

Bidder: _____
Address: _____

License No.: _____
Classification: _____
Expires: _____

Shelby County Tennessee

Contract Documents

For

ADA CURB RAMP INSTALLATION

RFP # 12-012-24

DECEMBER 9, 2011

Office of the Shelby County Engineering
6463 Haley Road, Building # 10
Memphis, TN 38134

Shelby County

Tennessee

Mark H. Luttrell, Jr., Mayor

**Request for Proposal
Shelby County Government
Purchasing Department**

**160 N. Main, Suite 550
Memphis, TN 38103**

Issued: December 9, 2011

Due: January 13, 2012 @ 4:00 P.M. (Central Standard Time)

RFP # 12-012-24

SHELBY COUNTY ADA CURB RAMP INSTALLATION

Shelby County Government is soliciting proposals for the provision of Construction Services to provide, Construction of ADA compliant curb ramps in Shelby County, Tennessee. The RFP is located on the County's website at www.shelbycountyttn.gov and click the link "Department" at the top, then P for the Purchasing Department, then click on the link "Bids."

A pre-bid conference will be held Friday, January 6, 2012 at 2:00 P.M., at the Shelby County Roads and Bridges Building Conference Room, 6449 Haley Road, Building #11, Memphis, Tennessee 38134.

The proposal, as submitted, should include all estimated cost related to the services requested in this RFP. If selected, your proposal will be the basis for negotiating a contract with Shelby County Government. Respondents requesting additional information or clarification are to contact, Nelson Fowler at nelson.fowler@shelbycountyttn.gov.

Proposals must be received in the office of the Administrator of Purchasing **no later than 4:00 P.M. on Friday, January 13, 2012**. Proposals should be addressed to:

**Nelson Fowler, Manager A
Shelby County Government
160 N. Main, Rm. 550
Memphis, TN 38103**

The package containing the original proposal (**clearly identified as original**) and three (3) copies of your proposal must be sealed and marked with the Bidders name and **"CONFIDENTIAL, "Shelby County ADA Curb Ramp Installation", RFP # 12-012-24** noted on the outside.

Sincerely,

Nelson Fowler, Manager A
Purchasing Department Shelby County Government

cc: Darren Sanders, Shelby County Engineer
Chris Masin, Shelby County Engineers Department

SECTION A

REQUEST FOR PROPOSAL

**SHELBY COUNTY
A.D.A.
CURB & RAMP
INSTALLATION
PROJECT**

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I. INTRODUCTION

Shelby County Government (the "County"), is seeking proposals from interested and qualified firms for the construction of curb ramps compliant with Title II of the Americans with Disabilities Act of 1990 (ADA). This Request for Proposal ("RFP") is being released to invite interested and qualified firms to prepare and submit proposals in accordance with instructions provided where the successful candidate will be selected and invited to enter into a contractual relationship with Shelby County for the Services outlined in this RFP.

II. MINIMUM BIDDER REQUIREMENTS

All bidders must:

1. **Apply** and **qualify** for an Equal Opportunity Compliance (EOC) certification number through our EOC Administration **prior to submitting your response**.
2. Must have a current "MU-D" or "MU" license with the Board for Licensing Contractors.
3. Firms located within the boundaries of Shelby County are required to have a current Shelby County Business License or be considered exempt from the license requirement by the Shelby County Clerks Office.
4. Adhere to the requirements of the "Living Wage Ordinance #328," Section VI, Item G.
5. Adhere to all Title VI requirements and provide proof/documentation if necessary.
6. A written statement of compliance to Title VI and the Living Wage Ordinance must be provided with your response. Please see page 3, item G for the Living Wage Ordinance.
7. Meet all other requirements for the performance of the Services in accordance with the provisions of this RFP.
8. Must submit a Bid Bond in the amount of 5% of their bid. This bond must be submitted with your bid.
9. The successful contractor must be able to submit a performance/labor material bond separate bonds each in the amount of 100% of the amount of the contract.
10. Must submit Drug Free Work Place Affidavit, LOSB Form B and A with their bid.

Please Note: *As a part of doing business with Shelby County, each individual, company, or organization is required to obtain an "Equal Opportunity Compliance" certification number prior to submitting your response.*

You can access the online application to receive the numbers indicated above at www.shelbycountyttn.gov and click the link "Department" at the top, then P for Purchasing Department, then click on the link "Conducting business with Shelby County." Please download the application instructions and read thoroughly prior to accessing the application.

If you have any questions regarding the application, you may contact Purchasing at (901) 222-2250 or the EOC Administration at (901) 222-1100.

III. CORRESPONDENCE

All correspondence, proposals and questions concerning the RFP are to be submitted to:

Nelson Fowler, Manager A
Shelby County Government
160 N. Main St. Suite 550
Memphis, TN 38103
(901) 222-2251

Respondents requesting additional information or clarification are to contact Nelson Fowler in writing at nelson.fowler@shelbycountyttn.gov or at the address listed above. Questions should reference the section of the RFP to which the question pertains and all contact information for the person submitting the questions. ***IN ORDER TO PREVENT AN UNFAIR ADVANTAGE TO ANY RESPONDENT, VERBAL QUESTIONS WILL NOT BE ANSWERED. The deadline for submitting questions will be Tuesday, January 10, 2012 by 12:00 p.m. (CST).*** These guidelines for communication; have been established to ensure a fair and equitable process for all respondents.

