

REGULAR MEETING OF THE BOARD OF COMMISSIONERS, MEMPHIS-SHELBY COUNTY AIRPORT
AUTHORITY (MSCAA) September 19, 2019

CALL TO ORDER

RECOGNITION OF VISITORS, OTHERS

APPROVAL OF BOARD MEETING MINUTES *August 22, 2019*

Resolutions for Approval This Month

1. Approval of Open-End Design Contract – Negotiate and Execute a Contract for Professional Engineering Services- Renaissance Group, Inc.
2. Approval of Amendment No. 13- Glycol Management Civil/Structural Design Phase – Kimley-Horn & Associates, Inc.
3. Approval of Contract – Glycol Management Control Facility-Design – Ross Witt Architecture, PLLC.
4. Approval of Amendment – Section 125 Cafeteria Plan
5. Approval of Amendment No. 1 – Airport Authority Civil Service Plan

Division Reports

TREASURER and PROPERTIES REPORTS

Forrest Artz, Vice President of Finance and Administration/CFO

OPERATIONS REPORT

Terry Blue, Vice President of Operations

INFORMATION ITEMS

NEXT BOARD MEETING – October 10, 2019 *adjusted date*

RESOLUTION

WHEREAS, pursuant to public advertisement, Statements of Qualifications for on-call professional engineering design and creation of complete construction documents for various projects at Memphis International Airport were received by the Memphis-Shelby County Airport Authority ("Airport Authority") as follows:

REQUEST FOR STATEMENTS OF QUALIFICATIONS
OPEN END DESIGN CONTRACT
MSCAA PROJECT NO. 19-1423-00
Received March 7, 2019

STATEMENTS OF QUALIFICATIONS RECEIVED FROM:

Allen & Hoshall, Inc.*

Barge Design Solutions, Inc.*

CHA Consulting, Inc.

D. Thurman & Associates, Inc.*

Fisher & Arnold, Inc.*

Ghafari Associates, LLC

O.T. Marshall Architects, P.C.*

Renaissance Group, Inc.*

Ross Witt Architecture, PLLC*

Self+Tucker Architects*

WDG Architects Engineers

** local*

and,

WHEREAS, the scope of services consists of various design and/or study tasks that may include, but are not limited to, architectural design, structural

engineering, mechanical engineering, electrical engineering, civil engineering, surveying, and airport planning; and,

WHEREAS, tasks will include programming, planning, design, cost estimating, construction support, other phases of work typical of capital improvement projects or studies, and preparing Independent Fee Estimates (IFEs) to assist the Airport Authority with evaluation of other consultants' design fees; and,

WHEREAS, the Statements of Qualifications were evaluated by the selection committee according to established criteria, and after review, the top three firms were ranked in the following order:

1. Renaissance Group, Inc.
2. Self+Tucker Architects
3. Fisher & Arnold, Inc.

and,

WHEREAS, all three firms interviewed were local firms; and

WHEREAS, Renaissance Group, Inc. was selected as the most qualified firm to provide the requested professional consulting services; and,

WHEREAS, Airport Authority Management will negotiate an acceptable scope of services with commensurate unit billing rates and will track these costs by specific project; and,

WHEREAS, costs from the previous Open-End Design Contract with ANF Architects averaged approximately \$250,000 per year over the five-year contract period; and,

WHEREAS, the Airport Authority Management's Capital Program Executive Staff, by action taken on September 6, 2019, recommends approval of a contract with Renaissance Group, Inc.; and,

WHEREAS, the term of the agreement will be for three years with two one-year renewal options, subject to the Airport Authority's sole discretion, for a maximum term of five years; and,

WHEREAS, in furtherance of its Disadvantaged Business Enterprise (DBE) Program, the Airport Authority established a DBE goal of 29% for the full term of this contract;

WHEREAS, Renaissance Group's DBE partners under this contract are all local;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Memphis-Shelby County Airport Authority, that the President and CEO or his designee, is hereby authorized to execute a contract with Renaissance Group, Inc. to provide professional engineering services as herein described, costs to be paid from multiple sources based on available project funding.

