. Exemptions

This section shall not apply to ice-cream trucks that move from place to place and are stationary in the same location for no more than 10 minutes at a time. This section also does not apply to food vending push carts or stands.

D. Zoning locations

Mobile Food Vehicles may operate in the following zones:

B-1, B-2, B-2-T, B-3, HBD, M-1, M-2, M-3, A-1, POP and HM zones. A Mobile Food Vehicle may operate on a parcel that contains non-residential uses in the MU, H-2, NSZ and NCCZ zones and in Planned Unit Developments (PUDs). All other zones are expressly prohibited, except in public parks as described herein.

E. Location and hours

Mobile Food Vehicles are permitted in City of Paducah Right-of-Way ("ROW"). Mobile Food Vehicles are expressly prohibited from locating on State of Kentucky ROW. Mobile Food Vehicles may not locate within 100 feet of the principal entrance of any restaurant where more than 50 percent of sales are derived from food.

A Mobile Food Vehicle shall not operate for more than 14 consecutive days at one location. After the 14 consecutive days have expired, a Mobile Food Vehicle shall not operate at the same location until a period of 30 days has elapsed as required by 902 KAR 45:005.

The Mobile Food Vendor must obtain written permission from the property owner to locate on private property and said permission must be made available to the Mobile Food Administrator. Mobile Food Vehicles may locate in public parking lots with written approval from the Mobile Food Administrator. Vehicles in the ROW may be asked to be moved in the event of street cleaning, snow removal, parades, construction or other events as deemed necessary, in the sole opinion, of the Mobile Food Administrator. Mobile Food Vehicles in private parking lots may be asked to be moved in the event sufficient parking is not available. Written permission must be granted from the Paducah Parks Services Director or his designee; or the McCracken County Judge Executive or his designee (depending on ownership) if the Mobile Food Vendor proposes to operate in a public park.

In no case shall a Mobile Food Vehicle obstruct traffic or pedestrian flow. A Mobile Food Vendor shall ensure that a minimum of four feet of unobstructed sidewalk remains open for pedestrian traffic. Mobile Food Vehicles parked in the ROW shall not occupy more than two parking spaces. No stop sign, yield sign, school crossing sign or any other traffic control sign or signal shall be obstructed. No ingress/egress of any driveway or alley shall be obstructed. No fire hydrant or fire lane shall be obstructed.

Mobile Food Vehicles may operate within the hours of 6:00 a.m. to 11:00 p.m. Mobile Food Vehicles may operate until 2:00 a.m. if the Mobile Food Vehicle is located on private property and the principal business located on the private property is open. Mobile Food Vehicles may not be left overnight in public parking lots or on City of Paducah ROW.

F. Self-contained units and appurtenances

All Mobile Food Vehicles shall have self-contained water and wastewater. No gray water or grease shall be dumped upon any street, sidewalk or down a storm water drain. Mobile Food Vehicles on private property may utilize electric power from the property being occupied or an adjacent property, but only when written consent is obtained to do so. No power cable, extension cord or other equipment shall be extended across any street, alley or sidewalk. If a power cable, extension cord or other electrical equipment is extended across a parking lot, said equipment must be protected from vehicle movements in accordance with the National Electrical Code requirements.

No tables, chairs, umbrellas or other appurtenances shall be allowed on public property.

All Mobile Food Vehicles shall be in compliance with regulations established by the Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety and/or the Purchase District Health Department.

The Mobile Food Vehicle must have a three compartment sink with drain boards; a hand sink; hot and cold water; proper screening for insects; refrigeration equipment that holds at 41 degrees or lower; hot holding equipment that holds at 135 degrees or higher and all work must be done by a Kentucky Master Plumber.

G. Garbage disposal

All Mobile Food Vendors must provide one or more garbage receptacles for their patrons. All Mobile Food Vendors must keep the area around their vehicles free from litter, refuse and garbage.

H. Serving articles and alcoholic beverages

Patrons shall be provided with single-service articles, such as plastic utensils, plastic or styrofoam cups and paper or styrofoam plates.

Mobile Food Vehicles shall not serve any alcoholic beverage unless permitted as part of a special event.

I. Special Events

Mobile Food Vehicles are prohibited from vending 2,500 feet from special event permitted areas; including, but not limited to; Barbecue on the River and Quilt Week unless the Mobile Food Vehicle is permitted by the City of Paducah; the City of Paducah Parks Services Department and/or the permit holder responsible for the special event. The "Safety Guidelines for Special

Events and Mobile Food Vehicles” must be obtained from the Paducah Fire Prevention Division and followed thereto.

J. Noise

No Mobile Food Vehicle may emit bells, music, horns or other audible sounds used to attract customers. Strobe lights, flashing lights or other repetitious lighting are prohibited.