Note: All written questions submitted by the deadline indicated above will be answered and posted on the County's website at www.shelbycountyttn.gov within fort eight (48) hours of the above cut-off date.

Please be aware that contact with any other personnel (other than the person clearly identified in this document) within Shelby County or its benefit administrators regarding this RFP may disqualify your company from further consideration.

IV. PROPOSAL SUBMISSION DEADLINE

All proposals must be received at the address listed above no later than **Tuesday, January 10, 2012 @ 4:00 PM**. Facsimile or electronically transmitted proposals will not be accepted since they do not contain original signatures. Postmarks will not be accepted in lieu of actual receipt. Late or incomplete proposals may not be opened and considered.

V. PROPOSAL TIMELINE

Shelby County reserves the right to modify this timeline at any time. If the due date for proposals is changed, all prospective Bidders shall be notified.

Request for Proposals Released	Friday, December 9, 2011
Pre-Bid Conference	Friday, January 6, 2012, at 2:00 P.M.
Proposal Due Date	Friday, January 13, 2012 at 4:00 P.M.
Notification of Award	February 2012

NOTE: THERE WILL BE NO PUBLIC BID OPENING FOR THIS BID.

The County may reproduce any of the Bidders proposal and supporting documents for internal use or for any other purpose required by law.

VI. PROPOSAL CONDITIONS

A. Contingencies

This RFP does not commit the County to award a contract. The County reserves the right to accept or reject any or all proposals if the County determines it is in the best interest of the County to do so. The County will notify all Bidders, in writing, if the County rejects all proposals.

B. Modifications

The County reserves the right to issue addenda or amendments to this RFP.

C. Proposal Submission

To be considered, all proposals must be submitted in the manner set forth in this RFP. It is the Bidders responsibility to ensure that its proposals arrive on or before the specified time.

D. Incurred Costs

This RFP does not commit the County to pay any costs incurred in the preparation of a proposal in response to this RFP and Bidders agree that all costs incurred in developing this RFP are the Bidders responsibility.

E. Final Authority

The final authority to award a contract rests solely with the Shelby County Purchasing Department.

F. Proposal Validity.

Proposals submitted hereunder will be firm for ninety (90) calendar days from the due date unless otherwise qualified.

G. Disclosure of Proposal Contents

Provider understands and acknowledges that the County is a governmental entity subject to the laws of the State of Tennessee and that any reports, data, or other information supplied to the County is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee. All proposals and other materials submitted become the property of Shelby County Government. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and before the time of a Notice of Intent to Award is issued. Thereafter, proposals will become public information.

H. Living Wage Ordinance and Prevailing Wage Ordinance

Living Wage - In accordance with Ordinance Number 328, commonly referred to as the Living Wage Ordinance, all persons/entities engaged in service contracts with the County, including but not limited to both prime and subcontractors, shall pay a Living Wage to employees for all work performed on said service contract, as defined in the Living Wage Ordinance. Proof of such compensation must be evidenced as required in the Living Wage Ordinance.

Prevailing Wage – Any firm, individual, partnership or corporation awarded a contract by the COUNTY for the construction of, improvement, enlargement, alteration or replacement of a public work or project in excess of \$500,000 and any subcontractors of such public work or project in excess of \$100,000 (“Recipient”) shall be required to pay local prevailing wages and benefits for laborers, mechanics, or other listed classifications as defined by the Tennessee Department of Labor. The prevailing wage rate shall be the most current State of Tennessee prevailing wage established by the Tennessee Department of Labor For Region 1 (Shelby County). The benefit rates shall be the most current rates described in the published schedule by the Memphis and West Tennessee Building and Construction Trades Council, except as otherwise provided in the Shelby County Code of Ordinances. The applicable rate shall be determined at the time that the project is awarded. In instances where Prevailing wage applies, Prevailing Wage will override the Living Wage requirement.

I. Non-discrimination and Title VI

The contractor hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or 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 handicap and/or 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 non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

Any recipient entity shall be subject to the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and regulations promulgated pursuant thereto. It shall develop a Title VI implementation plan with participation by protected beneficiaries as may be required by such law or regulations. To the extent applicable, such plan shall include Title VI implementation plans sub-recipients of federal funds through the entity. The contractor shall produce the plan upon request of Shelby County Government. Failure to provide same shall constitute a material breach of contract.

J. LOSB

SHELBY COUNTY GOVERNMENT LOCALLY OWNED SMALL BUSINESS (LOSB) PROGRAM FOR CONSTRUCTION SERVICES

Shelby County ADA Curb Ramp Installation

General

Shelby County Government is committed to a policy of non-discrimination pursuant to the Equal Protection provisions of the United States Constitution. It is further the policy of Shelby County that its purchasing and contracting practices encourage the use of Locally-Owned Small Businesses (LOSB's) in all solicitations. In furtherance of these policy objectives, Shelby County seeks to afford all citizens equal opportunities to do business on county contracts and to ensure that all bidders, or Contractors doing business with Shelby County provide to LOSB's, maximum practicable opportunities, commensurate with availability, price and capabilities required, to participate on contracts which are paid for, in whole or in part, with monetary appropriations from Shelby County.

