STATE OF TENNESSEE

RFP # 317.10-013-09
AMENDMENT # 2

November 13, 2008

THE SUBJECT RFP IS HEREBY AMENDED AS FOLLOWS.

A. The following RFP Schedule of Events updates or confirms scheduled RFP dates.

EVENT	TIME	DATE	UPDATED / CONFIRMED
1. State Issues RFP		October 14, 2008	CONFIRMED
2. Disability Accommodation Request Deadline		October 21, 2008	CONFIRMED
3. Pre-proposal Conference	9:00 a.m.	October 27, 2008	CONFIRMED
4. Notice of Intent to Propose Deadline		October 29, 2008	CONFIRMED
5. Written Comments Deadline		November 3, 2008	CONFIRMED
6. State Responds to Written Comments		November 13, 2008	CONFIRMED
7. Proposal Deadline	2:00 p.m.	November 24, 2008	CONFIRMED
8. State Completes Technical Proposal Evaluations		December 4, 2008	CONFIRMED
9. State Opens Cost Proposals & Calculates Scores	9:00 a.m.	December 5, 2008	CONFIRMED
10. State Issues Evaluation Notice & Opens RFP Files for Public Inspection	9:00 a.m.	December 9, 2008	CONFIRMED
11. Contract Signing		December 19, 2008	CONFIRMED
12. Contract Signature Deadline		December 31, 2008	CONFIRMED
13. Contract Start Date		January 5, 2009	CONFIRMED

B. The following State responses to the questions detailed shall amend or clarify this RFP accordingly.

QUESTION/COMMENT	STATE RESPONSE
Note: in the questions that follow, any vendor's restatement of the text of the Request for Proposals (RFP) is for reference purposes only and shall not be construed to change the original RFP wording.	
1. I was also wondering if there are current contracts in place for these services and how I would go about requesting information on those existing contracts?	Yes, there is a contract currently in place; however, there is only one and it services the entire State. Public Record information that has been retained on the current contract is available at a State facility during State business hours. To request an appointment to view the public records, please contact the RFP Coordinator indentified in RFP

	Section 1.5.1.1.
2. "Are contracts currently in place for Title and Closing Services in each of the three divisions and if so, can a copy of those contracts be provided upon request?"	Please see Question #3 above. A copy of the contract can be provided for a copying charge of $2.10 (15 cents per page [14 pages]). In addition, the vendor must provide for shipping of the document or pickup by a courier.
3. It is our understanding that different state agencies may use this contract to provide them with Title & Closing Services. (a) Can you please advise us which agencies use this contract and a breakdown of the usage between those agencies? (b) Are all services provided under this contract handled by a single contact person for the state or does each agency have its own contact person? This question is being asked to give us a better understanding of the type of property being acquired (highway right of way, utilities, environmental preservation, etc.) which will assist us in understanding the nature of the research and closing services that will be needed.	(a) This contract will be used for all State Acquisitions, except for Tennessee Department of Transportation (TDOT) right of way property. The State cannot provide a breakdown of agency usage as agency usage is determined by Land Acquisition approvals from the State Building Commission and the approvals can be for any agency at any time. (b) Contact will be between the Contractor's managing office and a point of contact in the Department of Finance & Administration. Title & Closing Services are for State Acquisitions in fee and by Permanent Conservation Easements.
4. Will the Tennessee Department of Transportation use this contract for title and closing services in conjunction with any of its projects?	This is a Tennessee Department of Finance and Administration contract which is for the acquisition of all State property except right of way property that is being acquired by TDOT. Other acquisitions for TDOT will utilize this contract.
5. Will the contractor be required to pay fees (such as recording costs) in advance of being compensated for title and closing services, and then be reimbursed for these fees at a later date?	No costs will be reimbursed outside of the rates proposed in Contract Section C.3.b. The exception is travel for closing services. See Question #11b below.
6. Will the state get title insurance on every parcel for which a commitment has been issued?	A title insurance policy will only be issued on properties the State acquires; if a commitment is issued for a property that is not purchased by the State, there will be no title insurance policy.
7. In attachment 6.1 (the Pro Forma contract), Item A.4 states that "should a property have more than one title chain, it will constitute only one title report". In the event that a property owner has recently assembled a larger tract through acquisition of a number of smaller tracts, each having its own unique chain of title, are there any circumstances or conditions under which the contractor can request compensation based on the actual number of title chains that have to be searched?	The State has added Contract Section C.3.d to provide clarification. Please see Release 2 of the RFP below for the revision.
8. When a property is acquired through condemnation: (a) Is the title commitment paid for at the time of issuance?	(a) All Title Commitments are paid for at the time of issuance.

(b) Upon entry of a final judgment transferring title to the state, is the closing fee paid to compensate for issuance of a title insurance policy? (c) What are the duties of the contractor throughout the condemnation process? (d) Approximately what percentage of parcels assigned under this contract goes to condemnation versus negotiated transactions? (e) Is the contractor ever required to provide expert witness testimony in a condemnation action and if so, how would that individual be compensated?	The Contractor should include an invoice with the Title Commitment. (b) No, the Contractor will not provide a Closing Statement on condemnations, but will issue a title insurance policy. (c) The responsibility of the Contractor on a condemnation is to provide a title commitment and title insurance policy. (d) Very few parcels go through condemnation versus negotiated sales. (e) It is possible that the Contractor may be required to testify as a witness. The State has amended Contract Section C.3.b. Please see Release 2 of the RFP below for the revision.
9. Approximately how many parcels were assigned in 2005, 2006 and 2007 under the prior contract(s)?	There are hundreds of transactions a year statewide which may be for the acquisition of one or more parcels. The State does not consider it beneficial to provide approximate numbers as the State cannot guarantee transaction volume based on historical amounts. Also, this RFP procurement will award three contracts, by Grand Division, instead of one. The State cannot guarantee the distribution of the parcels will be the same or similar in the coming contract period.
10. (a) Is the contractor required to conduct all closings in person? (b) If so, is travel compensation provided or would that cost need to be included in the proposed closing fee? (c) Are there any circumstances under which closing packages could be sent via mail for execution?	(a and c) Whether or not a closing is conducted in person is dependent upon the location and discretion of the property owner. If the property owner is located in the State, at the discretion of the owner, the closing will be conducted in person and the Contractor will travel to the closing. However, the owner may choose to conduct the closing by mail or electronic mail. If the property owner is out of the State or out of the country, the property owner may travel to the State for the closing or the closing may be done via mail or electronic mail. Most closings are by mail. (b) The State will reimburse Contractor's travel costs for closings only. Travel costs are not included in the closing fee but can be a separate item that is included on the invoice. Please see Question #16 below.
11. It is our intention for [NAME DELETED] to submit a proposal for all three services areas. Within each distinct area we will be proposing as a joint venture	(a) The joint venture itself will be recognized as the "Prime Contractor" and as such both parties to the

	partner with a different [NAME DELETED] affiliate who is headquartered in that region, in accordance with RFP Section 1.1.1, RFP Attachment 6.1 and RFP Attachment 6.3 Item A(4). (a) Under the terms of the solicitation would we need to designate either [NAME DELETED] or our local affiliate partner as the "Prime Contractor"? (b) Under Item 4.9, when a proposal is submitted by a joint venture partnership and both parties are licensed to conduct business in the state but only one partner is licensed to issue title insurance (the partner who will actually be issuing the title insurance commitments and policies), would this be considered in compliance with your licensing requirement? (c) In attachment 6.1 (the Pro Forma contract), Item D.13 states that "the parties hereto … shall not act as employees, partners, joint venturers, or associates of one another". Can you please confirm that this applies to the relationship between the State of Tennessee and the contractor, and does not prohibit a proposer from submitting as partners or as a joint venture?	joint venture will be required to sign the Contract. Also, the joint venture will submit only one proposal; however, see Question #13 below for additional direction on proposal submission. (b) The partner that operates the established managing office must be able to provide all services including issuing title insurance commitments. The State has amended Contract Section A.7. Please see Release 2 of the RFP below for the revision. (c) In Contract Section D.13, <u>Independent Contractor</u>, the term "joint venturers" refers to the relationship between the State and the joint venturers, not to the relationship of the partners engaged in the joint venture.
12.	Since we will be submitting as a joint venture, will you require each of the two firms to provide the mandatory requirement items set forth in Sections A and B of the Technical Proposal & Evaluation Guide, including submitting three Reference Information Questionnaires each?	All parties in the joint venture will be required to respond to all questions in RFP Attachment 6.3, Sections A and B of the Technical Proposal Evaluation Guide with one exception. There should only be one established managing office provided in response to RFP Attachment 6.3 Section A, Item A.4. Also, according to RFP Attachment 6.3 Section B, Item B.14 of the Technical Proposal Evaluation Guide, all Proposers must provide three references. Each party in the joint venture must provide at least one reference in the three required. The State has amended Item B.14. Please see Release 2 of the RFP below for the revision.
13.	Would it be possible to request three samples of the following deliverables so we have a better understanding of the work effort involved: (a) A 10-year sales document history (b) Title Commitment Letter (c) Closing package (d) Policy of title insurance	The State has added one example of a Title Commitment (b) and one example of a Title Insurance Policy (d) to the RFP as RFP Attachment 6.7. Please see Release 2 of the RFP below. Examples for (a) and (c) were not available.
14.	Section C of the Technical Proposal & Evaluation Guide requires the proposer to illustrate its understanding of the State's requirements for closing negotiated transactions. Are there any state policies and procedures regarding closing negotiated transactions or condemnation transactions in	The responsibilities of the Contractor are as set forth in Section A, Scope of Services and applicable law.

addition to the requirements set forth in Section A.6 of the Pro Forma Contract included in the RFP? If so, could a copy of these policies or procedures be provided?	
15. Please clarify if the contractor will be allowed to charge for out-of-pocket expenses (in addition to travel) while performing the title and closing services – on a cost reimbursement (no markup) basis?	As stated in Question #11(b) above, the State will only pay travel costs on closing services. The reimbursable expenses related to travel that the State will allow are outlined in the State of Tennessee Comprehensive Travel Regulations. The Regulations can be accessed at the following website: http://www.state.tn.us/finance/act/policy.html
16. Please clarify your anticipated invoicing procedures for each of the contract deliverables.	Invoices are sent with the deliverables and are submitted in accordance with Contract Section C.5.
17. Please clarify if Errors and Omissions (E&O) insurance coverage meets the need for "Malpractice Liability Coverage".	Errors and Omissions insurance coverage may satisfy the State's insurance requirement; however, this answer does not in any way constitute a pre-approval of any Proposal components. RFP Section 4.8 provides that the State has the option to require the proposer to provide proof of insurance; therefore, the State reserves the right to require other forms of insurance coverage such that insurance meets the requirements of Contract Section E.6 of the *pro forma* contract.
18. Please clarify the nature/composition of properties anticipated within the **Western Grand Division** subject to Title and Closing Services within this contract (e.g., residential, land-only, commercial properties, etc), to include property volumes by year?	The acquisition can be for multiple property types, including residential, land-only, commercial, agricultural, etc. Many of the state acquisitions in the Western Grand Division are for the Tennessee Board of Regents for campus expansions at the University of Memphis.