The noise level from the food truck motor and generator must comply with the City’s Noise Ordinance. Generators shall not be permitted on Broadway, 2nd Street or within 100 feet of a residence.

K. Application and Permitting

1. **Mobile Food Permit Required.** Any operator of a Mobile Food Vehicle must apply for and receive on an annual basis a Mobile Food Zoning Compliance Permit (the “Mobile Food Permit”) from the Mobile Food Administrator. The Mobile Food Permit is required for each Mobile Food Vehicle. The Mobile Food Permit shall be prominently displayed on the Mobile Food Vehicle along with other permits as required by this Chapter.

2. **Application.** Every Mobile Food Vendor desiring to operate a Mobile Food Vehicle shall submit an application for a Mobile Food Permit to the Mobile Food Administrator. All Mobile Food Vendors shall obtain necessary inspections and permits otherwise required by the City of Paducah, the Purchase District Health Department, and any other local, state or federal agencies or departments, including without limitation a current City of Paducah business license and any other inspections and permits required by Paducah Fire Prevention Division, in order to vend in the City limits. In addition to the information required by the application, the Mobile Food Administrator may request other information reasonably required. The Mobile Food Permit application shall not be considered complete until the Mobile Food Administrator has all information as required by the application or otherwise.

3. **Issuance of Mobile Food Permit.** Once the application is considered complete by the Mobile Food Administrator, the Mobile Food Administrator shall issue or deny the Mobile Food Permit within 14 business days. If the Mobile Food Administrator is satisfied that the application and Mobile Food Vehicle conform to the requirements of this Chapter and other pertinent laws and ordinances, a Mobile Food Permit shall be issued to the applicant. If the application and Mobile Food Vehicle does not conform to the requirements of this Chapter or other pertinent laws or ordinances, the Mobile Food Administrator shall not issue the Mobile Food Permit, but shall inform the applicant of the denial. Such denial, when requested, shall be in writing and state the reasons for denial. The Mobile Food Permit shall be valid for one calendar year from the date of issuance, unless the Mobile Food Permit is revoked pursuant to this Chapter.

4. **Permit Renewal.** Every Mobile Food Permit, unless suspended or revoked for a violation of any provision of this Chapter or other requirement or ordinance of the City of Paducah, can be renewed annually prior to expiration. An application for renewal of a Mobile Food Permit shall be made through the Mobile Food Administrator. Upon the Mobile Food Permit’s expiration, the holder of the Mobile Food Permit forfeits the right to renew and the Mobile Food Vendor must reapply for a new Mobile Food Permit.

5. Inspections after Permitting. Permitted operations will be inspected periodically and without notice by representatives of various City departments to ensure compliance with this Chapter.

6. Operation without Permit. Any Mobile Food Vehicle operating without a valid Mobile Food Permit may be deemed a public safety hazard and may be ticketed and impounded. The penalty for operating without a Mobile Vehicle Permit shall be the same as Section 126-178 of the Paducah Zoning Ordinance.

7. Revocation of Permit. The Mobile Food Administrator may revoke a Mobile Food Permit if it is discovered that:

i. An applicant obtained the Mobile Food Permit by knowingly providing false information on the application;

ii. The continuation of the Mobile Food Vendor's use of the Mobile Food Permit is a threat to public health or safety, or if the Mobile Food Vendor otherwise presents a threat to public health or safety; or

iii. The Mobile Food Vendor or Mobile Food Vehicle violates regulations of this Chapter or any other City of Paducah ordinance.

8. Appeal of Revocation. If a Mobile Food Permit is revoked, the Mobile Food Administrator shall state the specific reasons for the revocation. Any Mobile Food Vendor whose Mobile Food Permit has been revoked may appeal such denial by submitting a written request for a hearing to the Mobile Food Administrator within 10 days of revocation. An informal hearing shall be conducted within 30 days of the Mobile Food Administrator's receipt of said appeal by a panel comprised of the Chairman of the City Planning and Zoning Commission, the City Manager and the Director of the Fire Prevention Division of the City of Paducah. The panel shall consider whether the revocation was justified and whether good cause exists to reinstate the Mobile Food Permit. The panel shall issue its decision on the appeal in a written opinion within 10 business days; the written opinion will be sent via first class mail to the Mobile Food Vendor at the address listed on the Mobile Food Vehicle application. The decision resulting therefrom shall be final. Following the revocation of a Mobile Food Permit, a Vendor must wait one year before reapplying for a new Mobile Food Permit.