Shelby County seeks to prevent discrimination against any person or business in pursuit of these opportunities on the basis of race or gender. Shelby County will conduct its contracting and purchasing programs to discourage any discrimination and will actively seek to resolve all claims of discrimination brought against Shelby County or any Contractors involved in such contracting and purchasing programs.

Shelby County has determined that **20%** of the contract sum will be contracted with LOSB vendors. For assistance and information regarding LOSB participation, Bidders shall contact:

Ms. Doris Vester
Office of Equal Opportunity Compliance
Board of Commissioners of Shelby County
160 North Main Street, Suite 969
Memphis, Tennessee 38103
Phone: 901-222-1100
Fax: 901-222-1101
E-mail: Doris.Vester@shelbycountyttn.gov

Definitions

The definitions used in this document are as follows:

1. **"Bidder"** means any person, firm, partnership, association, or joint venture seeking to be awarded a contract or subcontract to provide goods, commodities, or services.
2. **"Certification"** or **"Certified"** means a Business that is certified by Shelby County Government under the LOSB program.

3. **"Commercially useful function"** means being responsible for the management and performance of a distinct element of the total work.
4. **"Contractor"** shall mean any person or business enterprise that submits a bid or proposal to provide labor, goods, or services to Shelby County by contract for profit in the area of construction or construction-related activities; and, any person or firm who supplies or provides labor, goods, or services to Shelby County by contract for profit.
5. **"Efforts to Achieve LOSB Participation"** means that the Contractor will solicit LOSB Participation with respect to the procurement and will consider all sub-bids and quotations received from LOSB's. When a subcontract is not awarded to the LOSB, the Contractor must document the reason(s) the award was not made and substantiate that documentation in writing pursuant to the provisions of this Program.
6. **"Locally Owned Small Business (LOSB)"** means a business whose home office is located in Shelby County, whose annual revenues do not exceed \$3,000,000 and who has been certified by Shelby County Office of Equal Opportunity Compliance.
7. **"Non-LOSB"** means a business, which is not certified as a LOSB.
8. **"Unavailable"** means either that: (1) there is no LOSB providing goods or services requested; or, (2) no LOSB submitted a bid.

Requirements and Compliance

All firms or entities seeking to become Contractors as outlined herein are required to make good faith efforts to achieve LOSB participation when submitting a proposal or bidding on Shelby County procurements. Bidders shall not discriminate on the basis of race or gender when soliciting bids in the performance of Shelby County's procurements. Discrimination complaints brought to the attention of Shelby County Office of Equal Opportunity Compliance (or its designee) will be reviewed and investigated to the extent necessary to determine the validity of such complaints and what actions, if any, should be taken by Shelby County.

Policies and Procedures

Shelby County may adopt policies and procedures as necessary to carry out and implement its powers and duties with regard to the LOSB Program. It is the goal of Shelby County to encourage participation by LOSB's and to adopt rules and regulations which achieve to the greatest extent possible a level of participation by LOSB's taking into account the total number of all Contractors and suppliers. Therefore, Shelby County will review each procurement request to determine the maximum potential for utilization of LOSB's. This review is based on the availability of qualified LOSB's providing goods or services as it relates to the scope of the bid or procurement process. The following procedures may be utilized during the procurement process.

1. Pre-Bid Activity

a. Bid Language

Shelby County may insert language into each bid specification describing the LOSB Program to assure that all prospective bidders are aware of the requirements to make efforts to utilize LOSB's.

b. Notification

Shelby County may provide written notification to Contractors and LOSB's regarding pre-bid conferences; technical assistance to LOSB's; LOSB Program procedures and required documentation; and, provide a list of LOSB's who have expressed an interest in competing for the bid or in performing as a subcontractor.

2. Contractor's Responsibilities

a. Efforts to Achieve LOSB Participation

All entities seeking to become Contractors are required to make efforts to achieve maximum LOSB participation, as outlined in this LOSB Program, when submitting a response to a bid or negotiated proposal in response to a Shelby County procurement opportunity. Such Efforts should be documented on **LOSB Form "A."** and submitted with your bid.

b. Utilization

Contractors are required to utilize legitimate LOSB's in order to receive credit for the utilization of a LOSB. Contractors must document all LOSB's to be utilized, the percentage of utilization and the intended scope of work. Such information should be submitted on **LOSB Form "B."** This documentation must be submitted with the bid or negotiated proposal document.

c. Commercially Useful Functions

All LOSB's identified on **LOSB Form "C"** or **LOSB Form "D"** shall perform a Commercially Useful Function.

d. Unavailability

If a potential Contractor's efforts to obtain LOSB participation are unsuccessful due to the unavailability of a LOSB, the Contractor will submit a statement of unavailability. **LOSB Form "A."**

e. Pre-Work Conference

Any Contractor who is the successful bidder shall be required to attend a conference with Shelby County prior to beginning the work. The primary purpose of this conference is to review the project scope and review LOSB participation as outlined in **LOSB Form "B."** Shelby County will also review the Statement of Intent to Perform as a Subcontractor or Provide Supplies or Services as documented on **LOSB Form "C."**

f. Post-Award Change

Any Contractor who determines that a LOSB identified on **LOSB Form "B"** cannot perform shall request approval from Shelby County to contract with an alternate subcontractor pursuant to this LOSB Program. Such request will be reviewed and approved only after adequate documentation for the proposed change is presented.

g. LOSB Certification

Each month the Contractor shall submit **LOSB Form "D"** certifying all payments made to LOSB's.