C. Delete RFP 317.10-013-09 in its entirety and replace the document with RFP 317.10-013-09, Release Two (attached hereto).

NOTE: ALL revisions from the previously released RFP document will be emphasized in the attached document as follows. (1) The sentence or paragraph involving any revision in which text is replaced with new text or new text is simply added will be highlighted in yellow. (2) The location of any revision in which text is deleted but not replaced will be denoted by the words, "TEXT DELETED" in bold red caps inserted in the place of the text that is deleted but not replaced.

STATE OF TENNESSEE

DEPARTMENT OF FINANCE & ADMINISTRATION

REQUEST FOR PROPOSALS
FOR
REAL ESTATE TITLE & CLOSING SERVICES – WESTERN GRAND DIVISION

RFP NUMBER: 317.10-013-09

November 13, 2008

RELEASE TWO

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1 INTRODUCTION

1.1 Statement of Purpose

The State of Tennessee, Department of Finance & Administration, hereinafter referred to as the State, has issued this Request for Proposals (RFP) to define the State's minimum service requirements; solicit proposals; detail proposal requirements; and, outline the State's process for evaluating proposals and selecting the contractor.

Through this RFP, the State seeks to buy the best services at the most favorable, competitive prices and to give ALL qualified businesses, including those that are owned by minorities, women, persons with a disability, and small business enterprises, opportunity to do business with the state as contractors and sub-contractors.

The State intends to secure a contract for Real Estate Closing and Title Services for the Eastern, Middle and Western Grand Divisions of the State. The State plans to meet this need by awarding three (3) contracts; one for each of the Grand Divisions. **This RFP # 317.10-013-09 will award the contract for the Western Grand Division.** The other Grand Divisions will be awarded through RFP # 317.10-009-09 (Eastern) and RFP # 317.10-011-09 (Middle).

1.1.1 A Proposer may propose on one, two, or all three Grand Divisions and be awarded multiple contracts; however, the Proposer must have an established office in at least one county within each of the Grand Divisions being proposed on. For an office to be considered established, the office must have been in existence prior to the date of the Proposal submitted in response to this RFP. One established office within the Grand Division must serve as the managing office for the services provided in that Grand Division. (See RFP Attachment 6.1, *pro forma* Contract Section A.7.)

To propose on this RFP # 317.10-013-09, the Proposer must have an established office in at least one of the following counties, which comprise the Western Grand Division:

Lake, Obion, Weakley, Henry, Dyer, Gibson, Carroll, Lauderdale, Crockett, Tipton, Haywood, Madison, Chester, Henderson, Benton, Decatur, Shelby, Fayette, Hardeman, McNairy, Hardin

In RFP Attachment 6.3, Section A – Mandatory Requirements, Item A.4, the Proposer is required to confirm the location of their established managing office in the Western Grand Division.

1.2 Scope of Service, Contract Period, and Required Terms and Conditions

The RFP Attachment 6.1, *Pro Forma* Contract details the State's required:

- Scope of Services and Deliverables in Section A;
- Contract Period in Section B;
- Payment Terms in Section C;
- Standard Terms and Conditions in Section D; and,
- Special Terms and Conditions in Section E.

The *pro forma* contract substantially represents the contract document that the proposer selected by the State MUST agree to and sign.

1.3 Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the State's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the State or in the employment practices of the State's contractors. Accordingly, all vendors entering into contracts with the State shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

The State has designated the following to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and applicable federal regulations.

Emily M. Passino, Ph.D.
Senior Management Consultant
Finance & Administration/Office of Consulting Services
Snodgrass TN Tower, 12th Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243-1700
Phone: (615) 741-6030
Fax: (615) 532-1892
Email: http://www.state.tn.us/finance/rds/consulting_services_home.html

1.4 Assistance to Proposers With a Disability

A Proposer with a disability may receive accommodation regarding the means of communicating this RFP and participating in this RFP process. A Proposer with a disability should contact the RFP Coordinator to request reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

1.5 RFP Communications

1.5.1 **Unauthorized contact regarding this RFP with employees or officials of the State of Tennessee other than the RFP Coordinator detailed below may result in disqualification from this procurement process.**

1.5.1.1 Interested Parties must direct all communications regarding this RFP to the following RFP Coordinator, who is the state of Tennessee's only official point of contact for this RFP.

Mitzi Hale
Department of Finance & Administration
Wm R. Snodgrass Tennessee Tower, 17th Floor
312 Rosa L Parks Avenue
Nashville, Tennessee 37243-1102
(615) 741-3735
(615) 741-6164
Mitzi.Hale@state.tn.us

1.5.1.2 Notwithstanding the foregoing, Interested Parties may contact the staff of the Governor's Office of Diversity Business Enterprise for general, public information regarding this RFP, assistance available from the Governor's Office of Diversity Business Enterprise, or potential future state procurements.

1.5.2 The State has assigned the following RFP identification number that must be referenced in all communications regarding the RFP:

RFP-317.10-013-09

1.5.3 Any oral communications shall be considered unofficial and non-binding with regard to this RFP.

1.5.4 Each Proposer shall assume the risk of the method of dispatching any communication or proposal to the State. The State assumes no responsibility for delays or delivery failures resulting from the method of dispatch. Actual or electronic "postmarking" of a communication or proposal to the State by a deadline date shall not substitute for actual receipt of a communication or proposal by the State.

1.5.5 The RFP Coordinator must receive all written comments, including questions and requests for clarification, no later than the Written Comments Deadline detailed in the RFP Section 2, Schedule of Events.

1.5.6 The State reserves the right to determine, at its sole discretion, the appropriate and adequate responses to written comments, questions, and requests for clarification. The State's official responses and other official communications pursuant to this RFP shall constitute an amendment of this RFP.

1.5.7 The State will convey all official responses and communications pursuant to this RFP to the potential proposers from whom the State has received a Notice of Intent to Propose.

1.5.8 Only the State's official, written responses and communications shall be considered binding with regard to this RFP.

1.5.9 The State reserves the right to determine, at its sole discretion, the method of conveying official responses and communications pursuant to this RFP (*e.g.*, written, facsimile, electronic mail, or Internet posting).

1.5.10 Any data or factual information provided by the State, in this RFP or an official response or communication, shall be deemed for informational purposes only, and if a Proposer relies on such data or factual information, the Proposer should either: (1) independently verify the information; or, (2) obtain the State's written consent to rely thereon.

1.6 Notice of Intent to Propose

Each potential proposer should submit a Notice of Intent to Propose to the RFP Coordinator by the deadline detailed in the RFP Section 2, Schedule of Events. The notice should include:

- Proposer's name
- name and title of a contact person
- address, telephone number, and facsimile number of the contact person
- email address

NOTICE: A Notice of Intent to Propose creates no obligation and is not a prerequisite for making a proposal, however, it is necessary to ensure receipt of RFP amendments and other communications regarding the RFP (refer to RFP Sections 1.5, *et seq.*, above).

1.7 Proposal Deadline

Proposals must be submitted no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events. A proposal must respond to the written RFP and any RFP exhibits, attachments, or amendments. A late proposal shall not be accepted, and a Proposer's failure to submit a proposal before the deadline shall cause the proposal to be disqualified.

1.8 Pre-Proposal Conference

A Pre-Proposal Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. The purpose of the conference is to discuss the RFP scope of services. While questions will be entertained, the response to any question at the Pre-Proposal Conference shall be considered tentative and non-binding with regard to this RFP. Questions concerning the RFP should be submitted in writing prior to the Written Comments Deadline date detailed in the RFP Section 2, Schedule of Events. To ensure accurate, consistent responses to all known potential Proposers, the official response to questions will be issued by the State as described in RFP Sections 1.5, *et seq.*, above and on the date detailed in the RFP Section 2, Schedule of Events.

Pre-Proposal Conference attendance is <u>not</u> mandatory, and each potential Proposer may be limited to a maximum number of attendees depending upon overall attendance and space limitations. The conference will be held at:

The Wm R. Snodgrass Tennessee Tower
3rd Floor Multimedia Room
312 Rosa L Parks Avenue
Nashville, Tennessee 37243-1102

It is recommended that you enter the Tower at the 7th Avenue North entrance which is the 3rd floor. The Multi-Media Room is located just past the 3rd Floor Security Desk through the first set of double doors on the left hand side. Please be prepared to present a picture I.D. for each person entering the building. Also, please be aware that there are several steps leading down to the 3rd floor entrance.

2 RFP SCHEDULE OF EVENTS

The following Schedule of Events represents the State's best estimate of the schedule that will be followed. Unless otherwise specified, the time of day for the following events will be between 8:00 a.m. and 4:30 p.m., Central Time.

RFP SCHEDULE OF EVENTS

NOTICE: The State reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. The State will communicate any adjustment to the Schedule of Events to the potential proposers from whom the State has received a Notice of Intent to Propose.

EVENT	TIME	DATE (all dates are state business days)
1. State Issues RFP		**October 14, 2008**
2. Disability Accommodation Request Deadline		**October 21, 2008**
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5. Written Comments Deadline		**November 3, 2008**
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8. State Completes Technical Proposal Evaluations		**December 4, 2008**
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11. Contract Signing		**December 19, 2008**
12. Contract Signature Deadline		**December 31, 2008**
13. Contract Start Date		**January 5, 2009**

3 PROPOSAL REQUIREMENTS

Each Proposer must submit a proposal in response to this RFP with the most favorable terms that the Proposer can offer. There will be no best and final offer procedure.