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09/19/19

RESOLUTION

WHEREAS, by Resolution No. 14-4668, adopted June 20, 2014, approval was granted by the Memphis-Shelby County Airport Authority ("Airport Authority") Board of Commissioners to award a contract for professional engineering services to design multiple consolidated de-icing pads to Kimley-Horn & Associates, Inc. in the amount of \$6,890,000.00 for the project described as:

**GLYCOL MANAGEMENT PROGRAM
CIVIL/STRUCTURAL DESIGN PHASE
MSCAA PROJECT NO. 08-1260-01**

WHEREAS, it is now Airport Authority Management's desire to enter into Contract Amendment No. 13 to Contract No. 08-1260-01 for additional design services to revise and issue additional bid documents due to rejection of the one compliant previous bid; and,

WHEREAS, Airport Authority Staff has negotiated Contract Amendment No. 13 in a lump sum amount of Two Hundred Twenty-Five Thousand Eight Hundred Ninety-Three and 00/100 Dollars (\$225,893.00); and,

WHEREAS, Airport Authority Management proposes to amend the contract as follows:

Original Amount of Contract	\$ 4,310,000.00
Contract Amendment No. 1	\$ 1,626,000.00
Contract Amendment No. 2	\$ 19,740.00
Contract Amendment No. 3	\$ 99,500.00
Contract Amendment No. 4	\$ 394,000.00
Contract Amendment No. 5	\$ 446,000.00

Contract Amendment No. 6		\$	240,000.00
Contract Amendment No. 7	(NTE)	\$	864,000.00
Contract Amendment No. 8		\$	19,000.00
Contract Amendment No. 9		\$	72,200.00
Contract Amendment No. 10		\$	112,000.00
Contract Amendment No. 11		\$	50,000.00
Contract Amendment No. 12		\$.00
Contract Amendment No. 13		\$	225,893.00
TOTAL AMENDED CONTRACT AMOUNT		\$	8,478,333.00

and,

WHEREAS, the Airport Authority Management's Capital Program Executive Staff, by action taken on September 6, 2019, recommends approval of Amendment No. 13 to Contract No. 08-1260-01; and,

WHEREAS, in furtherance of its Disadvantaged Business Enterprise (DBE) Program, the Airport Authority established a DBE goal of 29% for the full term of this contract;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Memphis-Shelby County Airport Authority, that the President and CEO or his designee is hereby authorized to execute Amendment No. 13 to Contract No. 08-1260-01 with Kimley-Horn & Associates Inc. as herein described, cost to be paid from 99D Capital and Federal Grant funds.

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09/19/19

RESOLUTION

WHEREAS, pursuant to public advertisement, Statements of Qualifications for professional engineering design and creation of complete construction documents of a Glycol De-Ice facility at Memphis International Airport were received as follows:

REQUEST FOR QUALIFICATIONS
GLYCOL MANAGEMENT PROGRAM – CONTROL FACILITY – DESIGN
MSCAA PROJECT NO. 08-1260-04
Received November 15, 2018

STATEMENTS OF QUALIFICATIONS RECEIVED FROM:

Allen & Hoshall, Inc.*

Fisher & Arnold, Inc.*

Ross Witt Architecture, PLLC*

** local*

and,

WHEREAS, the scope of services consists of the design of a Glycol De-Ice facility and tower. The facility will include office areas, meeting room, storage areas, break room, restrooms, vehicle maintenance bays, and an observation tower; and,

WHEREAS, work efforts may include, but not necessarily be limited to surveying, civil engineering, architectural design, mechanical engineering, electrical engineering, and structural engineering; and,

WHEREAS, the Statements of Qualifications were evaluated by the selection committee according to established criteria, and after review, the three firms were ranked in the following order:

1. Ross Witt Architecture, PLLC
2. Allen & Hoshall, Inc.
3. Fisher & Arnold, Inc.

and,

WHEREAS, Ross Witt Architecture, PLLC was selected as the most qualified firm to provide the requested professional engineering services; and,

WHEREAS, in furtherance of its Disadvantaged Business Enterprise (DBE) Program, the Memphis-Shelby County Airport Authority (Airport Authority) established a DBE goal of 30% for the full term of this contract; and,

WHEREAS, the following fees have been negotiated for the professional engineering services:

TOTAL Contract Amount	\$717,000.00
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and,