3. LOSB Responsibilities

a. Commercially Useful Function

It is the responsibility of each LOSB providing subcontracted goods and/or services to submit **LOS Form "C"** certifying that it is performing the work and that it is a Commercially Useful Function.

Written Agreement

Shelby County policies and procedures on LOSB participation are designed to create contractual relationships between Contractors and LOSB's. Therefore, a Contractor may utilize the services of a LOSB in estimating and satisfying the scope of work, provided that a written contract/agreement is executed between the Contractor and the LOSB.

Certification

To ensure that the ownership and control over decision-making and day-to-day operations of a Certified LOSB is legitimate, Shelby County reserves the right to verify the ownership and control of each LOSB utilized.

Monitoring LOSB Utilization

Shelby County intends to monitor and enforce this LOSB Program. Shelby County reserves the right to conduct random audits of each of its Contractor's/ LOSB's. Shelby County reserves the right to reevaluate a LOSB's certification at any time.

Efforts to Achieve LOSB Participation

The Contractor shall consider all bids and/or quotations received from LOSB's. When a subcontract is not awarded by a Contractor to any of the competing LOSB's, the Contractor must document the reason(s) the award was not made to the LOSB's. It is the responsibility of the Contractor to prove that it employed Efforts to Achieve LOSB participation. Evidence supporting the Contractor's Efforts must be documented on **LOS Form "A,"** which must include, but is not limited to, the following:

1. Contractor must submit proof that it solicited LOSB participation through reasonable and available means including, but not limited to:
 - a. Written notices to LOSB's who have the capability to perform the work of the contract or provide the service;
 - b. Direct mailing, electronic mailing, facsimile or telephone requests.
2. Contractor must submit proof that it provided interested LOSB's with adequate information about plans, requirements and specifications of the contract in a timely manner to assist them in responding to a solicitation.
3. Contractor must submit proof that it made Efforts to Achieve LOSB Participation including, but not limited to, proof that it made opportunities available to LOSB suppliers and identified opportunities commensurate with opportunities made available and identified to Non LOSB's. Such proof will include the names of businesses, contact person(s), addresses, telephone numbers, and, a description of the specifications for the work selected for subcontracting.
4. Contractor must submit proof that it allowed LOSB's the opportunity to review bid specifications, blue prints and all other bid related items at no charge. The Contractor must allow sufficient time for review prior to the bid deadline.

5. Contractor must submit proof that it made Efforts to Achieve LOSB Participation by not rejecting a LOSB as unqualified or unacceptable without sound reasons based on a thorough investigation of their capabilities. Contractor must submit proof of the basis for rejecting any LOSB deemed unqualified or unacceptable by the Contractor. The Contractor will not impose unrealistic conditions of performance on LOSB's seeking subcontracting opportunities.
The Contractor must fully cooperate with Shelby County in its post-contract award LOSB Program audit and compliance efforts.

Substitution of LOSB's after Contract Award

In order to make a substitution of a LOSB, a Contractor must make a request to Shelby County. This request must be submitted in writing to Shelby County. Shelby County reserves the right to approve any substitution of a LOSB. The Contractor has the responsibility to provide Shelby County with a reasonable basis for the substitution. If the Contractor desires to substitute the LOSB with a Non-LOSB, then the Contractor must comply with the Effort to Achieve LOSB Participation provisions set forth herein.

Noncompliance with LOSB Program

Any of the following reasons, individually or collectively, may result in suspension from bidding, prohibition from contracting, or cancellation of contracts:

1. The failure to perform according to contract provisions relating to this LOSB Program;
2. Violation of, circumvention of, or failure to comply with the LOSB Program; and/or,
3. Other reasons deemed appropriate by Shelby County.

Construction

This LOSB Program is consistent with Shelby County Policies and Procedures. Wherever conflicts exist, the provision in the Shelby County Policies and Procedures will prevail.

LOSB Program Forms Description

- **LOSB Form A -- Certification of Efforts**

Contractors are required to submit **LOSB Form "A"** with proposals as evidence and documentation of efforts that have been made to contact LOSB's for participation as subcontractors, joint venture partners, or suppliers of goods and services. Contractors are required to contact LOSB's and solicit quotes for goods and services. All responses to the Contractor's solicitation should be recorded and reported.

- **LOSB Form B -- LOSB Utilization Plan**

A Contractor is required to submit **LOSB Form "B"** with its Proposal in order to identify all LOSB's they propose to utilize in providing the goods and services included in the Proposal. Contractors may only include a proposed provider of goods or services on **LOSB Form "B,"** if the entity is a legitimate LOSB. Additionally, if such entity will provide services, Contractors may only list LOSB's on **LOSB Form "B"** if the entity

will perform a Commercially Useful Function. The Successful Contractor will be required to finalize and submit **LOS B Form "B"** prior to award of a contract. **LOS B Form "B"** will be incorporated into the contract and will become a contractual obligation of the Successful Contractor. **LOS B Form "B"** shall not be changed or altered after award of a contract without approval from Shelby County. The Contractor is required to provide written notice describing the reasons for any proposed change to Shelby County and to obtain approval from Shelby County of any changes to **LOS B Form "B."**

LOS B Form C –Statement of Intent to Perform as a Subcontractor or Provide Supplies or Services.