3.1 Proposal Form and Delivery

3.1.1 Each response to this RFP must consist of a Technical Proposal and a Cost Proposal (as described below).

3.1.2 Each Proposer must submit, in hardcopy form, one (1) original (labeled as "original"), and five (5) copies of the Technical Proposal. The State also requires two (2) CD copies of the Technical Proposal. The hardcopies and CDs must be submitted to the State in a sealed package that is clearly marked:

"Technical Proposal in Response to RFP- 317.10-013-09 for Real Estate Title & Closing Services – Western Grand Division -- Do Not Open"

In the case of a discrepancy between the hardcopy RFP version and a CD version, the hardcopy will take precedence over the CD copies. **IMPORTANT NOTE: Do <u>not</u> include cost proposal information of any kind in the hard or soft copies of the Technical Proposal.**

3.1.3 Each Proposer must submit one (1) Cost Proposal to the State in a <u>separate</u>, <u>sealed</u> package that is clearly marked:

"Cost Proposal in Response to RFP- 317.10-013-09 for Real Estate Title & Closing Services – Western Grand Division -- Do Not Open"

3.1.4 If a Proposer encloses the separately sealed proposals (as detailed above) in a larger package for mailing, the Proposer must clearly mark the outermost package:

"Contains Separately Sealed Technical and Cost Proposals for RFP- 317.10-013-09 for Real Estate Title & Closing Services – Western Grand Division"

3.1.5 The State must receive all proposals in response to this RFP, at the following address, no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events.

Mitzi Hale
Department of Finance & Administration
Wm R. Snodgrass Tennessee Tower, 17th Floor
312 Rosa L Parks Avenue
Nashville, Tennessee 37243-1102

3.1.6 A Proposer may not deliver a proposal orally or by any means of electronic transmission.

3.2 Technical Proposal

3.2.1 The RFP Attachment 6.3, Technical Proposal and Evaluation Guide details specific requirements for making a Technical Proposal in response to this RFP. This guide includes mandatory and general requirements as well as technical queries requiring a written response.

NOTICE: No pricing information shall be included in the Technical Proposal. Inclusion of Cost Proposal amounts in the Technical Proposal shall make the proposal non-responsive and the State shall reject it.

3.2.2 Each Proposer must use the Technical Proposal and Evaluation Guide to organize, reference, and draft the Technical Proposal. Each Proposer should duplicate the Technical Proposal and Evaluation

Guide and use it as a table of contents covering the Technical Proposal (adding proposal page numbers as appropriate).

3.2.3 Each proposal should be economically prepared, with emphasis on completeness and clarity of content. A proposal, as well as any reference material presented, must be written in English and must be written on standard 8 1/2" x 11" paper (although foldouts containing charts, spreadsheets, and oversize exhibits are permissible). All proposal pages must be numbered.

3.2.4 All information included in a Technical Proposal should be relevant to a specific requirement detailed in the Technical Proposal and Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will in no way contribute to the evaluation process.

3.2.5 The State may determine a proposal to be non-responsive and reject it if the Proposer fails to organize and properly reference the Technical Proposal as required by this RFP and the Technical Proposal and Evaluation Guide.

3.2.6 The State may determine a proposal to be non-responsive and reject it if the Technical Proposal document fails to appropriately address/meet all of the requirements detailed in the Technical Proposal and Evaluation Guide.

3.3 Cost Proposal

3.3.1 The Cost Proposal must be submitted to the State in a sealed package separate from the Technical proposal.

3.3.2 Each Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.4, Cost Proposal and Scoring Guide.

3.3.3 Each Proposer shall ONLY record the proposed cost exactly as required by the Cost Proposal and Scoring Guide and shall NOT record any other rates, amounts, or information.

3.3.4 The proposed cost shall incorporate all costs for services under the contract for the total contract period.

3.3.5 The Proposer must sign and date the Cost Proposal.

3.3.6 If a Proposer fails to submit a Cost Proposal as required, the State shall determine the proposal to be non-responsive and reject it.

4 GENERAL REQUIREMENTS & CONTRACTING INFORMATION

4.1 Proposer Required Review and Waiver of Objections

Each Proposer must carefully review this RFP and all attachments, including but not limited to the *pro forma* contract, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Comments concerning RFP objections must be made in writing and received by the State no later than the Written Comments Deadline detailed in the RFP Section 2, Schedule of Events. This will allow issuance of any necessary amendments and help prevent the opening of defective proposals upon which contract award could not be made.

Protests based on any objection shall be considered waived and invalid if these comments/objections have not been brought to the attention of the State, in writing, by the Written Comments Deadline.

4.2 RFP Amendment and Cancellation

The State reserves the unilateral right to amend this RFP in writing at any time. If an RFP amendment is issued, the State will convey such amendment to the potential proposers who submitted a Notice of Intent to Propose. Each proposal must respond to the final written RFP and any exhibits, attachments, and amendments.

The State of Tennessee reserves the right, at its sole discretion, to cancel and reissue this RFP or to cancel this RFP in its entirety in accordance with applicable laws and regulations.

4.3 Proposal Prohibitions and Right of Rejection

4.3.1 The State of Tennessee reserves the right, at its sole discretion, to reject any and all proposals in accordance with applicable laws and regulations.

4.3.2 Each proposal must comply with all of the terms of this RFP and all applicable State laws and regulations. The State may reject any proposal that does not comply with all of the terms, conditions, and performance requirements of this RFP. The State may consider any proposal that does not meet the requirements of this RFP to be non-responsive, and the State may reject such a proposal.

4.3.3 A proposal of alternate services (*i.e.*, a proposal that offers services different from those requested by this RFP) shall be considered non-responsive and rejected.

4.3.4 A Proposer may not restrict the rights of the State or otherwise qualify a proposal. The State may determine such a proposal to be a non-responsive counteroffer, and the proposal may be rejected.

4.3.5 A Proposer may not submit the Proposer's own contract terms and conditions in a response to this RFP. If a proposal contains such terms and conditions, the State may determine, at its sole discretion, the proposal to be a non-responsive counteroffer, and the proposal may be rejected.

4.3.6 A Proposer shall not submit more than one proposal. Submitting more than one proposal shall result in the disqualification of the Proposer.

4.3.7 A Proposer shall not submit multiple proposals in different forms. This prohibited action shall be defined as a Proposer submitting one proposal as a prime contractor and permitting a second Proposer to submit another proposal with the first Proposer offered as a subcontractor. This restriction does not prohibit different Proposers from offering the same subcontractor as a part of their proposals, provided that the subcontractor does not also submit a proposal as a prime contractor. Submitting multiple proposals in different forms may result in the disqualification of all Proposers knowingly involved.

4.3.8 The State shall reject a proposal if the Cost Proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with

any other Proposer. Regardless of the time of detection, the State shall consider any of the foregoing prohibited actions to be grounds for proposal rejection or contract termination.

4.3.9 The State shall not contract with or consider a proposal from:

4.3.9.1 an individual who is, or within the past six months has been, an employee or official of the State of Tennessee;

4.3.9.2 a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee or official of the State of Tennessee (this shall not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity);

4.3.9.3 a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee or official of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,

4.3.9.4 any individual, company, or other entity involved in assisting the State in the development, formulation, or drafting of this RFP or its scope of services shall be considered to have been given information that would afford an unfair advantage over other Proposers, and such individual, company, or other entity may not submit a proposal in response to this RFP.

4.3.9.5 For the purposes of applying the requirements of RFP subsection 4.3.9, *et. seq.*, an individual shall be deemed an employee or official of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid.

4.3.10 The State reserves the right, at its sole discretion, to waive a proposal's variances from full compliance with this RFP. If the State waives minor variances in a proposal, such waiver shall not modify the RFP requirements or excuse the Proposer from full compliance with such. Notwithstanding any minor variance, the State may hold any Proposer to strict compliance with this RFP.

4.4 Incorrect Proposal Information

If the State determines that a Proposer has provided, for consideration in this RFP process or subsequent contract negotiations, incorrect information that the Proposer knew or should have known was materially incorrect, that proposal shall be determined non-responsive and shall be rejected.

4.5 Proposal of Additional Services

If a proposal offers services in addition to those required by and described in this RFP, the additional services may be added to the contract before contract signing at the sole discretion of the State. Notwithstanding the foregoing, a Proposer shall not propose any additional cost amount(s) or rate(s) for additional services.

NOTICE: The Proposer's Cost Proposal shall record only the proposed cost as required in this RFP and shall not record any other rates, amounts, or information. If a Proposer fails to submit a Cost Proposal as required, the State shall determine the proposal to be non-responsive and shall reject the proposal.

4.6 Assignment and Subcontracting

4.6.1 The Proposer awarded a contract pursuant to this RFP may not subcontract, transfer, or assign any portion of the contract without the State's prior, written approval.

4.6.2 A subcontractor may only be substituted for a proposed subcontractor at the discretion of the State and with the State's prior, written approval.

4.6.3 At its sole discretion, the State reserves the right to refuse approval of any subcontract, transfer, or assignment.

4.6.4 Notwithstanding State approval of each subcontractor, the Proposer, if awarded a contract pursuant to this RFP, shall be the prime contractor and shall be responsible for all work performed.

4.7 Right to Refuse Personnel

At its sole discretion, the State reserves the right to refuse any personnel, of the prime contractor or a subcontractor, for use in the performance of a contract pursuant to this RFP.

4.8 Insurance

The State may require the apparent successful Proposer to provide proof of adequate worker's compensation and public liability insurance coverage before entering into a contract. Additionally, the State may require, at its sole discretion, the apparent successful Proposer to provide proof of adequate professional malpractice liability or other forms of insurance. Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the State shall be in form and substance acceptable to the State.

4.9 Licensure

Before a contract pursuant to this RFP is signed, the apparent successful Proposer must hold all necessary, applicable business and professional licenses. The State may require any or all Proposers to submit evidence of proper licensure.

4.10 Service Location and Work Space

The service pursuant to this RFP is to be performed, completed, managed, and delivered as detailed in the RFP Attachment 6.1, *Pro Forma* Contract. Work space on the State's premises may be available for contractor use in accordance with the *pro forma* contract or at the State's discretion. Any work performed on the State's premises shall be completed during the State's standard business hours.

4.11 Proposal Withdrawal

A Proposer may withdraw a submitted proposal at any time up to the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events. To do so, a proposer must submit a written request, signed by a Proposer's authorized representative to withdraw a proposal. After withdrawing a previously submitted proposal, a Proposer may submit another proposal at any time up to the Proposal Deadline.

4.12 Proposal Errors and Amendments

Each Proposer is liable for all proposal errors or omissions. A Proposer will not be allowed to alter or amend proposal documents after the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

4.13 Proposal Preparation Costs

The State will not pay any costs associated with the preparation, submittal, or presentation of any proposal.

4.14 Disclosure of Proposal Contents

Each proposal and all materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Selection or rejection of a proposal does not affect this right. All proposal information, including detailed price and cost information, shall be held in confidence during the evaluation process. Notwithstanding, a list of actual proposers submitting timely proposals may be available to the public, upon request, directly after technical proposals are opened by the state.