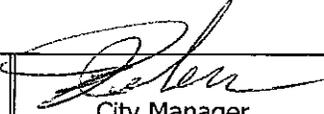
Funds Available: Account Name: N/A
Account Number: N/A

Finance

Motion:

Attachments:

Planning Commission Resolution

Department Head	City Clerk	 City Manager
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ORDINANCE NO. 2017-__-____

**AN ORDINANCE CREATING CHAPTER 126, ARTICLE III,
SECTION 126-88, "MOBILE FOOD VEHICLES," TO THE
CODE OF ORDINANCES OF THE CITY OF PADUCAH,
KENTUCKY**

WHEREAS, the City Commission has determined that the operation of Mobile Food Vehicles in certain areas of Paducah would be beneficial to the development and economic prosperity of Paducah, and would enhance and enrich the Paducah community by improving access to a variety of food options not otherwise available in Paducah; and

WHEREAS, it is the consensus of the City Commission that the operation of Mobile Food Vehicles should be subject to a permit process, and specific regulations that ensure that the operation of Mobile Food Vehicles will not interfere with the public's use of the City's right-of-ways or the operation of brick-and-mortar restaurants.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF
COMMISSIONERS OF THE CITY OF PADUCAH, KENTUCKY, AS FOLLOWS:**

Section 1. Chapter 126, Article III, Section 126-88 Mobile Food Vehicles of the Code of Ordinances of the City of Paducah is hereby created to read as follows:

A. Purpose and intent.

In order to promote a new dynamic for the citizens of Paducah, create new jobs, increase quality of life and diversify dining options; this section of the zoning ordinance has been adopted to allow Mobile Food Vehicles to operate under specific guidelines.

B. Definitions

The definitions contained in this sub-section shall govern the construction, meaning and application of words and phrases used in this section.

1. "Mobile Food Vehicle" shall mean a vehicle-mounted, vehicle-towed or vehicle-carried food service establishment that engages in the sale and preparation of food or beverages in individual portions to the general public.
2. "Mobile Food Vendor" shall mean a person or persons that prepare or serve food or beverages to the general public from a Mobile Food Vehicle.
3. "Mobile Food Administrator" shall mean the Director of Planning or his/her designee. The Administrator shall be responsible for the administration, oversight and enforcement of the provisions under this section.

C. Exemptions

This section shall not apply to ice-cream trucks that move from place to place and are stationary in the same location for no more than 10 minutes at a time. This section also does not apply to food vending push carts or stands.

D. Zoning locations

Mobile Food Vehicles may operate in the following zones:

B-1, B-2, B-2-T, B-3, HBD, M-1, M-2, M-3, A-1, POP and HM zones. A Mobile Food Vehicle may operate on a parcel that contains non-residential uses in the MU, H-2, NSZ and NCCZ zones and in Planned Unit Developments (PUDs). All other zones are expressly prohibited, except in public parks as described herein.

E. Location and hours

Mobile Food Vehicles are permitted in City of Paducah Right-of-Way ("ROW"). Mobile Food Vehicles are expressly prohibited from locating on State of Kentucky ROW. Mobile Food Vehicles may not locate within 100 feet of the principal entrance of any restaurant where more than 50 percent of sales are derived from food.

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In no case shall a Mobile Food Vehicle obstruct traffic or pedestrian flow. A Mobile Food Vendor shall ensure that a minimum of four feet of unobstructed sidewalk remains open for pedestrian traffic. Mobile Food Vehicles parked in the ROW shall not occupy more than two parking spaces. No stop sign, yield sign, school crossing sign or any other traffic control sign or signal shall be obstructed. No ingress/egress of any driveway or alley shall be obstructed. No fire hydrant or fire lane shall be obstructed.

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All Mobile Food Vehicles shall have self-contained water and wastewater. No gray water or grease shall be dumped upon any street, sidewalk or down a storm water drain. Mobile Food Vehicles on private property may utilize electric power from the property being occupied or an adjacent property, but only when written consent is obtained to do so. No power cable, extension cord or other equipment shall be extended across any street, alley or sidewalk. If a power cable, extension cord or other electrical equipment is extended across a parking lot, said equipment must be protected from vehicle movements in accordance with the National Electrical Code requirements.

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All Mobile Food Vendors must provide one or more garbage receptacles for their patrons. All Mobile Food Vendors must keep the area around their vehicles free from litter, refuse and garbage.

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Patrons shall be provided with single-service articles, such as plastic utensils, plastic or styrofoam cups and paper or styrofoam plates.