Contractors are required to have each subcontracted LOSB providing services complete **LOS B Form "C"** certifying that it is performing the work and that it is a Commercially Useful Function.

- **LOS B Form D** – Statement of Payments to LOSB's

Contractors are required to record and maintain information regarding the utilization of LOSB's and all other information during the performance of awarded contracts. This information shall be recorded and maintained on **LOS B Form "D."** The form is required to be submitted to Shelby County each month. **LOS B Form "D"** must be completed in its entirety with information regarding the types of goods purchased from LOSB's or the types of services rendered by LOSB's and dollars amounts paid for their goods or services.

**Shelby County
 LOSB Program
 LOSB FORM A
 CERTIFICATION OF EFFORTS TO ACHIEVE LOSB PARTICIPATION
 (To Be Submitted with the Bid/Proposal)**

Company Name: _____

Bid No.: _____

I certify that the following efforts were made to achieve LOSB participation:

		YES	NO
A	Provided written notices to LOSB's who have the capability to perform the work of the contract or provide the service		
B	Direct mailing, electronic mailing, facsimile or telephone requests		
C	Provided interested LOSB's with adequate information about plans, requirements and specifications of the contract in a timely manner to assist them in responding to a solicitation		
D	Allowed LOSB's the opportunity to review bid specifications, blue prints and all other bid/RFP related items at no charge, and allowed sufficient time for review prior to the bid deadline		
E	Acted in good faith with interested LOSB's, and did not reject LOSB's as unqualified or unacceptable without sound reasons based on a thorough investigation of their capabilities		
F	Did not impose unrealistic conditions of performance on LOSB's seeking subcontracting opportunities		

Additionally, I contacted the referenced LOSB's and requested a bid/proposal. The responses I received were as follows:

Name and Address of LOSB	Type of Work And Contract Items, Supplies or Services to be Performed	Response	Reason for Not Accepting Bid/Proposal

(If additional space is required, this form maybe duplicated)

If applicable, please complete the following:

I hereby certify that LOSB's were "Unavailable" as defined in the LOSB Program to submit bids to provide goods and services for this RFP/Bid's purpose.

Reasons for the "Unavailability":

Submitted by:

Authorized Representative Signature _____

Title _____

Date _____

**Shelby County
LOSB Program**

LOSB FORM B

LOSB UTILIZATION PLAN

(To Be Submitted with the Bid/Proposal)

Company: _____

Bid No.: _____

I, _____, do certify that on the following procurement opportunity,
(Contractor) _____, the following LOSB's will be utilized as sub-contractors,
suppliers, (Opportunity) or to provide professional services:

Name	Description of Work	Contract Value	LOSB Number

(If additional space is needed this form may be duplicated)

TOTAL CONTRACT VALUE: _____

TOTAL % OF LOSB PARTICIPATION: _____

The successful bidder is required to finalize and submit this form prior to award of a contract. Joint Venture Agreements, partnering agreements and all pertinent information must be presented prior to contract award. This information will be incorporated into the contract and will become a contractual obligation of the successful bidder. The finalized LOSB Form B shall not be changed or altered after award of a contract without approval from Shelby County. The successful bidder is required to provide written notice describing the reasons for the change to Shelby County to obtain approval of any changes to LOSB Form B.

Submitted by:

Authorized Representative Signature

Title

Date

**Shelby County
LOSB Program
LOSB FORM C**

**STATEMENT OF INTENT TO PERFORM AS A SUBCONTRACTOR OR
PROVIDE SUPPLIES OR SERVICES
(To Be Submitted Prior to Contract Award)**

Company Name: _____
Bid No.: _____

I, _____, intend to provide supplies or services in connection with the
(Subcontractor/Provider)
above **bid/proposal** request as a LOSB.

I am prepared to perform a “**Commercially Useful Function**” in connection with the above project.

The following are the work items to be performed:

at the following price: \$ _____.

If applicable, please complete the following:

I have or will enter into a formal agreement with _____ for the above-
(Company)
described scope of work, supplies, or services conditioned upon the execution of a contract
with Shelby County.

I hereby certify that this statement is true and correct:

Business Information: _____ **Submitted by:** _____

Business: _____ **Authorized Representative (Print):** _____

Address: _____

Title: _____

Phone: _____ **Authorized Representative's Signature:** _____

Facsimile: _____ **Date:** _____

Shelby County
LOSB Program

LOSB FORM D

STATEMENT OF PAYMENTS TO LOSB'S
(To Be Submitted Monthly and with Final Payment Request)

Company Name: _____

Name/Contract No.: _____

Payment Request Number: _____

Name of Firm	Description of work	Total Amount Due This Month	Total Dollars Paid To Date	% of Contract Completed	Start Date of Contract	End Date of Contract

(If additional space is needed this form may be duplicated)

I hereby certify that this statement is true and that above payments have been made.