Upon the completion of the evaluation of proposals, indicated by public release of an Evaluation Notice, the proposals and associated materials shall be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7). By submitting a proposal, the Proposer acknowledges and accepts that the full proposal contents and associated documents shall become open to public inspection.

4.15 Contractor Registration

While registration with the state is not required to make a proposal, a service provider must be registered to do business with the state of Tennessee before approval of an awarded contract. To meet this prerequisite, an unregistered service provider must simply register as required prior to contract approval. Fast and easy access to *Online Contractor Registration* is available at the following Internet URL: **www.state.tn.us/finance/rds/ocr/register.html**

(For more information about registration, please contact the Department of General Services at (615) 741-1035 or **vendor.registration@state.tn.us**.)

4.16 Contract Approval

The RFP and the contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Proposer with the apparent best-evaluated proposal or any other Proposer. Contract award and State obligations pursuant thereto shall commence only after the contract is signed by the Contractor and the head of the procuring state agency and after the contract is approved and signed by all other State officials as required by State laws and regulations.

4.17 Contract Payments

All contract payments shall be made in accordance with the contract's Payment Terms and Conditions provisions (refer to RFP Attachment 6.1, *Pro Forma* Contract, Section C). No payment shall be made until the contract is approved as required by State laws and regulations. Under no conditions shall the State be liable for payment of any type associated with the contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before contract approval by State officials as required by applicable statutes and rules of the State of Tennessee or before the contract start date or after the contract end date specified by the contract.

4.18 Contractor Performance

The Contractor shall be responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and acceptance by the State. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. At reasonable times, the State may inspect those areas of the Contractor's place of business that are related to the performance of the contract. If the State requires such an inspection, the Contractor shall provide reasonable access and assistance.

4.19 Contract Amendment

During the course of this contract, the State may request the Contractor to perform additional work for which the Contractor would be compensated. That work shall be within the general scope of this RFP. In such instances, the State shall provide the Contractor a written description of the additional work, and the Contractor shall submit a time schedule for accomplishing the additional work and a price for the additional work based on the rates included in the Contractor's proposal to this RFP. If the State

and the Contractor reach an agreement regarding the work and associated compensation, such agreement shall be effected by means of a contract amendment. Any such amendment requiring additional work must be mutually agreed upon by the parties and signed by the Contractor and the head of the procuring state agency and must be approved by other State officials as required by State laws and regulations. The Contractor shall not commence additional work until the State has issued a written contract amendment and secured all required approvals.

4.20 Severability

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision shall not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Proposers shall be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

5 PROPOSAL EVALUATION & CONTRACT AWARD

5.1 Evaluation Categories and Maximum Points

The State will consider qualifications and experience, technical approach, and cost in the evaluation of proposals. The maximum points that shall be awarded for each of these categories are detailed below.

CATEGORY	MAXIMUM POINTS POSSIBLE
Qualifications and Experience	**40**
Technical Approach	**20**
Cost Proposal	**40**

5.2 Evaluation Process

The proposal evaluation process is designed to award the contract not necessarily to the Proposer of least cost, but rather to the Proposer with the best combination of attributes based upon the evaluation criteria.

5.2.1 The RFP Coordinator will use the RFP Attachment 6.3, Technical Proposal and Evaluation Guide to manage the Technical Proposal Evaluation and maintain evaluation records.

5.2.1.1 The RFP Coordinator will review each Technical Proposal to determine compliance with mandatory requirements (refer to RFP Attachment 6.3, Technical Proposal and Evaluation Guide, Technical Proposal Section A). If the RFP Coordinator determines that a proposal may have failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the proposal and document its determination of whether: (1) the proposal meets requirements for further evaluation; (2) the State will request clarifications or corrections; or, (3) the State will determine the proposal non-responsive to the RFP and reject it.

5.2.1.2 A Proposal Evaluation Team, made up of three or more State employees, will evaluate each Technical Proposal that appears responsive to the RFP.

5.2.1.3 Each Proposal Evaluation Team member will independently, evaluate each proposal against the evaluation criteria in this RFP, rather than against other proposals, and will score each in accordance with the RFP Attachment 6.3, Technical Proposal and Evaluation Guide.

5.2.1.4 The State reserves the right, at its sole discretion, to request Proposer clarification of a Technical Proposal or to conduct clarification discussions with any or all Proposers. Any such clarification or discussion shall be limited to specific sections of the proposal identified by the State. The subject Proposer shall put any resulting clarification in writing as may be required by the State.

5.2.2 After Technical Proposal evaluations are completed, the RFP Coordinator will open the Cost Proposals and use the RFP Attachment 6.4, Cost Proposal and Scoring Guide to calculate and document the Cost Proposal scores.

5.2.3 For each responsive proposal, the RFP Coordinator will add the average Technical Proposal score to the Cost Proposal score (refer to RFP Attachment 6.5, Proposal Score Summary Matrix).

5.3 Contract Award Process

5.3.1 The RFP Coordinator will forward the results of the proposal evaluation process to the head of the procuring agency who will consider the proposal evaluation process results and all pertinent

information available to make a determination about the contract award. The State reserves the right to make an award without further discussion of any proposal.

Notwithstanding the foregoing, to effect a contract award to a proposer other than the one receiving the highest evaluation score, the head of the procuring agency must provide written justification for such an award and obtain the written approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury.

5.3.2 After the agency head's determination, the State will issue an Evaluation Notice to identify the apparent best-evaluated proposal on the Evaluation Notice date detailed in the RFP Section 2, Schedule of Events.

NOTICE: The Evaluation Notice shall not create rights, interests, or claims of entitlement in either the Proposer with apparent best-evaluated proposal or any other Proposer.

5.3.3 The State will also make the RFP files available for public inspection on the Evaluation Notice date detailed in the RFP Section 2, Schedule of Events.

5.3.4 The Proposer with the apparent best-evaluated proposal must agree to and sign contract with the State which shall be substantially the same as the RFP Attachment 6.1, *Pro Forma* Contract.

However, the State reserves the right, at its sole discretion, to add terms and conditions or to revise *pro forma* contract requirements in the State's best interests subsequent to this RFP process. No such terms and conditions or revision of contract requirements shall materially affect the basis of proposal evaluations or negatively impact the competitive nature of the RFP process.

5.3.5 The Proposer with the apparent best-evaluated proposal must sign and return the contract drawn by the State pursuant to this RFP no later than the Contract Signature Deadline date detailed in the RFP Section 2, Schedule of Events. If the Proposer fails to provide the signed contract by the deadline, the State may determine that the Proposer is non-responsive to the terms of this RFP and reject the proposal.

5.3.6 If the State determines that the apparent best-evaluated proposal is non-responsive and rejects the proposal after opening Cost Proposals, the RFP Coordinator will re-calculate scores for each responsive Cost Proposal to determine the new, apparent best-evaluated proposal.

ATTACHMENT 6.1

PRO FORMA CONTRACT

The *pro forma* contract detailed in this attachment contains some "blanks" (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from this RFP.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and CONTRACTOR LEGAL ENTITY NAME, hereinafter referred to as the "Contractor," is for the provision of Real Estate Closing and Title Services for the Western Grand Division of Tennessee, as further defined in the "SCOPE OF SERVICES."

The Contractor is A/AN INDIVIDUAL, FOR-PROFIT CORPORATION, NON-PROFIT CORPORATION, SPECIAL PURPOSE CORPORATION OR ASSOCIATION, PARTNERSHIP, JOINT VENTURE, OR LIMITED LIABILITY COMPANY.
Contractor Federal Employer Identification or Social Security Number: ID NUMBER
Contractor Place of Incorporation or Organization: LOCATION

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. Upon request by the State, the Contractor shall provide services for properties in the Western Grand Division of the State of Tennessee, which shall include the following counties: Lake, Obion, Weakley, Henry, Dyer, Gibson, Carroll, Lauderdale, Crockett, Tipton, Haywood, Madison, Chester, Henderson, Benton, Decatur, Shelby, Fayette, Hardeman, McNairy, Hardin.

A.3. Summary of Ten (10) Years Sales History: This service shall consist of an information document containing the name(s) of the grantor(s), grantee(s), consideration, record book and page for each conveyance in the Chain of Title for the last ten (10) year period. One (1) original and one (1) copy to be delivered to the State on or before thirty (30) days after request.

a. "Chain of Title" is defined as the successive conveyances, or other forms of alienation, affecting a particular parcel of land, arranged consecutively over the last 10-year period, down to the present owner.

A.4. Issuance of Title Commitment: This service shall include title commitment letter, containing copies of all liens or mortgages for each property. Should a property have more than one title chain, it will constitute only one title report. The only permissible exceptions to the title commitment letter will be for unrecorded instruments and such facts that would not be disclosed by a search of the records, an accurate survey and inspection of the premises. One (1) original and one (1) copy of the Title Commitment to be delivered to the State on or before thirty (30) days after request.

A.5. Title Insurance: This shall consist of the issuance of a policy of title insurance, without defects as to marketability or the existence of any encumbrances, whether acquisition is obtained by negotiated conveyance or by condemnation. The policy shall include the amount that represents the total sum paid for the acquisition of the property. Issuance cost for title insurance will be based on the rates filed with

the Tennessee Department of Commerce and Insurance. One (1) original and one (1) copy of the Title Policy are to be delivered to the State with the recorded instrument of conveyance.

A.6. Closing Negotiated Transactions: This service shall include the updating of title commitment letters to the time of execution of the instrument of conveyance, the preparation of the deed, and the arrangement for and making of such disbursements, as necessary to cause the removal of all liens and encumbrances. This service shall also include working with State agents to correct any errors or title problems. The following are requirements for closing negotiated transactions:

a. A licensed attorney, with experience in real property law, must be available to discuss title/acquisition situations with all of the State's Land Agents, Managers, and the Director of Real Estate Management.

b. The Contractor shall discuss the time and location for each proposed closing with prospective grantor(s), and within reason, accomplish the same in accordance with their advice. The closing attorney, or closing agent, shall notify the Office of Real Estate Management, in writing, of the time, date, and place for closing. Such notice to be received no later than thirty-six (36) hours in advance.

c. For the preparation of the instrument of conveyance by the Contractor, the State will provide the description and special provisions, if any. The consideration for the transfer must be set out in the body of the deed. The deed must be completed, and one copy submitted to the Office of Real Estate Management, on or before five (5) working days following receipt of the above information from the State. Acceptance of the deed will be subject to approval by the Office of the Attorney General and Reporter.

d. All property shall be conveyed by warranty deed to the grantee as specified by the State. The service shall include obtaining property tax proration amount, and, if possible, a receipt for payment of pro-rated amount and any prior years taxes. The receipt shall be furnished to the Real Estate Management office with the closing statement.

e. Within 24 hours following the closing, the closing attorney, or closing agent, shall notify the Office of Real Estate Management in writing or by other means that the transaction has been closed. The closing attorney shall be expected to record the deed as soon as practicable, in no instance more than five (5) calendar days following the closing.

f. The closing statement, recorded deed, and title policy must be submitted to the Real Estate Management office within thirty (30) calendar days following closing, unless an extension is requested, and granted, in writing.

g. The Contractor shall issue Forms 1099, a W-9 and any other forms required by Section 6045 of the U. S. Internal Revenue Service to the seller(s) of all property to the State, at the time of the closing on the property. A copy of the issued forms shall be furnished to the State, along with the closing statement.