WHEREAS, the Airport Authority's Capital Program Executive Staff, by action taken on September 6, 2019, recommends approval of the negotiated fees for services to be performed by the contractor; and,

WHEREAS, the Airport Authority's Capital Program Executive Staff, recommends an Initial Contingency Amount (ICA) in the amount of \$71,700.00 (10%) for the project, which, in accordance with Policy 701, requires approval of the President and CEO and the Board; and,

WHEREAS, Ross Witt Architecture, PLLC, a local DBE prime contractor, will perform 66% of the effort, which will total \$ 473,220.00 on this contract and one (1) local DBE subcontractor will perform 14%, which will total \$100,380.00; and,

WHEREAS, Management recommends approval;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Memphis-Shelby County Airport Authority, that the President and CEO or his designee is hereby authorized to execute a contract with Ross Witt Architecture, PLLC. as herein described, cost to be paid from 2016A Bonds.

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09/19/19

RESOLUTION

WHEREAS, the Internal Revenue Service provides regulations for the administration of Section 125 cafeteria plans ("Sections 125 Plan") and such Section 125 Plan is required to process any contributions, such as premium payments, to the various welfare plans on a pre-tax basis; and,

WHEREAS, the various welfare plans include health care insurance, group term life insurance, dental insurance, and vision insurance, all of which are premium-only plans, as well as a health care flexible spending account plan and a dependent care assistance plan; and,

WHEREAS, the Memphis-Shelby County Airport Authority ("Airport Authority") processes all contributions to the various welfare plans through its internal payroll department, whether sponsored by the City of Memphis or the Airport Authority; and,

WHEREAS, the Airport Authority's Board of Commissioners ("Board") previously approved the Section 125 Plan, which has been amended, at a minimum, by Resolution #11-4539 adopted on February 24, 2011, to add a Dependent Care Assistance Program and a Healthcare Flexible Spending Account (FSA); and by Resolution #12-4617 adopted on December 20, 2012, to add a cap to the FSA in accordance with the Affordable Care Act; and,

WHEREAS, the Airport Authority's Board modified the Section 125 Plan by Resolution #13-4650 adopted November 21, 2013 to allow an FSA balance carry-over as authorized by the Internal Revenue Code; and,

WHEREAS, in accordance with the best practices of the Internal Revenue Service and the U.S. Department of Labor for this type of plan, the Section 125 Plan

should be amended and restated at this time due to the age of, and the overall number of amendments to, the Section 125 Plan; and,

WHEREAS, the Airport Authority currently pays an annual \$200.00 medical reimbursement to eligible employees, which is currently classified as taxable income; and,

WHEREAS, Airport Authority Management wishes to maximize the benefit of the reimbursement for employees and, thereby, reclassify the medical reimbursement as an Airport Authority contribution to a flexible spending account for each eligible employee, each of whom may voluntarily contribute to such account up to the limits prescribed by the Internal Revenue Service; and,

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Memphis-Shelby County Airport Authority, that the Section 125 Plan be and is hereby amended and restated;

BE IT FURTHER RESOLVED, that the President and CEO or his designee is hereby directed to take any and all actions that are deemed necessary and proper in order to modify the flexible spending account plan as set forth herein, employer costs to be paid from the Airport Authority's Operating Funds.

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09-19-19

RESOLUTION

WHEREAS, federal and state governments establish civil service plans for the protection of employees from either political patronage or political vengeance and court decisions emphasize that a classified employee has a property right in government employment, thereby providing protection of that right as well as the right to due process upon termination; and,

WHEREAS, pursuant to the power granted in Tenn. Code Ann. § 42-4-110, the Memphis-Shelby County Airport Authority ("Airport Authority") Board of Commissioners ("Board"), by Resolution No. 16-4752 adopted on June 16, 2016, adopted a civil service plan for the Airport Authority effective July 1, 2016; and,

WHEREAS, prior to the adoption of the Civil Service Plan, the Airport Authority participated in the City of Memphis' civil service plan pursuant to Article IV, Paragraph E (1) of the Amended and Restated Agreement of November 1, 2006, between the City of Memphis and the Airport Authority; and,

WHEREAS, as Secretary of the Airport Authority's Civil Service Plan ("Plan"), the Director of Human Resources, in coordination with the General Counsel, conducted a triennial review of the Plan and proposes the revisions reflected in Amendment No. 1, which is attached hereto and incorporated herein by reference; and,

WHEREAS, the Airport Authority's Senior Executive Management Team recommends approval;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Memphis-Shelby County Airport Authority, that Amendment No. 1 to the Airport

Authority's Civil Service Plan of July 1, 2016 be and is hereby approved and shall become effective upon adoption of this Resolution.