Business Information:

Submitted by:

Business: _____

Authorized Representative (Print):

Address: _____

Title: _____

Phone: _____

Authorized Representative's Signature:

Facsimile: _____

Date: _____

LOCALLY OWNED SMALL BUSINESS PURCHASING PROGRAM RULES AND REGULATIONS:

1. The Administrator of Purchasing in conjunction with the Administrator of EOC shall identify certain goods and services required by the County to be set aside for special purchasing procedures for locally owned small businesses.
2. Only certified locally owned small businesses will be allowed to submit competitive bids on the goods or services identified under paragraph (i) above.
3. The Administrator of Purchasing shall, in conjunction with the Administrator of EOC, annually review the Shelby County Capital Improvement Program to determine those projects with a construction cost of \$250,000 or more. Contracts amounting to at least ten (10%) of the construction costs of such project shall be awarded to locally owned small businesses as defined herein, except as set forth in sub-paragraph (vi) of this section, either as part of the conditions of the solicitation for general contractors bidding on these projects, or as separate bids issued by the County for subcontracts that may be assigned to general contractors.
4. After adhering to all other bidding and purchasing requirements of the County, not inconsistent with this part, if no bids are received from locally owned small businesses, then the County may solicit bids for the goods or services from all other sources.
5. On all purchases and/or contracts entered into by the County, the Purchasing Administrator or his or her designee shall have the right to negotiate with any supplier of goods or services to the County for the inclusion of locally owned small business subcontractors and/or suppliers in the contract award.
6. Failure by a supplier or contractor to include locally owned small business subcontractors or suppliers in its bid or contract may be grounds for rejection of said bid or contract unless the supplier or contractor can show documented evidence of good cause why none were included.
7. Any locally owned small business awarded a contract or purchase order under this section shall not sublet, subcontract, or assign any work or services awarded to it without the prior written consent of the Mayor or the Purchasing Administrator.
8. As to those purchases below the requirement for a formal bid solicitation (currently, under \$15,000) and not included in the locally owned small business set aside, the Administrator of Purchasing shall determine if any locally owned small business offers that product or service. If so, at least one such eligible locally owned small business should be included in the vendors contacted for an opportunity to bid, and the Administrator of Purchasing may, at his discretion, designate in a purchase order the purchase of such goods and services from the identified locally owned small business.
9. In those situations where a locally owned small business as defined herein, engages in open competitive bidding for County contracts, the Administrator of Purchasing shall provide for a preference for the locally owned small business where responsibility and quality are equal. Said preferences shall not exceed five percent (5%) of the lowest possible bidder meeting specifications. The preference shall be applied on a sliding scale in the following manner:
 - a. A preference of up to five percent (5%) shall be allowed for contracts up to

\$ 500,000.00;

- b. A preference of up to three and five-tenths percent (3.5%) shall be allowed for contracts up to \$750,000.00;
- c. A preference of two and one-half percent (2.5%) shall be allowed for contracts up to \$1,000,000.00;
- d. A preference of two percent (2%) shall be allowed for contracts that exceed \$1,000,000.00.

10. For construction contracts over \$2,000,000.00, the Administrator of Purchasing shall provide for a preference of two percent (2%) to general contractors meeting the requirements of Section 1, Subparagraph B, if fifty percent (50%) or more of the total work comprising the bid has been or will be awarded to certified locally owned small businesses. The fifty percent subcontracting threshold must be met prior to contract execution.

11. The Administrator of Purchasing may divide a single bid package for any purchase of goods and services into two or more smaller bid packages in any case that the Administrator of Purchasing reasonably believes that the smaller bid packages will result in a greater number of bids by locally owned small businesses.

12. The Administrator of Purchasing, upon approval of the County Mayor, may establish special insurance and bonding requirements for certified locally owned small businesses so long as they are not in conflict with the laws of the State of Tennessee.

13. The Administrator of Purchasing, with the approval of the County Mayor, shall adopt and promulgate, and may from time to time, amend rules and regulations not inconsistent with the provisions of this ordinance, governing the purchase of goods and services from locally owned small business concerns to effectuate and implement the Locally Owned Small Business Purchasing Program within the intent of this ordinance.

14. The Administrator of EOC shall, in conjunction with the Administrator of Purchasing, provide a written quarterly report to the Mayor and Board of Commissioners which shall include a summary of the purchases selected for this program, a listing of the contracts awarded to locally owned small businesses for the period, and the dollar amounts of each such contract, and the percentage which such contracts bear to the total amount of purchases for the period.

K. DRUG-FREE WORKPLACE AFFIDAVIT

STATE OF _____

COUNTY OF _____

The undersigned, principal officer of _____, an employer of five (5) or more employees contracting with _____ County government to provide construction services, here states under oath as follows:

1. The undersigned is a principal officer of _____ (hereinafter referred to as the "Company"), and is duly authorized to execute this Affidavit on behalf of the Company.
2. The Company submits this Affidavit pursuant to T.C.A. § 50-9-113, which requires each employer with no less than five (5) employees receiving pay who contracts with the state or any local government to provide construction services to submit an affidavit stating that such employer has a drug-free workplace program that complies with Title 50, Chapter 9, of the *Tennessee Code Annotated*.
3. The Company is in compliance with T.C.A. ~ 50-9-113. Further affiant smith not.

Principal Officer

STATE OF _____

COUNTY OF _____

Before me personally appeared with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the foregoing affidavit for the purposes therein contained. Witness my hand and seal at office this day of _____.

Notary Public

My commission expires:

L. GRATUITY DISCLOSURE FORM:

INSTRUCTIONS: This form is for all persons receiving any Shelby County Government contract, land use approval or financial grant money to report any gratuity that has been given, directly or indirectly, to any elected official, employee or appointee (including their spouses and immediate family members) who is involved in the decision regarding the contract, land use approval, or financial grant of money. Please note that the information listed on this statement is subject to being posted on the Shelby County Government's website.