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3. **Issuance of Mobile Food Permit.** Once the application is considered complete by the Mobile Food Administrator, the Mobile Food Administrator shall issue or deny the Mobile Food Permit within 14 business days. If the Mobile Food Administrator is satisfied that the application and Mobile Food Vehicle conform to the requirements of this Chapter and other pertinent laws and ordinances, a Mobile Food Permit shall be issued to the applicant. If the application and Mobile Food Vehicle does not conform to the requirements of this Chapter or other pertinent laws or ordinances, the Mobile Food Administrator shall not issue the Mobile Food Permit, but shall inform the applicant of the denial. Such denial, when requested, shall be in writing and state the reasons for denial. The Mobile Food Permit shall be valid for one calendar year from the date of issuance, unless the Mobile Food Permit is revoked pursuant to this Chapter.
4. **Permit Renewal.** Every Mobile Food Permit, unless suspended or revoked for a violation of any provision of this Chapter or other requirement or ordinance of the City of Paducah, can be renewed annually prior to expiration. An application for renewal of a Mobile Food Permit shall be made through the Mobile Food Administrator. Upon the Mobile Food Permit’s expiration, the holder of the Mobile Food Permit forfeits the right to renew and the Mobile Food Vendor must reapply for a new Mobile Food Permit.
5. **Inspections after Permitting.** Permitted operations will be inspected periodically and without notice by representatives of various City departments to ensure compliance with this Chapter.
6. **Operation without Permit.** Any Mobile Food Vehicle operating without a valid Mobile Food Permit may be deemed a public safety hazard and may be ticketed and impounded. The penalty for operating without a Mobile Vehicle Permit shall be the same as Section 126-178 of the Paducah Zoning Ordinance.
7. **Revocation of Permit.** The Mobile Food Administrator may revoke a Mobile Food Permit if it is discovered that:

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ii. The continuation of the Mobile Food Vendor's use of the Mobile Food Permit is a threat to public health or safety, or if the Mobile Food Vendor otherwise presents a threat to public health or safety; or

iii. The Mobile Food Vendor or Mobile Food Vehicle violates regulations of this Chapter or any other City of Paducah ordinance.

8. **Appeal of Revocation.** If a Mobile Food Permit is revoked, the Mobile Food Administrator shall state the specific reasons for the revocation. Any Mobile Food Vendor whose Mobile Food Permit has been revoked may appeal such denial by submitting a written request for a hearing to the Mobile Food Administrator within 10 days of revocation. An informal hearing shall be conducted within 30 days of the Mobile Food Administrator's receipt of said appeal by a panel comprised of the Chairman of the City Planning and Zoning Commission, the City Manager and the Director of the Fire Prevention Division of the City of Paducah. The panel shall consider whether the revocation was justified and whether good cause exists to reinstate the Mobile Food Permit. The panel shall issue its decision on the appeal in a written opinion within 10 business days; the written opinion will be sent via first class mail to the Mobile Food Vendor at the address listed on the Mobile Food Vehicle application. The decision resulting therefrom shall be final. Following the revocation of a Mobile Food Permit, a Vendor must wait one year before reapplying for a new Mobile Food Permit.

SECTION 2. SEVERABILITY. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 3. COMPLIANCE WITH OPEN MEETINGS LAWS. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

SECTION 4. CONFLICTS. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed and the provisions of this Ordinance shall prevail and be given effect.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS 424.

MAYOR

ATTEST:

Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, April 25, 2017

Adopted by the Board of Commissioners, _____, 2017

Recorded by Tammara S. Sanderson, City Clerk, _____, 2017

Published by *The Paducah Sun*, _____, 2017

\\ord\plan\zone\126-88-food trucks

Agenda Action Form

Paducah City Commission

Meeting Date: April 24, 2017

Short Title: Project Partnership Agreement (PPA) with the U.S. Department of the Army for the Construction of the Ohio River Shoreline Reconstruction Project

Ordinance Emergency Municipal Order Resolution Motion

Staff Work By: Angela Weeks, EPW Proj Mgr

Presentation By: Rick Murphy, P.E., City Engineer-Public Works Director

Background Information:

- **1998** – The U.S. Army Corps of Engineers (USACE) was authorized to initiate a “Shoreline Study” which included review of the City of Paducah’s Floodwall System upon requests made by the City following the flood event of March 1997.
- **May 2000** - The USACE completed the Ohio River, Paducah, Kentucky, Analysis, which described major repairs required of the City’s Floodwall System.
- **2007 WRDA Act** – The Water Resources Development Act of 2007 “WRDA” bill authorized the USACE and the City of Paducah to enter into an Floodwall Feasibility Study and Certification of Levee System
- **January 30, 2009** - The City and the USAC executed an Agreement to authorize the USACE to undertake a Feasibility Study to evaluate the Paducah Floodwall System as authorized by Ordinance #2009-1-7510.
- **October 2010** – The USACE completed the Feasibility Report of the Paducah Levee System, aka “the Ohio River Shoreline, Paducah Kentucky “LFPP” Reconstruction Project Feasibility Report,” which recommended certain rehabilitation priority projects to improve the reliability and restore system performance of the City’s 60-year old Floodwall.
- **May 16, 2012** - The USACE Chief’s report recommended to the U.S. Congress the implementation of the Paducah’s Ohio River Shoreline Reconstruction Project as noted within the Feasibility Report as authorized by H.R. 3080, WRRDA 2014, page 174.
- **July 17, 2012** - Municipal Order #1678 was adopted authorizing the Mayor to Execute a Letter of Intent to the USACE supporting the initiation of Preconstruction Engineering and Design Activities (PED) for the Reconstruction Project.
- **March 14, 2013** – Design Agreement was executed authorizing the initiation of the PED for Priority #1 of the Reconstruction Project as authorized by Ordinance #2013-02-8014.
- **April 9, 2015** - Amendment #1 to the Design Agreement was executed which expanded the Original Design work to include initiation of the PED for Priority #2 thru Priority #7 of the Reconstruction Project as authorized by Ordinance #2015-03-8227.