09-19-19

**AMENDMENT NO. 1
TO
MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY
CIVIL SERVICE PLAN
INTRODUCTION**

In accordance with Tenn. Code Ann. 42-4-110, the Memphis-Shelby County Airport Authority Civil Service Plan (“Plan”) was adopted by the Board of Commissioners (“Board”) of the Memphis-Shelby County Airport Authority (“Authority”) effective July 1, 2016. The President of the Authority or his designee will be responsible for implementing the provisions of the Plan. Classified Employees, as defined herein, are subject to the Plan, as well as all policies contained in the Authority’s Policy Manual and Employee Handbook. The provisions contained in the Plan are subject to change by action of the Board and are not intended to and do not create a contract of employment between the Authority and any Classified Employee.

SECTION 1. CIVIL SERVICE PLAN ESTABLISHED.

There is hereby established a Civil Service Plan for Classified Employees of the Memphis-Shelby County Airport Authority.

SECTION 2. DEFINITIONS.

As used in this Plan, the following words and terms shall have the following meanings:

- a. “Administrative Law Judge” – An administrative judge selected by the State of Tennessee to conduct administrative contested hearings pursuant to an agreement with the Authority.
- b. "Authority"- The Memphis-Shelby County Airport Authority.
- c. "Board" - The Memphis-Shelby County Airport Authority Board of Commissioners.
- d. "Classified Service" - All positions of employment not included in the Unclassified Service of the Plan.
- e. "Employee" - Any person hired for a position in the Classified Service.
- f. "Hiring Authority" - Any employee of the Authority with the responsibility of hiring, disciplining, and/or dismissing personnel employed under their direction.
- g. "Plan" - The Civil Service Plan of the Authority.
- h. “President” - The President of the Authority.
- i. "Secretary" – An employee of the Authority designated herein to implement and oversee the administration of the Plan on behalf of the Board.

- j. "Unclassified Service" – All positions of employment identified herein, which are specifically excluded from the Classified Service of the Plan.

SECTION 3. SECRETARY OF THE PLAN.

The Director of Human Resources is hereby designated to serve as the Secretary of the Plan. The Secretary may designate and direct employees to assist in carrying out the duties of the Secretary established herein.

SECTION 4. POWERS AND DUTIES OF SECRETARY.

The powers and duties of the Secretary shall be as follows:

- a. To prepare written personnel rules and regulations governing working conditions for submission to the President for approval;
- b. To prepare a classification plan for submission to the President for approval;
- c. To prepare a schedule of compensation and pay increases for the Classified Service for submission to the Board for approval as part of the annual budget process;
- d. To make necessary amendments to items (a), (b), and (c) above for submission to the President or Board, as applicable, for approval;
- e. To establish a system for maintaining service records for all employees;
- f. To prepare a selection program based on open competition and that stresses validity and reliability and that relates to those characteristics that will test fairly the relative capacity, efficiency, merit, and fitness of applicants to discharge efficiently the duties of the positions to be filled;
- g. To maintain and provide to the Hiring Authority the rating of candidates on the basis of publicly announced job requirements, a list of all eligible candidates in the highest qualified rating for open positions;
- h. To keep all components of the Plan current and make them available for public inspection; and
- i. To prepare such rules and regulations as are necessary for the efficient administration of the Plan.

SECTION 5. UNCLASSIFIED AND CLASSIFIED SERVICES.

The Plan is hereby divided into the Unclassified and Classified Services.