A.7. Managing Office. The Contractor shall identify and maintain one office in the Middle Grand Division of the State that will be responsible for managing the services described herein. Services may be performed in other Contractor offices; however, the identified office shall be the single point of contact and coordinate all communication with the State regarding the services in this Grand Division. However, the State reserves the right to contact other entities within the Contractor's organization, if this deemed to be in the State's best interest. The Managing Office must be empowered to make decisions and provide all required services in a timely manner and must hold all applicable licenses and certifications.

The Contractor may change the managing office with prior written approval from the State, which will not be unreasonably withheld; however, the newly identified managing office must be located in the Western Grand Division of the State. The Contractor must submit the request to change managing offices in writing to the State at least thirty (30) days prior to the effective date of the change.

A.8. Service Periods: The State shall initiate and request services for new properties through January 4, 2014. The period commencing January 5, 2014 through the end of the Contract shall only be used to complete previously requested services.

B. CONTRACT TERM:

B.1. This Contract shall be effective for the period commencing on January 5, 2009 and ending on July 4 2014. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed WRITTEN DOLLAR AMOUNT ($NUMBER). The payment rates in Section C.3 and the Travel Compensation provided in Section C.4.shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	**Amount** (per compensable increment)
TEN YEAR "CHAIN OF TITLE" HISTORY AND TITLE INSURANCE COMMITMENT	$ NUMBER
CLOSING SERVICES AND RESOLUTION OF TITLE/ACQUISTION SITUATIONS	$ NUMBER
Court Appearance of 4 hours or Less in One Day (applicable only as required by the State)	$ 250.00 each
Court Appearance of More than 4 Hours in One Day (applicable only as required by the State)	$ 500.00 each
Pre-Trial Meeting of 4 hours or Less in One Day (applicable only as required by the State)	$ 250.00 each
Pre-Trial Meeting of More than 4 Hours in One Day	$ 500.00 each

Service Description	Amount (per compensable increment)
(applicable only as required by the State)	

c. Original Title Insurance Rates. The Contractor shall submit an invoice for actual charges for original title insurance, at rates on file with the Tennessee Department of Commerce and Insurance. The Contractor shall only be reimbursed in accordance with these rates.

i. Reissue Credits. The Contractor shall offer the State a premium discount of thirty percent (30%) for reissue credit where the seller to the State presents, within five (5) business days of the title work order, a valid prior title insurance policy issued by a title insurance company licensed under T.C.A. 56-35-132.

ii. All-Inclusive Fees. The Contractor shall be reimbursed for "all-inclusive" premiums only in those counties that charge an "all-inclusive" fee. The Contractor shall provide to the State a copy of the current rates and any changes which may occur for each county where an "all-inclusive" fee is charged.

d. If there is more than one title chain for a property, the Contractor may, at the State's sole discretion, invoice for more than one chain of title. However, any such request for compensation for multiple chains of title will require prior approval of the Director of Real Estate Management.

C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be in the amount of actual costs, subject to maximum amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time. Claims may be submitted only for travel directed by and approved by the Director of Real Estate Management. No charges shall be allowed for travel within a county where the Contractor has an office.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

a. The Contractor shall submit invoices, with all necessary supporting documentation, to:

Philip W. Smith
Department of Finance & Administration
William R. Snodgrass Tennessee Tower
22nd Floor, 312 Rosa L Parks Avenue
Nashville, Tennessee 37243-1102

b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

(1) Invoice/Reference Number (assigned by the Contractor);
(2) Invoice Date;
(3) Invoice Period (period to which all invoiced charges are applicable);
(4) Contract Number (assigned by the State to this Contract);
(5) Account Name: Department of Finance & Administration, Real Property Administration;
(6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
(7) Contractor Name;
(8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
(9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
(10) Contractor Remittance Address;
(11) Complete Itemization of Charges, which shall detail the following:

i. Service Description for each service invoiced;

ii. Number of Units, Increments, or Milestones, including Transaction Tracking Number assigned by the State, of each service invoiced;
iii. Applicable Payment Rate (as stipulated in Section C.3.) for each service invoiced;
iv. Amount Due by Service;
v. Travel Compensation requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations;" and
vi. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

(1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
(2) not include any future work but will only be submitted for completed service; and
(3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least Thirty (30) days written notice before the effective termination date. The Contractor shall be entitled

to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and “Records” (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor

from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.

D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Philip W. Smith
Department of Finance & Administration
William R. Snodgrass Tennessee Tower
22nd Floor, 312 Rosa L Parks Avenue
Nashville, Tennessee 37243-1102
philip.w.smith@state.tn.us
Telephone # (615) 741-3948
FAX # (615) 741-7599

The Contractor:

NAME & TITLE OF CONTRACTOR CONTACT PERSON
CONTRACTOR NAME
ADDRESS
EMAIL ADDRESS
Telephone # NUMBER
FAX # NUMBER

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

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq*., the

law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.

b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.

c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

a. The Contractor shall maintain, at minimum, the following insurance coverage:

(1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars ($1,000,000) per occurrence for employers' liability whichever is greater.

(2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate.

(3) Professional Malpractice Liability with a limit of not less than one million dollars ($1,000,000) per claim and two million dollars ($2,000,000) aggregate.

b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.7. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-317.10-013-09 (Attachment 6.3, Section B, Item B.13.) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Business Diversity Enterprise in form and substance as required by said office.

IN WITNESS WHEREOF:

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE **DATE**

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. GOETZ, JR., COMMISSIONER **DATE**

APPROVED:

M. D. GOETZ, JR., COMMISSIONER **DATE**
DEPARTMENT OF FINANCE AND ADMINISTRATION

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY **DATE**

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

ATTACHMENT 6.2

PROPOSAL TRANSMITTAL AND STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Proposer must complete and sign this *Proposal Transmittal and Statement of Certifications and Assurances*. It must be signed, in the space below, by an individual empowered to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the Proposer's chief executive or president, this document shall attach evidence showing the individual's authority to bind the proposing entity.

Any contract resulting from this RFP process shall incorporate this *Proposal Transmittal and Statement of Certifications and Assurances* by reference as a part of said contract (refer to *pro forma* contract "Special Terms and Conditions").

PROPOSER LEGAL ENTITY NAME:	
PROPOSER FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Proposer does hereby affirm and expressly declare confirmation, certification, and assurance of the following:

1) This proposal constitutes a commitment to provide all services as defined in the RFP Attachment 6.1, *Pro Forma* Contract Scope of Services for the total contract period and confirmation that the Proposer shall comply with all of the provisions in this RFP and shall accept all terms and conditions set out in the RFP Attachment 6.1, *Pro Forma* Contract.
2) The information detailed in the proposal submitted herewith in response to the subject RFP is accurate.
3) The proposal submitted herewith in response to the subject RFP shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
4) The Proposers shall comply with:
   a) the laws of the State of Tennessee;
   b) Title VI of the federal Civil Rights Act of 1964;
   c) Title IX of the federal Education Amendments Act of 1972;
   d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
   e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government;
   f) the condition that the submitted proposal was independently arrived at, without collusion, under penalty of perjury; and,
   g) the condition that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the Procurement under this RFP.

PRINTED NAME:		**DATE:**	
SIGNATURE & TITLE:			
	Signature	**Title**	

ATTACHMENT 6.3

TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION A	
PROPOSER NAME:	

SECTION A — MANDATORY REQUIREMENTS

The Proposer must address ALL Mandatory Requirements section items and provide, in sequence, the information and documentation as required (referenced with the associated item references). The RFP Coordinator will review all general mandatory requirements, including but not limited to the following:

- **Proposal received on or before the Proposal Deadline.**
- **Technical Proposal copies and Cost Proposal packaged separately.**
- **Technical Proposal contains NO cost data.**
- **Proposer did NOT submit alternate proposals.**
- **Proposer did NOT submit multiple proposals in a different form.**
- **Technical Proposal does NOT contain any restrictions of the rights of the State or other qualification of the proposal.**

The RFP Coordinator will also review the proposal to determine if the Mandatory Requirement Items (below) are met and mark each with pass or fail. For each requirement that is not met, the Proposal Evaluation Team must review the proposal and attach a written determination.

Any contract resulting from this RFP process shall incorporate by reference the respective proposal responses to all items below as a part of said contract (refer to *pro forma* contract "Special Terms and Conditions").

NOTICE: In addition to these requirements, the State will also evaluate compliance with ALL RFP requirements.