Since the execution of the Design Agreements in 2013 and 2015, Preconstruction Engineering and Design work of the noted Priority Reconstruction Projects has proceeded. However, the Design Agreements did not include provisions allowing the City to receive "Project In-Kind Credits" for any Floodwall monetary expenses in the event any emergency work was required. The USACE requires a separate document to be executed, a Project Partnership Agreement (PPA), which has not been executed as of this date. Since the City had not entered into a PPA with the USACE, four separate MOUs were executed in the last two years with the USACE in order to ensure the City receives "Project In-Kind Credits" for expenditures related to emergency repair/replacement work at Pump Station #2 and Pump Station #9.

After 19 years of effort, working with the USACE we have finally prequalified Paducah's Local Flood Protection Project (LFPP) and have received the Project Partnership Agreement (PPA) from the USACE for Federal Financial Assistance as outlined in the agreement. This Agreement establishes the Project's financial cost sharing between the Federal Government and the Non-Federal Sponsor (the City). The cost sharing responsibilities will cause a 65% Federal matched by a 35% Non-Federal Sponsor. The 35% Non-Federal Sponsor's matching funds will consist of 30% of in-kind and a minimum of a 5% cash match of the Project completion. As of this date, the financial proportions are as follows:

- \$32,554,000 100% Total Project Authorized Reconstruction Costs
- \$21,160,000 65% Federal Share
- \$11,393,900 35% Non-Federal Sponsor's (City's) Share

From the execution day forward, this Project will require Federal Legislation/Appropriations to fund the future Project needs.

Goal: Strong Economy Quality Services Vital Neighborhoods Restored Downtowns

Funds Available: Account Name: FW Project Accounts as

Finance

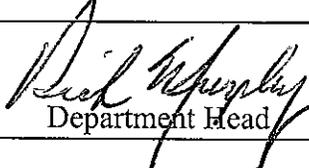
 Needed
 Account Number:

Staff Recommendation:

To adopt an Ordinance authorizing the Mayor to execute a Project Partnership Agreement (PPA) between the Department of the Army and the City of Paducah for the Construction of the Ohio River Shoreline, Paducah, Kentucky, Reconstruction Project; and to authorize the Finance Director to provide the Non-Federal Sponsor's 5% cash obligations to the USACE in accordance with the Agreement as Federal Legislation/Appropriations are awarded.

Attachments:

Project Partnership Agreement with USACE Division Approval Cover Letters

 Department Head	City Clerk	City Manager
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AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PROJECT PARTNERSHIP AGREEMENT (PPA) BETWEEN THE DEPARTMENT OF THE ARMY AND THE CITY OF PADUCAH FOR THE CONSTRUCTION OF THE OHIO RIVER SHORELINE, PADUCAH, KENTUCKY, RECONSTRUCTION PROJECT; AND TO AUTHORIZE THE FINANCE DIRECTOR TO PROVIDE THE NON-FEDERAL SPONSOR'S 5% CASH OBLIGATIONS TO THE U.S. ARMY CORPS OF ENGINEERS AS FEDERAL LEGISLATION/APPROPRIATIONS ARE AWARDED

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The Mayor is hereby authorized to execute a Project Partnership Agreement between the Department of the Army, represented by the District Engineer, United States Army Engineer District, Louisville and the City of Paducah, Kentucky, for construction of the Ohio River Shoreline, Paducah, Kentucky, Reconstruction Project.

SECTION 2. The City authorizes the Finance Director to provide the Non-Federal Sponsor's 5% cash obligations to the U.S. Army Corps of Engineers as Federal Legislation/Appropriations are awarded.