- a. The Unclassified Service shall include:

1. Officers of the Authority appointed by the President pursuant to state law and the Bylaws of the Authority.
 2. Employees appointed by the President at the grade of Senior Manager and above. The intent of this provision is to restrict positions in the Unclassified Service to those that involve sensitive, policy-making duties. A list of these appointed positions shall be prepared and maintained by the Secretary.
 3. Any person retained by the Authority on a consulting basis and any professional person hired in his professional capacity as determined by the President.
 4. Any employee of the Authority whose employment is on a temporary basis, including, but not limited to, seasonal workers and interns.
 5. Any person who provides services to the Authority on a volunteer basis or who receives no compensation for said services.
- b. The Classified Service shall comprise all positions of employment not specifically included in the Unclassified Service.

SECTION 6. CLASSIFICATION PLAN.

Each position of employment shall be assigned to an appropriate class of positions with each class consisting of those positions that have the same or reasonably similar duties and responsibilities. Each class shall include the title of the class; a general description of the duties and responsibilities of the positions within the class; the minimum requirements of education, training, experience, licensing or certification; and any other qualifications necessary to hold the position. A class, however, may be comprised of a single position. As far as practicable, the lines of promotion to and from each class should be included in the classification plan.

SECTION 7. EXEMPTIONS.

Individuals may be exempted from the classification plan if they are employed to render professional, scientific, technical or expert service of a temporary or unusual character; primarily employed on projects funded from the proceeds of bonds issued by the Authority, grants or loans to be repaid from the proceeds of bonds issued by the Authority, or from grants received by the Authority; employed for a period of less than six (6) months in any twelve (12) month period; or work thirty (30) hours or less per week.

SECTION 8. SCHEDULE OF COMPENSATION.

For each class of positions established in the classification plan, a study shall be made of the rates paid for similar services elsewhere and of other information pertaining to proper rates of compensation and a schedule of compensation shall accordingly be established. Such schedules shall show for each class a minimum salary rate, a maximum salary rate and such intermediate rate as is equitable and proper. The financial condition of the Authority and the personnel policies of the Authority, in addition to other relevant factors, shall be taken into consideration in

the assignment of a minimum and maximum rate for each class of positions. The schedule of compensation may also include a rate of pay based on longevity of service with the Authority.

SECTION 9. PERSONNEL POLICIES.

All policies, rules, and regulations regarding employees within the Plan shall be reduced to writing. The personnel policies of the Authority shall establish specific procedures for the governing and maintenance of the personnel system of the Authority. Such written statements of policy shall prescribe regulations for working conditions such as working hours, attendance, holidays, leaves of absences, transfers, and vacations; procedures for layoffs, suspension, discharge, discipline, and reinstatement; in addition to residency requirements, minimum age requirements, and programs available to employees; and any and all other pertinent information.

SECTION 10. APPLICATION FORMS.

Application forms for employment in the Classified Service shall be prepared and maintained by the Secretary, who shall make such forms available to the public in paper and electronic formats. The forms shall require all applicants to provide such information as will reveal the applicant's qualifications for employment in the Plan.

SECTION 11. SELECTION.

Open competitive and promotional selection process shall be prepared and conducted by or under the direction of the Secretary. The selection process may be assembled and may include, but not be limited to, rating of training and experience; written, oral, physical or performance tests or other measurements that are technically sound; or any combination thereof as determined by the Secretary. The selection process may take into consideration such factors as education, experience, knowledge, skill, physical fitness or any other qualifications that are job-related, which shall be applied equitably and, in the judgment of the Secretary, enter into the determination of the relative fitness of applicants. For all selection processes, the minimum performance or requirements on which eligibility is attained shall be established by the Secretary. Minimum qualifications shall be established for each selection segment or the combined ratings of several parts of the process.

SECTION 12. ELIGIBILITY LISTS.

Employment and promotion eligibility lists for the various classes of positions in the Plan shall be maintained by the Secretary as are necessary or desirable to meet the needs of the Authority. These lists shall contain the names of persons arranged in order of final earned ratings. Candidates from the eligibility list in the highest qualified rating shall be provided to the Hiring Authority as needed for the purpose of filling vacancies in accordance with the provisions herein.

SECTION 13. HIRING; PROBATIONARY PERIOD.

- a. The Hiring Authority shall notify the Secretary whenever a position in the Classified Service needs to be filled. The Secretary shall forward to the Hiring Authority a list of

eligible candidates for the position to be filled, and the Hiring Authority shall select one of the candidates whose name appears on the list.