1. NAME:

2. DATE OF GRATUITY:

3. NATURE AND PURPOSE OF THE GRATUITY:

4. NAME OF THE OFFICIAL, EMPLOYEE, APPOINTEE, OR FAMILY MEMBER WHO RECEIVED THE GRATUITY:

5. NAME OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY:

6. ADDRESS OF THE PERSON OR ENTITY THAT PROVIDED THE GRATUITY:

7. DESCRIPTION OF THE GRATUITY:

8. COST OF THE GRATUITY: (If cost is unknown and not reasonably discernible by the person giving the gratuity, then the person giving the gratuity shall report a

9. AFFIDAVIT:

The information contained in this Gratuity Disclosure Form, and any supporting documentation or materials referenced herein or submitted herewith, is true and correct to the best of my knowledge, information and belief and affirm that I have not given, directly or indirectly, any gratuity to any elected official, employee or appointee (including spouse and immediate family members) that has not been disclosed and I affirm that I have not violated the provisions of the Shelby County Government Code of Ethics.

Signature

Date

Print Name

Sworn to and subscribed before me this _____ day of _____ in
_____ County, Tennessee:

Signature of Notary

Affix Notary Seal Here

Notary Registration No.

M. FORMS TO BE SUBMITTED:

LOSB FORM A: MUST BE COMPLETED AND SUBMITTED IN YOUR BID ENVELOPE.

LOSB FORM B: MUST BE COMPLETED, SUBMITTED WITH YOUR BID AND ATTACHED TO THE OUTSIDE OF THE ENVELOPE DOCUMENTING ALL LOSB'S TO BE UTILIZED, THE PERCENTAGE OF UTILIZATION AND THE INTENDED SCOPE OF THE WORK.

LOSB FORM C- MUST BE COMPLETED AND SUBMITTED BY EACH LOSB PROVIDING SUBCONTRACTED GOODS AND OR SERVICES CERTIFYING THAT THEY ARE PERFORMING THE WORK AND THAT IT IS A COMMERCIALY USEFUL FUNCTION. ONLY REQUIRED AFTER THE AWARD OF THE BID.

LOSB FORM D-MUST BE COMPLETED AND SUBMITTED BY THE SUCCESSFUL CONTRACTOR EACH MONTH CERTIFYING ALL PAYMENTS MADE TO LOSB'S.

DRUG FREE WORKPLACE AFFIDAVIT - MUST BE COMPLETED AND SUBMITTED WITH YOUR BID.

BID BOND - ALL BIDS MUST BE ACCOMPANIED BY A BANK CERTIFIED CHECK OF BANK DRAFT, LETTER OF CREDIT ISSUED BY ANY NATIONAL BANK OR APPROVED BID BOND FOR NOT LESS THAN 5% (PERCENT) OF THE AMOUNT OF THE BID. ALL PROPOSAL GUARANTEES SHALL BE MADE OUT TO THE COUNTY OF SHELBY.

NOTE: THE SUCCESSFUL CONTRACTOR WILL SUBMIT LOSB FORM C AND D.

FAILURE TO SUBMIT THE REQUIRED FORMS MAY RESULT IN YOUR BID BEING REJECTED AS BEING IN NON-COMPLIANCE WITH BID REQUIREMENTS.

VII. General Requirements:

A. Scope of Contract

The County wishes to engage in a contractual relationship with the best-qualified Consultant selected through a competitive process that will work well with the Engineering Department in the performance of the Services in a manner that is cost-effective and practical. The Consultant must be prepared to begin immediately upon receipt of a Notice to Proceed.

B. Project Time Frame

The work under this contract shall be substantially completed within ninety (90) calendar days.

C. Reservation of Rights

The County reserves the right, for any reason to accept or reject any one or more proposals, to negotiate the term and specifications for the services provided, to modify any part of the RFP, or to issue a new RFP.

D. Selection Criteria

Contract(s) will be awarded based on the lowest responsive proposals received. The contents of the proposal of the successful Bidders will become contractual obligations and failure to accept these obligations in a contractual agreement may result in cancellation of the award.

E. Additional Information and References

Any additional information that would be helpful to the County evaluating your proposal, including a list of current and former clients with a similar profile to Shelby County should be submitted.

VIII. CONTRACT REQUIREMENTS

The successful Proposer will be expected to enter into a contract incorporating the following terms and conditions, and such additional terms and conditions standard to services of this type.

A. General Requirements

1. Control. All services by the Provider will be performed in a manner satisfactory to the County, and in accordance with the generally accepted business practices and procedures of the County.
2. Provider's Personnel. The Provider certifies that it presently has adequate qualified personnel to perform all services required under this Contract. The provider will supervise all work under this Contract. The Provider further certifies that all of its employees assigned to serve the County have such knowledge and experience as required to perform the duties assigned to them. Any employee of the Consultant who, in the opinion of the County, is

incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with services under this Contract.

3. Independent Status. (a) Nothing in this Contract shall be deemed to represent that the provider, or any of the provider's employees or agents, are the agents, representatives, or employees of the County. The Provider will be an independent consultant over the details and means for performing its obligations under this Contract. Anything in this Contract which may appear to give County the right to direct the Provider as to the details of the performance of its obligations under this Contract or to exercise a measure of control over the Provider is solely for purposes of compliance with local, state and federal regulations and means that the Consultant will follow the desires of the County only as to the intended results of the scope of this Contract.