SECTION 3. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

SECTION 4. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

Mayor

ATTEST:

Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, April 25, 2017
Adopted by the Board of Commissioners, May _____, 2017
Recorded by Tammara S. Sanderson, May _____, 2017
Published by The Paducah Sun, _____
\\ord\eng\agree-army corps – floodwall – ohio river shoreline

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF PADUCAH, KENTUCKY
FOR
CONSTRUCTION
OF THE
OHIO RIVER SHORELINE, PADUCAH, KENTUCKY
RECONSTRUCTION PROJECT

THIS PROJECT PARTNERSHIP AGREEMENT is made and entered into this ____ day of _____, 2017, by and between the United States Department of the Army (hereinafter the "Government"), represented by the District Engineer, United States Army Engineer District, Louisville and the City of Paducah, Kentucky, a Home Rule Class city organized and existing under and pursuant to the laws of the Commonwealth of Kentucky (hereinafter the "Non-Federal Sponsor"), represented by the Mayor of the City of Paducah, Kentucky.

WITNESSETH, THAT:
—

WHEREAS, construction of the Ohio River Shoreline, Paducah, Kentucky Reconstruction Project for flood risk management (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) at Paducah, Kentucky was authorized by Section 5077 of the Water Resources Development Act of 2007 (Public Law 110-114, 121 Stat. 1226); Section 7002(2) of the Water Resources Reform and Development Act of 2014 (Public Law 113-121, 128 Stat. 1366); and Section 1401(9) of the Water Resources Development Act of 2016 (Public Law 114-322);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States;

WHEREAS, the Government and the Non-Federal Sponsor entered into a Memorandum of Understanding (dated November 17, 2008) to make provisions for the Non-Federal Sponsor to perform or provide *in-kind contributions* before the execution of a cost sharing partnership agreement (cite 42 U.S.C. 1962d-5b(a)(4));

WHEREAS, the Government and the Non-Federal Sponsor entered into a Design Agreement (dated March 14, 2013) for engineering and design of the *Project* under the terms of which the Non-Federal Sponsor is to contribute a portion of the costs for engineering and design. The above-referenced Design Agreement was amended (dated April 9, 2015) to make provisions for the Non-Federal Sponsor to perform or provide in-kind design contributions (cite 42 U.S.C. 1962d-5b(a)(4));

WHEREAS, the Government and the Non-Federal Sponsor entered into a Memorandum of Understanding (dated September 28, 2015) to make provisions for the Non-Federal Sponsor to perform or provide *in-kind contributions* before the execution of a cost sharing partnership agreement (cite 42 U.S.C. 1962d-5b(a)(4)). The above-referenced Memorandum of Understanding was amended, in part, on the 11th day of December, 2015 and the 17th day of August, 2016; and

WHEREAS, the Government and the Non-Federal Sponsor entered into a Memorandum of Understanding (dated August 17, 2016) to make provisions for the Non-Federal Sponsor to perform or provide *in-kind contributions* before the execution of a cost sharing partnership agreement (cite 42 U.S.C. 1962d-5b(a)(4)).

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Project" shall mean reconstruction of multiple features of the Paducah, Kentucky Local Flood Protection Project, including the construction of a new levee pump plant as generally described in the Ohio River Shoreline, Paducah, Kentucky (Paducah, Kentucky Local Flood Protection Project) Reconstruction Feasibility Report, Volumes 1 through 4 (dated April 2011 and revised September 2011), and approved by the Chief of Engineers, United States Army Corps of Engineers (Merdith W. B. Temple, Major General, United States Army, Acting Commander) on the 16th day of May, 2012.

B. The term "construction costs" means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes, but is not necessarily limited to: the Government's costs and the Non-Federal Sponsor's creditable contributions pursuant to the terms of the Design Agreement executed on March 14, 2013 (amended April 9, 2015); the costs of historic preservation activities except for data recovery for historic properties; the Government's costs of engineering, design, and construction; the Government's supervision and administration costs; the Non-Federal Sponsor's creditable costs for providing real property interests, placement area improvements, and relocations and for providing in-kind contributions, if any. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; dispute resolution; participation in the Project Coordination Team; audits; or betterments; or the Non-Federal Sponsor's cost of negotiating this Agreement.

C. The term "real property interests" means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement

areas. Acquisition of real property interests may require the performance of relocations.

D. The term "relocation" means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding existing railroad bridges and approaches thereto), or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

E. The term "placement area improvements" means the improvements required on real property interests to enable the ancillary placement of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

F. The term "functional portion thereof" means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Engineer, United States Army Engineer District, Louisville (hereinafter the "District Engineer"), although the remainder of the Project is not yet complete.

G. The term "in-kind contributions" means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Commander, United States Army Engineer Division, Great Lakes and Ohio River. To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any investigations performed by the Non-Federal Sponsor to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

H. The term "betterment" means a difference in construction of an element of the Project that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to construction of that element.

I. The term "fiscal year" means one year beginning on October 1st and ending on September 30th of the following year.

J. The term "Maximum Cost Limit" means the statutory limitation on the total cost of the Project, as determined by the Government in accordance with Section 902 of the Water Resources Development Act of 1986, as amended, if applicable to the Project, and Government regulations issued thereto.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall contribute a minimum of 35 percent of construction costs, up to a maximum of 50 percent of construction costs, as follows:

1. The Non-Federal Sponsor shall pay 5 percent of construction costs, with an estimated \$120,000 in funds already provided by the Non-Federal Sponsor pursuant to the Design Agreement creditable toward that amount.

2. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project. If the Government determines that the Non-Federal Sponsor's estimated credits for real property interests, placement area improvements, and relocations will exceed 45 percent

of construction costs, the Government, in its sole discretion, may acquire any of the remaining real property interests, construct any of the remaining placement area improvements, or perform any of the remaining relocations. Nothing in this provision affects the Non-Federal Sponsor's responsibility under Article IV for the costs of any clean up and response related thereto.

3. In providing in-kind contributions, if any, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsor shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government and provide the Government with a copy of as-built drawings for the work.

4. After determining the amount to meet the 5 percent required by paragraph B.1., above, for the current fiscal year and after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.2. and B.3., above, the Government shall determine the estimated additional amount of funds required from the Non-Federal Sponsor to meet its minimum 35 percent cost share for the current fiscal year. No later than 30 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.

5. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsor with a written estimate of the full amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. Not later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government

shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effects of construction are determined adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, the Government and Non-Federal Sponsor shall consult with each other and reach an agreement on how to fund such data recovery costs. Upon agreement in accordance with 54 U.S.C. 312508, the Government may seek a waiver from the 1 percent limitation under 54 U.S.C. 312507.

E. When the District Engineer determines that construction of the Project, or a functional portion thereof, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and the Non-Federal

Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. The Government shall furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") and copies of all as-built drawings for the completed work.

1. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal and State laws and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent updates or amendments thereto.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsor is failing to perform its obligations under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

F. Not less than once each year, the Non-Federal Sponsor shall inform affected interests of the extent of risk reduction afforded by the Project.

G. The Non-Federal Sponsor shall participate in and comply with applicable Federal floodplain management and flood insurance programs.

H. In accordance with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsor shall prepare a floodplain management plan for the Project within one year after the effective date of this Agreement and shall implement such plan not later than one year after completion of construction of the Project. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood risk reduction provided by such work. The Non-Federal Sponsor shall provide an information copy of the plan to the Government.

I. The Non-Federal Sponsor shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Project.

J. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of flood risk reduction the Project affords, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

K. The Non-Federal Sponsor shall not use Federal Program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

L. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

M. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

N. The Non-Federal Sponsor may request in writing that the Government perform betterments on behalf of the Non-Federal Sponsor. Each request shall be subject to review and written approval by the Division Commander, United States Army Engineer Division, Great Lakes and Ohio River. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

ARTICLE III - REAL PROPERTY INTERESTS, PLACEMENT AREA
IMPROVEMENTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW
91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property

interests needed for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. The Non-Federal Sponsor shall acquire the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the placement area improvements necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements and shall provide the Non-Federal Sponsor with a written notice to proceed with such improvements. The Non-Federal Sponsor shall construct the improvements in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

D. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsor written descriptions and maps of the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests, construct placement area improvements, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of the acquisitions, placement area improvements, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, construct the placement area improvements, and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds. The Government's providing real property interests, placement area improvements, or performing relocations on behalf of the Non-Federal Sponsor does not alter the Non-Federal Sponsor's responsibility under Article IV for the costs of any clean up and response related thereto.

E. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsor assures that (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced

persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property

interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. The Non-Federal Sponsor and the Government shall consult with each other in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, PLACEMENT
AREA IMPROVEMENTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsor's share of such costs, the value of Non-Federal Sponsor provided real property interests, placement area improvements, and relocations, and the costs of in-kind contributions determined by the Government to be required for construction, operation, and maintenance of the Project.

B. To the maximum extent practicable, no later than 6 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interest in accordance with paragraphs C.1. of this Article. To the maximum extent practicable, no less frequently than on a biannual basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsor agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the

appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. For real property interests owned by the Non-Federal Sponsor on the effective date of this Agreement, the date the Non-Federal Sponsor provides the Government with authorization for entry thereto shall be used to determine the fair market value, except for such real property interests for in-kind contributions covered by an In-Kind Memorandum of Understanding, the date of initiation of construction shall be used to determine the fair market value. The fair market value of real property interests acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining

fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the property to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise the property, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the property proposed for acquisition is estimated at \$10,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval.

d. Incidental Costs. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the incidental costs the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for construction, operation, and maintenance of the Project within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, that are documented to the satisfaction of the Government. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Placement Area Improvements. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of placement area improvements required for construction, operation, and maintenance of the Project. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide any placement area improvements required for construction, operation, and maintenance of the Project. Such costs shall include, but not necessarily be limited to, actual costs of constructing the improvements;

planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs associated with betterments, as determined by the Government.

3. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of any relocations performed by the Non-Federal Sponsor that are directly related to construction, operation, and maintenance of the Project.

a. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the Commonwealth of Kentucky would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

4. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-

Federal Sponsor's share of such costs, the value of in-kind contributions that are integral to construction, operation, and maintenance of the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of constructing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

b. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsor; or for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government.

5. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-

Federal Sponsor's failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for real property interests that were previously provided as an item of local cooperation for another Federal project or for costs associated with betterments.

ARTICLE VI - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs are projected to be \$32,554,000.00, with the Government's share of such costs projected to be \$21,160,000.00 and the Non-Federal Sponsor's share of such costs projected to be \$11,393,900.00 which includes the 5 percent contribution of funds projected to be \$1,627,700.00, costs for creditable real property interests, relocations, and placement area improvements projected to be \$255,000.00, costs for creditable in-kind contributions projected to be \$9,530,892.00 and the additional amount of funds required to meet the minimum 35 percent cost share projected to be \$0.00. Costs for betterments are projected to be \$0.00. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests, placement area improvements, and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. The Non-Federal Sponsor shall provide the funds required to meet its share of construction costs by delivering a check payable to "FAO, USAED, Louisville (H2)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of construction costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such construction costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

E. Upon conclusion of construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting. If the final accounting determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet

its share of construction costs, the Government shall refund such excess amount, subject to the availability of funds for the refund. In addition, if the final accounting determines that the Non-Federal Sponsor's credit for real property interests, placement area improvements, and relocations combined with credit for in-kind contributions exceed its share of construction costs for the Project, the Government, subject to the availability of funds, shall enter into a separate agreement to reimburse the difference to the Non-Federal Sponsor.

F. If there are real property interests, placement area improvements, relocations, or betterments provided on behalf of the Non-Federal Sponsor, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 30 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, Louisville (H2)" to the District Engineer, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for construction of the Project are not sufficient to complete such work, the

Government shall so notify the Non-Federal Sponsor in writing, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow construction to resume. In addition, the Government may suspend construction if the Maximum Cost Limit is exceeded.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for

damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the Maximum Cost Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal

Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

Mayor
City of Paducah, Kentucky
City Hall - 300 South 5th Street
P.O. Box 2267
Paducah, Kentucky 42002-2267

And

City Engineer and Public Works Director
City of Paducah, Kentucky
City Hall - 300 South 5th Street
P.O. Box 2267
Paducah, Kentucky 40201-0059

If to the Government:

District Engineer
United States Army Engineer District, Louisville
P.O. Box 59
Louisville, Kentucky 40201-0059

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

ARTICLE XV - OBLIGATION OF FUTURE APPROPRIATIONS

The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Board of Commissioners of the

City of Paducah, Kentucky, where creating such an obligation would be inconsistent with Section 157b of the Constitution of the Commonwealth of Kentucky and Kentucky Revised Statutes 91A.030(13). If the Non-Federal Sponsor is unable to, or does not, fulfill its obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government's interests.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer, United States Army Engineer District, Louisville.

CITY OF PADUCAH, KENTUCKY

BY: _____
Brandi Harless, Mayor
City of Paducah, Kentucky

DATE: _____

UNITED STATES DEPARTMENT OF
THE ARMY, ACTING BY AND THROUGH
THE DISTRICT ENGINEER, UNITED
STATES ARMY ENGINEER DISTRICT,
LOUISVILLE

BY: _____
Christopher G. Beck
Colonel, Corps of Engineers
District Engineer, United States
Army Engineer District, Louisville

DATE: _____

CERTIFICATE OF AUTHORITY

I, W. David Denton, Denton Law Firm, PLLC, do hereby certify that I am the principal legal officer of the City of Paducah, Kentucky, that the City of Paducah, Kentucky is a legally constituted public body with full authority and legal capability to perform the terms of the Project Partnership Agreement between the United States Department of the Army and the City of Paducah, Kentucky in connection with the construction of the Ohio River Shoreline, Paducah, Kentucky Reconstruction Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Agreement on behalf of the City of Paducah, Kentucky has acted within her statutory authority.

Witness the signature of W. David Denton, Denton Law Firm, PLLC, City Attorney, City of Paducah, Kentucky, this _____ day of _____, 2017.

CITY OF PADUCAH, KENTUCKY

BY: _____
W. David Denton, Denton Law
Firm, PLLC, City Attorney, City
of Paducah, Kentucky

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of her knowledge and belief that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject

to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Witness the signature of Gayle Kaler, Mayor, City of Paducah, Kentucky, this ____ day of _____, 2017.

CITY OF PADUCAH, KENTUCKY

BY: _____
Gayle Kaler, Mayor, City of
Paducah, Kentucky