- b. The selected candidate shall serve a probationary period of six (6) months, commencing with the first working day. The six (6) month probationary period for police officers, however, shall begin the first working day after an officer is commissioned. During the probationary period, the newly hired employee may be dismissed with or without cause, and such dismissed employee shall have no appeal rights under the Plan. The probationary period may be extended for disciplinary reasons or as otherwise needed to obtain required licensing or certifications. Such extended probationary period shall be implemented by the Hiring Authority, after consulting with the Secretary, but shall not exceed three (3) months.
- c. If not discharged prior to the expiration of any period of probation, a newly hired employee's inclusion in the Classified Service shall be deemed complete.

SECTION 14. EXTRAORDINARY AND EMERGENCY EMPLOYMENT.

Notwithstanding any other provision herein to the contrary, a Hiring Authority may select any individual for employment in a position in the Classified Service in order to prevent the stoppage of business or to meet extraordinary conditions or emergencies. Such individual may hold the position until a candidate can be hired in accordance with the provisions of the Plan.

SECTION 15. PROVISIONAL EMPLOYMENT.

- a. Notwithstanding any other provision herein to the contrary, a Hiring Authority may select any individual to fill a vacant position in the Classified Service if an urgent or pressing need arises and there is no list of eligible candidates for the vacant position. Such individual may hold the position until a candidate can be hired in accordance with the provisions of the Plan.
- b. Under such circumstances, a Hiring Authority may also select any individual to fill a new position in the Classified Service. Such individual may hold the position until the classification plan can be amended to include such position and a candidate can be hired in accordance with the provisions of the Plan.

SECTION 16. PROMOTION OR TRANSFER.

- a. A vacancy occurring in the Classified Service may be filled by the promotion or transfer of an employee of a lesser or equal position in the classification plan, if they are otherwise qualified for the position and certified as eligible by the Secretary. Promotions shall be based on ascertained merit, seniority in service, satisfaction of job requirements, and any other factors deemed necessary. When filling a vacancy, a Hiring Authority shall restrict his consideration to employees in the Classified Service who have been certified as eligible for promotion by the Secretary.

- b. Following a promotion or transfer, the employee shall serve a six (6) month probationary period for the purpose of affording the Hiring Authority an opportunity to evaluate the employee's competency to perform the job duties. At the successful completion of the probationary period, the promotion or transfer shall be deemed complete.
- c. Nothing contained herein shall be construed as prohibiting the Hiring Authority from approving the transfer of an employee to a lower classification at the request of the employee or as an accommodation in accordance with any applicable federal, state or local law or court order.
- d. At all times during the probationary period, the promoted or transferred employee shall retain all civil service rights that the employee was entitled to prior to the promotion or transfer. In the event that an employee who is promoted or transferred is unable to perform the job duties, the employee shall be afforded fallback rights, which will entitle the employee to return to the position occupied immediately prior to the promotion or transfer. If that position is unavailable, the employee shall be placed on unpaid leave for up to 90 calendar days to allow the employee to apply for other available positions for which the employee is qualified. Unsuccessful placement in the Classified Service during the 90-day period will result in voluntary resignation by the employee.

SECTION 17. DISCRIMINATION PROHIBITED.

Except as otherwise provided herein, all new hires, promotions, or transfers in the Classified Service of the Plan shall be made on the basis of competitive selection. No person shall be discriminated against in any employment practices based on race, color, national origin, sex, age, religion, disability, sexual orientation, marital status, or veteran status.

SECTION 18. SERVICE RATING.

The Secretary shall prepare, for approval by the President of the Authority, a system for rating the performance of employees in the Plan. The rating system shall be designed to give a fair evaluation of the quality and quantity of the employee's work performance. The service rating for each employee shall be based on periodic written reports made by the Hiring Authority no less than on an annual basis. No employee shall be eligible for a promotion in rank or compensation who does not maintain a satisfactory service rating. An unsatisfactory service rating may be grounds for disciplinary action.

SECTION 19. DISCIPLINE OR DISCHARGE FOR CAUSE.