Proposal Page # (to be completed by Proposer)	Mandatory Requirement Items	State Use ONLY Pass/Fail
	A.1 Provide the Proposal Transmittal and Statement of Certifications and Assurances (detailed in RFP Attachment 6.2) completed and signed, in the space provided, by an individual empowered to bind the Proposer to the provisions of this RFP and any resulting contract. ***Each Proposer <u>must</u> sign the Proposal Transmittal and Statement of Certifications and Assurances without exception or qualification.***	
	A.2 Provide the following as documentation of financial responsibility and stability. ▪ a current written bank reference, in the form of a standard <u>signed and dated</u> business letter, indicating that the proposer's business relationship with the financial institution is in positive standing ▪ two current written, positive credit references, in the form of standard <u>signed and dated</u> business letters, from vendors with which the proposer has done business or, a positive credit rating determined by a accredited credit bureau within the last six (6) months and the associated credit report number; inclusion of credit report number without the actual	

Proposal Page # (to be completed by Proposer)	Mandatory Requirement Items	State Use ONLY Pass/Fail
	rating is insufficient	
	A.3 Provide a statement of whether the Proposer or any individual who shall perform work under the contract has a possible conflict of interest (*e.g.,* employment by the State of Tennessee) and, if so, the nature of that conflict. ***Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.***	
	A.4 Provide the established managing office location within the Western Grand Division. For each office location, provide the office street address, city, and state (a PO Box address is **not** sufficient) and the year the office was opened. If the office was opened in 2008, the month and day must also be provided. **See RFP Sections 1.1.1 and RFP Attachment 6.1 *pro forma* Contract Section A.7 for details regarding this requirement and the definition of an established managing office within the Western Grand Division.**	

ATTACHMENT 6.3

TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION B		
PROPOSER NAME:		
SECTION B — QUALIFICATIONS & EXPERIENCE		
The Proposer must address ALL Qualifications and Experience section items and provide, in sequence, the information and documentation as required (referenced with the associated item references). **A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the proposal's "qualifications and experience" responses.** **Any contract resulting from this RFP process shall incorporate by reference the respective proposal responses to all items below as a part of said contract (refer to *pro forma* contract "Special Terms and Conditions").**		
Proposal Page # (to be completed by Proposer)	**Qualifications & Experience Items**	
	B.1	Describe the Proposer's form of business (*i.e.*, individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and detail the name, mailing address, email address, and telephone number of the person the State should contact regarding the proposal.
	B.2	Provide a statement of whether there have been any mergers, acquisitions, or sales of the Proposer company within the last ten years, and if so, an explanation providing relevant details.
	B.3	Provide a statement of whether the Proposer or any of the Proposer's employees, agents, independent contractors, or subcontractors have been convicted of, pled guilty to, or pled *nolo contendere* to any felony, and if so, an explanation providing relevant details.
	B.4	Provide a statement of whether there is any pending litigation against the Proposer; and if such litigation exists, an attached opinion of counsel as to whether the pending litigation will impair the Proposer's performance in a contract under this RFP.
	B.5	Provide a statement of whether, in the last ten years, the Proposer has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details.
	B.6	Provide a statement of whether there are any pending Securities Exchange Commission investigations involving the Proposer, and if such are pending or in progress, an explanation providing relevant details and an attached opinion of counsel as to whether the pending investigation(s) will impair the Proposer's performance in a contract under this RFP.
	B.7	Provide a brief, descriptive statement indicating the Proposer's credentials to deliver the services sought under this RFP and include a description of the client base.
	B.8	Briefly describe how long the Proposer has been performing the services required

Proposal Page # (to be completed by Proposer)	Qualifications & Experience Items
	by this RFP and include the number of years in business.
	B.9 Describe the Proposer organization's number of employees, client base, and location of offices.
	B.10 Provide a narrative description of the proposed project team, its members, and organizational structure.
	B.11 Provide a personnel roster and resumes of key people who shall be assigned by the Proposer to perform duties or services under the contract (include estimated number of hours to be worked on the contract for each person, and the resumes shall detail each individual's title, education, current position with the Proposer, and employment history) as well as an organizational chart highlighting the key people who shall be assigned to accomplish the work required by this RFP and illustrating the lines of authority and designate the individual responsible for the completion of each service component and deliverable of the RFP.
	B.12 Provide a statement of whether the Proposer intends to use subcontractors, and if so, the names and mailing addresses of the committed subcontractors and a description of the scope and portions of the work the subcontractors will perform.
	B.13 Provide documentation of Proposer commitment to diversity as represented by its business strategy, business relationships, and workforce — this documentation should detail: ▪ a description of the Proposer's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, persons with a disability and small business enterprises ▪ a listing of the Proposer's current contracts with business enterprises owned by minorities, women, persons with a disability and small business enterprises, including the following information o contract description and total value o contractor name and ownership characteristics (*i.e.*, ethnicity, sex, disability) o contractor contact and telephone number ▪ an estimate of the level of participation by business enterprises owned by minorities, women, persons with a disability and small business enterprises in a contract awarded to the Proposer pursuant to this RFP, including the following information: o participation estimate (expressed as a percent of the total contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics). DO NOT INCLUDE DOLLAR AMOUNTS; ONLY PERCENTAGES. o descriptions of anticipated contracts o names and ownership characteristics (*i.e.*, ethnicity, sex, disability) of anticipated subcontractors and supply contractors anticipated ▪ the percent of the Proposer's total current employees by ethnicity, sex, and disability ***Proposers that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and sub-contractors. Proposal evaluations will recognize the positive***

Proposal Page # (to be completed by Proposer)	Qualifications & Experience Items
	qualifications and experience of a Proposer that does business with enterprises owned by minorities, women, persons with a disability and small business enterprises and that offers a diverse workforce to meet service needs.
	B.14 Provide customer references for similar projects representing three of the larger accounts currently serviced or completed by the vendor. If the Proposer is a joint venture, then each party to the joint venture must provide at least one reference. The references shall be provided to the State in the form of questionnaires that have been fully completed by the individual providing the reference. The State has included the reference check questionnaire to be used, as RFP Attachment 6.6. **THE PROPOSER MUST USE THIS FORM, OR AN EXACT DUPLICATE THEREOF**. The Proposer will be solely responsible for obtaining the fully completed reference check questionnaires, and for including them within the Proposer's sealed Technical Proposal. In order to obtain and submit the completed reference check questionnaire, the Proposer shall follow the process detailed below exactly: 1. Proposer makes an exact duplicate of the State's form, as it appears in RFP Attachment 6.6; 2. Proposer sends the copy of the form to the reference it has chosen, along with a new, standard #10 envelope; 3. Proposer directs the person providing the reference check feedback to complete the form in its entirety, sign and date it, and seal it within the provided envelope. The person may prepare a manual document or complete the exact duplicate Word document and print the completed copy for submission. After sealing the envelope, the person providing the reference must sign his or her name in ink across the sealed portion of the envelope and return it directly to the Proposer. The Proposer will give the reference check provider a deadline, such that the Proposer will be able to collect all references in time to include them within its sealed Technical Proposal. 4. When the Proposer receives the sealed envelopes from the reference check providers, the Proposer **will not open** them. Instead, the Proposer will enclose all of the unopened reference check envelopes, in an easily identifiable larger envelope, and will include this envelope as a part of the written Technical Proposal. Therefore, when the State opens the Technical Proposal box, the State will find a clearly labeled envelope enclosed, which contains all of the sealed reference check envelopes. 5. The State will base its reference check evaluation on the contents of these envelopes. **THE STATE WILL NOT ACCEPT LATE REFERENCES OR REFERENCES SUBMITTED THROUGH ANY OTHER CHANNEL OF SUBMISSION OR MEDIUM, WHETHER WRITTEN, ELECTRONIC, VERBAL, OR OTHERWISE.** Each reference must include: • the Proposer's name; • the Reference's Organization name; • the Name of the person responding;

Proposal Page # (to be completed by Proposer)	Qualifications & Experience Items
	• the Title of the person responding; • the Email Address of the person responding; and • the Date the reference form was completed. ***Each evaluator will generally consider the results of reference inquiries by the State regarding all references provided.***
(Maximum Section B Score = 40)	
SCORE *(for all Section B items above, B.1 through B.14)*:	

ATTACHMENT 6.3

TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION C

PROPOSER NAME:	

SECTION C — TECHNICAL APPROACH

The Proposer must address ALL Technical Approach section items and provide, in sequence, the information and documentation as required (referenced with the associated item references). A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the proposal's response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

0 = little value ***1 = poor*** ***2 = fair*** ***3 = satisfactory*** ***4 = good*** ***5 = excellent***

The RFP Coordinator will multiply each item score by the assigned weight with the product being the item's raw weighted score for purposes of calculating the section score as detailed at the end of this table.

Any contract resulting from this RFP process shall incorporate by reference the respective proposal responses to all items below as a part of said contract (refer to *pro forma* contract "Special Terms and Conditions").

Proposal Page # (to be completed by Proposer)	Technical Approach Items		State Use ONLY		
			Score	Item Weight	Raw Weighted Score
	C.1	Provide a narrative that illustrates the Proposer's understanding of the State's requirements and deliverables described in Attachment 6.1 *pro forma* Contract Sections A.3 (10 year sales history document), A.4 (title commitment letter), and A.5 (policy of title insurance).		**25**	
	C.2	Provide a narrative that illustrates how the Proposer will accomplish the tasks required to deliver the services described in Attachment 6.1 *pro forma* Contract Sections A.3, A.4, and A.5.		**15**	
	C.3	Provide a narrative that illustrates the Proposer's understanding of the State's requirements for closing negotiated transactions as described in Attachment 6.1 *pro forma* Contract Sections A.6.		**25**	
	C.4	Provide a narrative that illustrates how the Proposer will accomplish the tasks required to deliver the closing services described in Attachment 6.1 *pro forma* Contract Sections A.6.		**15**	
	C.5	Provide a narrative that illustrates how the Proposer will manage the services, including how services will be managed if the State requests services for multiple properties during the same time period.		**20**	
		Total Raw Weighted Score: *(sum of Raw Weighted Scores above)*			

Total Raw Weighted Score / **maximum possible raw weighted score** *(i.e., 5 x the sum of item weights above)*	**X 20** *(maximum section score)*	**= SCORE:**	

ATTACHMENT 6.4

COST PROPOSAL & SCORING GUIDE

NOTICE TO PROPOSER: This Cost Proposal MUST be completed EXACTLY as required.

PROPOSER NAME:			
PRINTED NAME:		**DATE:**	
SIGNATURE & TITLE:			
	Signature	**Title**	

NOTE: The signatory must be an individual or a company officer empowered to contractually bind the Proposer. If the Signatory is not the Proposer's chief executive or president, this Statement of Certifications and Assurances SHALL attach evidence showing the Signatory's authority to bind the Proposer.

COST PROPOSAL SCHEDULE

The proposed cost, detailed below, shall indicate the proposed price for providing the entire scope of service including all services as defined in the RFP Attachment 6.1, *Pro Forma* Contract Scope of Services for the total contract period. The proposed cost and the submitted technical proposal associated with this cost shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any resulting contract between the Proposer and the State. All monetary amounts are United States currency.

DO NOT LEAVE A COST CELL "BLANK." The State shall deem a Cost Proposal with a "blank" cell as non-responsive and shall reject it.

DO NOT ENTER MORE THAN ONE RATE OR A RANGE OF RATES IN A COST CELL. The State shall deem a Cost Proposal with a cell containing more than one rate or a range of rates as non-responsive and shall reject it.

Cost Item Description	Proposed Cost					State Use ONLY		
	Year 1	Year 2	Year 3	Year 4	Year 5	Sum	Weight	Weighted Cost
TITLE COMMITMENT							500	
CLOSING FEE							500	

The RFP Coordinator shall use the evaluation cost amount derived from the proposed cost amounts above and the following formula to calculate the COST PROPOSAL SCORE. Calculations shall result in numbers rounded to two decimal places.	**Evaluation Cost Amount:** *(sum of all weighted cost amounts above)*	

	Lowest Evaluation Cost Amount from all Proposals / **Evaluation Cost Amount Being Evaluated**	**X 40** *(maximum section score)*	**= SCORE:**

ATTACHMENT 6.5

PROPOSAL SCORE SUMMARY MATRIX

RFP Coordinator **Date**

QUALIFICATIONS & EXPERIENCE **Maximum Points: 40**	**PROPOSER NAME**		**PROPOSER NAME**		**PROPOSER NAME**	
EVALUATOR NAME						
EVALUATOR NAME						
EVALUATOR NAME						
EVALUATOR NAME						
REPEAT AS NECESSARY						
	AVERAGE SCORE:		**AVERAGE SCORE:**		**AVERAGE SCORE:**	
TECHNICAL APPROACH **Maximum Points: 20**						
EVALUATOR NAME						
EVALUATOR NAME						
EVALUATOR NAME						
EVALUATOR NAME						
REPEAT AS NECESSARY						
	AVERAGE SCORE:		**AVERAGE SCORE:**		**AVERAGE SCORE:**	
COST PROPOSAL **Maximum Points: 40**	**SCORE:**		**SCORE:**		**SCORE:**	
PROPOSAL SCORE **Maximum Points: 100**	**TOTAL SCORE:**		**TOTAL SCORE:**		**TOTAL SCORE:**	

ATTACHMENT 6.6

STATE OF TENNESSEE

REAL ESTATE TITLE & CLOSING SERVICES – WESTERN GRAND DIVISION

RFS # 317.10-013-09

REFERENCE INFORMATION QUESTIONNAIRE

Proposer's Name: _____

Reference (Client Organization) Name:

_____

Person Responding To This
Request for Reference Information: _____
Printed Name

_____
Signature **(MUST BE THE SAME AS THE SIGNATURE ACROSS THE ENVELOPE SEAL)**

Person's Title: _____

Person's Email Address: _____

Date Reference Form Was Completed: _____

NOTE: Reference should complete responses to the seven (7) items that appear on the following pages. If completed using a Word document, use as much space as required. If completed manually, record response in space provided.

1. Describe the services provided by the vendor to your organization.

2. Please rate your overall satisfaction with the vendor on a scale of 1 to 5, with 1 being "least satisfied" and 5 being "most satisfied."

3. If you answered 3 or less to the previous question, what could the vendor have done to improve their rating?

4. Please indicate your level of satisfaction with the Proposer personnel that you worked with to fill your Title needs? Use a scale of 1 to 5; with 1 being "least satisfied," and 5 being "most satisfied."

5. If you answered 3 or less to the previous question, what could the vendor have done to improve their rating?

6. As far as you know, has the vendor remained (or did the vendor remain) in compliance with the contract throughout their provision of services to your organization? If not, please explain.

7. Would you use the services of the vendor again? Indicate on a scale of 1 to 5: with 1 being "absolutely not" and 5 being "absolutely yes".

ATTACHMENT 6.7

Example of a Title Commitment and a Title Insurance Policy begin on following page

Commitment To Insure

ALTA Commitment - 1982

Commitment No.: N-94422-04
Order No.: 94422
RE: State of Tennessee#
ATTN: Philip W. Smith
Loan #: 04-04-005

INFORMATION SHEET

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT. YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

If you have any questions about the Commitment, contact RELS/Nashville (615) 367-2300.

TABLE OF CONTENTS

	Page
AGREEMENT TO ISSUE POLICY	Back Cover
SCHEDULE A	Insert
1. Commitment Date	
2. Policies to be Issued, Amounts and Proposed Insureds	
3. Interest in the Land and Owner	
4. Description of the Land	
SCHEDULE B-I – REQUIREMENTS	Insert
SCHEDULE B-II – EXCEPTIONS	Insert
CONDITIONS	Back Cover

SCHEDULE A
COMMITMENT

Application Number: 94422-04

Commitment Number: N-94422-04

1. Commitment Date: June 23, 2004 at 08:00 AM

2. Policy (or Policies) to be issued: Policy Amount

   (a) OWNER'S POLICY (ALTA Own. Policy (10/17/92))
   Proposed Insured:
   State of Tennessee

   (b) LOAN POLICY (ALTA Loan Policy (10/17/92))
   Proposed Insured:

3. Fee Simple interest in the land described in this Commitment is owned, at the Commitment Date, by:
   Middle Tennessee Baptist Church, a Tennessee Not-For-Profit Corporation

4. The land referred to in this Commitment is described as follows:
   SEE SCHEDULE C ATTACHED HERETO

SCHEDULE B-SECTION I
COMMITMENT

REQUIREMENTS

File Number: 94422-04 Commitment Number: N-94422-04

The following requirements must be met:

a. Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.

b. Pay us the premiums, fees and charges for the policy.

c. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.

d. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.

1. Prepare instruments necessary to create the estate or interest to be insured and have same properly executed, delivered, and duly filed for record in the Register's Office for Rutherford County, TN.

2. Subject to final approval for commitment for determination of value of property to be insured, based on appraised value to be submitted to the underwriter (s).

3. Cancellation or release of Deed of Trust executed by Middle Tennessee Baptist Church to Cavalry Enterprises, Inc., Trustee for Cavalry Banking, dated 04/01/1997, recorded 04/04/1997, of record in Book B201, Page 459, in the Register's Office for Rutherford County, TN, securing the principal sum of $800,000.00. Modification of record in Record Book 201, Page1498, said Register's Office.

4. Cancellation or termination of Fixture Filing/Financing Statement held by Cavalry Banking, filed 04/04/1997, of record in Book B201, Page 465, in the Register's Office for Rutherford County, TN, in the amount of $800,000.00. Continuation of record in Record Book 133, Page 2914, said Register's Office. Debtors: Middle Tennessee Baptist Church.

5. Cancellation or termination of Fixture Filing/Financing Statement held by Murfreesboro Electric Department, filed 04/14/1998, of record in Book B329, Page 47, in the Register's Office for Rutherford County, TN, in the amount of $5,550.00. Debtors: Middle Tennessee Baptist Church.

6. Cancellation or termination of Fixture Filing/Financing Statement held by Murfreesboro Electric Department, filed 11/20/1998, of record in Book B422, Page 441, in the Register's Office for Rutherford County, TN. Debtors: Middle Tennessee Baptist Church.

SCHEDULE B-SECTION II
COMMITMENT

EXCEPTIONS

File Number: 94422-04 Commitment Number: N-94422-04

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

a. Facts which would be disclosed by a comprehensive survey of the premises herein described.

b. Rights or claims of parties in possession.

c. Mechanics', Contractor's or Materialmen's liens and lien claims, if any, where no notice thereof appears of record.

d. Any change in title occurring subsequent to the effective date of this Commitment and prior to the date of issuance of the title policy.

e. Any discrepancies or conflicts in boundary lines, any shortages in area, or any encroachment or overlapping of improvements.

f. Any facts, rights, interests or claims which are not shown by the public record but which could be ascertained by an accurate survey of the land or by making inquiry of persons in possession thereof.

g. Easements, liens or encumbrances or claims thereof, which are not shown by the public record.

h. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished. NOTE: Upon receipt of a satisfactory Affidavit of Agreement this exception will be deleted.

i. If improvements on herein described property are completed after January 1 of any year the law requires supplemental assessments for the year in which improvements are completed, as defined by Statute. The Company assumes no liability for taxes assessed by correction pursuant to the provisions of Tennessee Code Annotated sections 67-5-603, et seq.

j. Any loss or claim arising under The Federal Truth in Lending Act.

k. At the time of the issurance of this commitment, the insured property was not assessed for tax purposes, however the final policy will not insure against future assessments, or any all back assessments for taxes that may be made by the city and/or county assessors subsequent to the dated of this commitment.

l. Easement of record in Book 428, Page 831, in the Register's Office for Rutherford County, TN.

SCHEDULE C
COMMITMENT

PROPERTY DESCRIPTION

File Number: 94422-04

Commitment Number: N-94422-04

The land referred to in this Policy is described as follows:

Being known and designated as 213 N. Tennessee Boulevard, and being bounded on the North by property formerly belonging to Allen Prince and wife, (now belonging to grantees), on the east by North Tennessee Boulevard, on the South by property formerly belonging to T. H. Harrison, and on the West by other property of the grantees; and being a lot fronting 75 feet on North Tennessee Boulevard and running back West 200 feet between parallel lines, and being Lot No. 9 in the Harrison and Black Subdivision as shown on plat in Deed Book 68, page 398, of the Register's Office of Rutherford County, Tennessee.

Being a portion of the same property conveyed to Middle Tennessee Baptist Church, a Tennessee Not-For-Profit Corporation, by deed from North Boulevard Church of Christ, an independent and autonomous Church of Christ, dated April 1, 1997, recorded April 4, 1997, of record in Book 594, page 412, Register's Office for Rutherford County, Tennessee.

RELS | Real Estate Loan Services of Tennessee, Inc.

Parcel VI

CLIENT: State of Tennessee

NAME: (Seller) Middle TN. Baptist Church

ADDRESS: 213-217 N. Tennessee Blvd.

CHAIN OF TITLE

GRANTEE: Middle Tennessee Baptist Church

GRANTOR: North Boulevard Church of Christ

DATED: 4/1/97 RECORDED: 4/4/97 INSTRUMENT #:

CASE #: DOCKET #: BOOK/PAGE: 594/412

COMMENTS:

GRANTEE: Elders of North Boulevard Church of Christ

GRANTOR: Richard S. Johns and wife Mary Love Johns

DATED: 6/6/87 RECORDED: 10/20/87 INSTRUMENT #:

CASE #: DOCKET #: BOOK/PAGE: 393/362

COMMENTS:

GRANTEE:

GRANTOR:

DATED: RECORDED: INSTRUMENT #:

Commitment To Insure

ALTA Commitment - 1982

AGREEMENT TO ISSUE POLICY

We agree to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.
If the Requirements shown in this Commitment have not been met within six (6) months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.
Our obligation under this Commitment is limited by the following:
The Provisions in Schedule A.
The Requirements in Schedule B-I
The Exceptions in Schedule B-II.
The Conditions below.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

CONDITIONS

1. Definitions. (a) "Mortgage" means mortgage, deed of trust or other security instrument.
(b) "Public Records" means title records that give constructive notice of matters affecting your title - according to the state statutes where your land is located.

2. Later Defects. The Exceptions in Schedule B - Sections II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attach between the Commitment Date and the date of which all of the Requirements (a) and (c) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.