Except as otherwise provided herein, employees who have successfully completed the prescribed period of probation and entered the Classified Service may only be suspended, demoted, discharged or subjected to other disciplinary action for cause with the right of notice and review. This provision shall not apply to employees holding a position that is seasonal or grant-funded.

SECTION 20. LAYOFFS.

Notwithstanding any other provision herein, in the event that conditions in any division or department of the Authority or the financial condition of the Authority necessitates a reduction in the work force, the required reduction shall be made in such class as the President designates. If necessary, to achieve their retention, employees may be temporarily demoted to a position in a lower classification. The determination as to which employees will be demoted shall be based on such considerations as service ratings, seniority, and other relevant factors.

SECTION 21. DISCIPLINARY ACTION.

- a. For unsatisfactory performance of duties or other just cause, an employee in the Classified Service may be subject to the following disciplinary action:
 1. Counseling;
 2. Oral reprimand;
 3. Written reprimand;
 4. Probation;
 5. Suspension without pay for a period not to exceed 30 days;
 6. Reduction in pay within the allowable range for the classification of the employee's position;
 7. Demotion to a lower classification; and/or
 8. Discharge from service.
- b. All forms of discipline shall become final if not appealed by the employee in accordance with the procedures established herein.

SECTION 22. REPLY TO DISCIPLINE; APPEAL FROM DISCIPLINE.

- a. The Hiring Authority is responsible for providing written notice to the employee of any disciplinary action to be taken and the reason for such discipline. Within seven (7) days of receipt of the notice of disciplinary action, the employee may respond to such action by submitting a written reply to the Secretary. A copy of the notice of disciplinary action and, if submitted, the employee's reply shall be included in the employee's service record.
- b. Any employee demoted in rank or compensation, suspended without pay for a period exceeding five (5) days, or discharged from service, may appeal such action within seven (7) days after being served with the notice of disciplinary action. The appeal must be submitted in writing to the Secretary.

SECTION 23. APPEAL REVIEW.

- a. Appeals that meet all of the requirements established herein shall be reviewed by an Administrative Law Judge (ALJ). In accordance with state law, the Secretary shall request an ALJ within five (5) business days of receiving a valid written appeal of disciplinary action. The Tennessee Uniform Administrative Procedures Act shall apply to all administrative hearings.
- b. At the discretion of the ALJ, an administrative hearing may be continued by written request of the employee, written or oral request of the employee's attorney, or as otherwise deemed necessary by the ALJ. The employee shall be entitled to appear personally, produce evidence, have counsel present, and have a public hearing.
- c. The findings of fact and decision of the ALJ to affirm or reverse the disciplinary action shall be certified to the Secretary, who shall enforce the decision. Upon certification to the Secretary, the disciplinary action shall become final, unless appealed to a court of competent jurisdiction for illegality or want of jurisdiction.

SECTION 24. APPEAL FROM DECISION OF ALJ.

Within thirty (30) days after being served with the findings and decision of the ALJ, the employee or the Authority may appeal the decision of the ALJ to a court of law having jurisdiction. The findings of fact by the ALJ shall not be subject to review by any court except for illegality or want of jurisdiction.

SECTION 25. STATUS OF EMPLOYEES ON EFFECTIVE DATE OF PLAN.

On the effective date of the Plan, all employees who hold a position in the Classified Service and have completed any applicable period of probation shall be deemed transferred into the Plan. Newly hired employees working in a probationary status, however, shall only enter the Classified Service upon the expiration of any period of probation.

SECTION 26. VALIDITY OF PLAN.

The provisions of the Plan are severable, and if any provision or section of the Plan be held unconstitutional by a court having jurisdiction, the remaining provisions and sections shall not be so affected and shall continue in full force and effect.

SECTION 27. EFFECTIVE DATE OF PLAN.

The effective date of this Plan shall be July 1, 2016.

SECTION 28. AMENDMENTS TO PLAN.¹

The Secretary shall review the Plan no less than every three (3) years and, in consultation with the General Counsel, propose amendments as deemed necessary to be consistent with all applicable federal, state, and local laws. Any and all such proposed amendments to the Plan shall be approved by the Board prior to becoming effective.

¹ Amendment No. 1, effective August 19, 2019, adopted by Resolution No. 19-####, 08-19-2019.