3. Existing Defects. If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. Limitation Of Our Liability. Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:
Comply with the Requirements in Schedule B - Section I
or
Eliminate with our written consent any Exceptions shown in Schedule B - Section II.
We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. Claims Must Be Based On This Commitment. Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.

IN WITNESS WHEREOF, Old Republic National Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A, to be valid when countersigned by a validating officer or other authorized signatory.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

By _____ *President*

Attest _____ *Secretary*

_____
Authorized Signatory

ORT Form 3538
ALTA Commitment Form - 1982

TRANSACTION NO.: 04-04-005

Owner's Policy

American Land Title Association Owner's Policy 10-17-92

Policy Number **SV** 4074349

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS,

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, the said Old Republic National Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers as of the date shown in Schedule A, the policy to be valid when countersigned by an authorized officer or agent of the Company.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including, but not limited to, building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy; or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
   (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
      (i) to timely record the instrument of transfer; or
      (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

Issued through the Office of:

Real Estate Loan Services of TN., Inc.
901-385-1982 / 800-264-2764
901-385-0834 fax

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

Authorized Signatory

By *President*

Attest *Secretary*

CONDITIONS AND STIPULATIONS

1. *Definition of Terms.*

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions from Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. *Continuation of Insurance After Conveyance of Title.*

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. *Notice of Claim to be Given by Insured Claimant.*

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. *Defense and Prosecution of Actions; Duty of Insured Claimant to Cooperate.*

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. *Proof of Loss or Damage.*

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of

(Continued on inside back cover.)

File No.

TRANSACTION NUMBER: 04-04-005

Amount of Insurance	Date of Policy	Policy No.
$ 2225000.00	September 10, 2004 at 1:32 PM	SV 4074349

1. **NAME OF INSURED:**

   State of Tennessee

2. The estate or interest in the land which is covered by this policy is: FEE SIMPLE

3. Title to the estate or interest in the land is vested in:

   State of Tennessee

4. The land referred to in this policy is described in Schedule C.

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Any discrepancies or conflicts in boundary lines, any shortages in area, or any encroachment or overlapping of improvements.

2. Any facts, rights, interests or claims which are not shown by the public record but which could be ascertained by an accurate survey of the land or by making inquiry of persons in possession thereof.

3. Easements, liens or encumbrances or claims thereof, which are not shown by the public record.

4. Any lien or right to lien for services, labor or material imposed by law and not shown by the public record.

5. Taxes and assessments in the year 2004, and thereafter.

6. All taxes, for the year 2004 and subsequent years, and any additional taxes, interest or penalties which may be assessed for prior years by virtue of readjustment, reappraisal, reassessment, reversal of exemption, appeal or other amendments to the tax records of the city or county in which subject property is located.

7. If improvements on herein described property are completed after January 1 of any year the law requires supplemental assessments for the year in which improvements are completed, as defined by Statute. The Company assumes no liability for taxes assessed by correction pursuant to the provisions of Tennessee Code Annotated Sections 67-5-603, et seq.

8. The acreage mentioned in the legal description is only for convenience in identifying the tract insured; it is not intended that this policy

The schedules of this policy consist of 4 pages.

By _____
Authorized Signature

Rider attached to and forming a part of policy or commitment number: SV 4074349

Continuation of SCHEDULE B:

insure the amount of acreage.

9. Subject to Storm Drainage Easement of record in Deed Book 428, page 831, Register's Office for Rutherford County, Tennessee.

SCHEDULE C

POLICY NO: SV 4074349

BEING A PARCEL OF LAND IN THE THIRTEEN CIVIL DISTRICT OF MURFREESBORO, RUTHERFORD COUNTY, TENNESSEE, BOUNDED ON THE EAST BY THE WESTERLY MARGIN OF NORTH TENNESSEE BOULEVARD, THE CARL J. BUCKNER, ET UX PROPERTY AS OF RECORD IN DEED BOOK 659, PAGE 698-R.O.R.C., TN, AND THE JEFFREY CLIFTON DAVIS PROPERTY AS OF RECORD IN DEED BOOK 580, PAGE 340-R.O.R.C., TN, BOUNDED ON THE SOUTH BY THE NANCY F. CHRISTIANSEN PROPERTY AS OF RECORD IN DEED BOOK WB33, PAGE 327-R.O.R.C., TN, AND THE REBA JACKSON PROPERTY AS OF RECORD IN DEED BOOK WB19, PAGE 253-R.O.R.C., TN, BOUNDED ON THE WEST BY THE WHITNEY STEGALL, ET AL PROPERTY AS OF RECORD IN DEED BOOK WB16, PAGE 560-R.O.R.C., TN, THE JOY P. SMITH PROPERTY AS OF RECORD IN DEED BOOK 407, PAGE 371-R.O.R.C., TN, THE CHARLOTTE W. SMOTHERMAN PROPERTY AS OF RECORD IN DEED BOOK WB22, PAGE 408-R.O.R.C., TN AND THE KAREN HAYWARD BLOODING PROPERTY AS OF RCORD IN DEED BOOK 430, PGE 822-R.O.R.C., TN, BOUNDED ON THE NORTH BY THE SOUTHERLY MARGIN OF EAST LYTLE STREET, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A IRON PIN SET AT THE INTERSECTION OF THE SOUTHERLY MARGIN OF EAST LYTLE STREET AND THE WESTERLY MARGIN OF NORTH TENNESSEE BOULEVARD, SAID IRON PIN HAVING TENNESSEE STATE PLANE COORDINATES (NAD83) OF N-550,917.12, E-1, 858,285.46;

THENCE, WITH THE WESTERLY MARGIN OF NORTH TENNESSEE BOULEVARD, SOUTH 07 DEGREES 08 MINUTES 55 SECONDS WEST, 400.00 FEET TO AN EXISTING IRON PIN;

THENCE, A COMMON LINE WITH THE CARL J. BUCKNER ET UX PROPERTY AS OF RECORD IN DEED BOOK 659, PAGE 698-R.O.R.C., TN, NORTH 82 DEGREES 47 MINUTES 25 SECONDS WEST, 183.22 FEET;

THENCE, A COMMON LINE WITH THE CARL J. BUCKNER, ET UX PROPERTY AS OF RECORD IN DEED BOOK 659, PAGE 698-R.O.R.C., TN, AND THE JEFFREY CLIFTON DAVIS PROPERTY AS OF RECORD IN DEED BOOK 580, PAGE 340-R.O.R.C., TN, SOUTH 07 DEGREES 33 MINUTES 21 SECONDS WEST, 109.21 FEET (PASSING AN EXISTING IRON PIN AT 100.00 FEET);

THENCE, A COMMON LINE WITH THE NANCY F. CHRISTIANSEN PROPERTY AS OF RECORD IN DEED BOOK WB33, PAGE 327-R.O.R.C., TN, AND THE REBA JACKSON PROPERTY AS OF RECORD IN DEED BOOK WB19, PAGE 253-R.O.R.C., TN, NORTH 82 DEGREES 08 MINUTES 41 SECONDS WEST, 233.31 FEET TO AN EXISTING IRON PIN, SAID IRON PIIN HAVING TENNESSEE STATE PLANE COORDINATES (NAD83) OF N-550,466.85, E-1,857,808.41;

THENCE, A COMMON LINE WITH THE WHITNEY STEGALL ET AL PROPERTY AS OF RECORD IN DEED BOOK WB16, PAGE 560-R.O.R.C., TN, AND THE JOY P. SMITH PROPERTY AS OF RECORD IN DEED BOOK 407, PAGE 371-R.O.R.C., TN, NORTH 07 DEGREES 38 MINUTES 09 SECONDS EAST, 256.21 FEET;

THENCE, A COMMON LINE WITH THE CHARLOTTE W. SMOTHERMAN PROPERTY AS OF RECORD IN DEED BOOK WB22, PAGE 408-R.O.R.C., TN, NORTH 07 DEGREES 10 MINUTES 26 SECONDS EAST, 78.00 FEET TO AN EXISTING IRON PIPE;

THENCE, A COMMON LINE WITH THE KAREN HAYWARD BLOODING PROPERTY AS OF RECORD IN DEED BOOK 430, PAGE 822-R.O.R.C., TN, SOUTH 82 DEGREES 51 MINUTES 05 SECONDS EAST, 80.00 FEET;

THENCE, A COMMON LINE WITH THE KAREN HAYWARD BLOODING PROPERTY AS OF RECORD IN DEED BOOK 430, PAGE 822-R.O.R.C., TN, NORTH 07 DEGREES 08 MINUTES 55 SECONDS EAST, 171.93 FEET;

THENCE, WITH THE SOUTHERLY MARGIN OF EAST LYTLE STREET, SOUTH 82 DEGREES 51 MINUTES 05 SECONDS EAST, 335.08 FEET TO THE POINT OF BEGINNING.

CONTAINING 177,449 SQUARE FEET OR 4.07 ACRES, MORE OR LESS.

SUBJECT PROPERTY IS ENCUMBERED BY A 15 FOOT WIDE STORM DRAINAGE EASEMENT ALONG THE MOST NORTHWESTERLY BOUNDARIES AS OF RECORD IN DEED BOOK 428, PAGE 831-R.O.R.C., TN.

SCHEDULE C

POLICY NO. : SV 4074349

AS SURVEYED BY THORNTON & ASSOCIATES INC., 1205 SOUTH GRAYCROFT AVENUE, MADISON, TN 37115, FILE NO. 04-919.

BEING THE SAME PROPERTY CONVEYED TO THE STATE OF TENNESSEE, BY WARRANTY DEED FROM MIDDLE TENNESSEE BAPTIST CHURCH, BY TONY HUTSON, PRESIDENT, DATED SEPTEMBER 7, 2004, RECORDED SEPTEMBER 10, 2004, OF RECORD IN RECORD BOOK 427, PAGE 642, REGISTER'S OFFICE FOR RUTHERFORD COUNTY, TENNESSEE.

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the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. Options to Pay or Otherwise Settle Claims; Termination of Liability.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

7. Determination, Extent of Liability and Coinsurance.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. Apportionment.

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. Limitation of Liability.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. Reduction of Insurance; Reduction or Termination of Liability.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. Liability Non-cumulative.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. Payment of Loss.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. Subrogation Upon Payment or Settlement.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and

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remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. Arbitration.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.

15. Liability Limited to this Policy; Policy Entire Contract.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or Validating Officer or Authorized Signatory of the Company.

16. Severability.

In the event any provision of the policy is held invalid or unenforceable under the applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to its Home Office: 400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111.