(b) It is further expressly agreed and understood by Provider that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the County; that the provider has been retained by the County to perform the services specified herein (not hired) and that the remuneration specified herein is considered fees for services performed (not wages) and that invoices submitted to the County by the Provider for services performed shall be on the Consultant's letterhead.

4. Termination or Abandonment. (a) It shall be cause for the immediate termination of this Contract if, after its execution, the County determines that either:

- (i) the Provider or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting.
- (ii) The Provider has subcontracted, assigned, delegated, or transferred its rights, obligations, or interests under this Contract without the County's consent or approval.
- (iii) The Provider has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of Provider's assets.

(b) The County may terminate the Contract upon five (5) days written notice by the County or its authorized agent to the Provider for Provider's failure to provide the services specified under this Contract.

(c) This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination. In the event of such termination, the Provider shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date; however, the Provider shall not be reimbursed for any anticipatory profits that have not been earned as of the date of termination.

(d) All work accomplished by Provider prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of the County prior to payment for services rendered.

(e) Notwithstanding the above, the Provider shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Provider and the County may withhold any payments to Consultant for the purpose of setoff until such time as the exact amount of damages due the County from the Provider is determined.

5. Subcontracting, Assignment or Transfer. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the Provider from performance of its duties under this contract. The County shall not be responsible for the fulfillment of the Provider's obligations to its transferors or sub-providers. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the assignment.

6. Conflict Of Interest. The Provider covenants that it has no public or private interest, and will not acquire directly or indirectly any interest, which would conflict in any manner with the performance of its services. The Provider warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the County as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-provider to the Provider in connection with any work contemplated or performed relative to this Contract.

7. Covenant against Contingent Fees. The Provider warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Provider, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Provider any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the County will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

8. Employment of County Workers. (a) The Consultant will not engage on a full, part-time, or other basis during the period of the Contract, any professional or technical personnel who are in the current employment of the County.

(b) Notwithstanding the foregoing, no prior County official or employee may be employed by or receive compensation, wages or benefits from Consultant for a period of one year from employment separation from County if during the period of employment with County the employee or official had any direct or indirect involvement with Consultant's services or operations provided to County

9. Arbitration. Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the Consultant and the County will be referred to the Shelby County Contract Administrator or his/her duly authorized representative, whose decision regarding same will be final.

10. General Compliance with Laws. (a) If required, the Provider shall certify that it is qualified and duly licensed to do business in the State of Tennessee and that it will take such

action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

(b) The Provider is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, the Americans with Disabilities Act (ADA), and all state and local laws, rules and regulations pertaining to electrical requirements of residential construction and renovation.

(c) This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this contract the Provider agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

11. Nondiscrimination. The Provider 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 Provider on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Provider shall upon request show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination.

12. Entire Agreement. This Contract contains the entire Contract of the parties and there are no other promises or conditions in any other Contract whether oral or written. This Contract supersedes any prior written or oral Contracts between the parties.

13. Amendment. This Contract may be modified or amended, only if the amendment is made in writing and is signed by both parties.

14. Severability. If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible, and be legal, valid and enforceable.

15. No Waiver of Contractual Right. No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to

enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

16. Matters To Be Disregarded. The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this contract.

17. Subject To Funding. This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the term hereof, then this Contract will be terminated. In the event of such termination, the consultant shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date.

18. Travel Expenses. All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. The County will make no travel advances.

19. Incorporation of Other Documents. (a) Provider shall provide services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for the Shelby County Purchasing Department and incorporated herein by reference.

(b) It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

20. Contracting With Locally Owned Small Businesses. The Provider shall take affirmative action to utilized Locally Owned Small Businesses when possible as sources of supplies, equipment, construction and services.

21. Incorporation Of Whereas Clauses. The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

22. Waiver of Proprietary Interest. Notwithstanding anything to the contrary contained herein or within any other document supplied to County by the Provider, Provider understands and acknowledges that County is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to County by Consultant due to services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

23. Organization Status and Authority. (a) Provider represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and

authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

(b) The execution, delivery and performance of this Contract by the Provider has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Provider, any provision of any indenture, agreement or other instrument to which the Provider is a party, or by which the Provider's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

24. Warranty. Provider warrants to County that all Services shall be in strict compliance with the terms of this Contract, and all applicable governmental laws, rules and regulations.

25. Rights in Data. The County shall become the owner, and the Provider shall be required to grant to the County, or its successors, a perpetual, non-exclusive, non-transferable, royalty-free right, in the County's name, to use any deliverables provided by the Provider under this Contract, regardless of whether they are proprietary to the Provider or to any third parties.

26. Provider Responsibilities.

B. Indemnification and Insurance Requirements

1. Responsibilities for Claims and Liabilities. (a) Provider shall indemnify, defend, save and hold harmless the County, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the duties hereunder, whether performed by the Provider its sub-providers, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

(b) Provider expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the Consultant shall in no way limit the responsibility to indemnify, defend, save and hold harmless the County or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

(c) The County has no obligation to provide legal counsel or defense to the Provider or its sub-providers in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against Provider as a result of or relating to obligations under this Contract.

(d) Except as expressly provided herein, the County has no obligation for the payment of any judgment or the settlement of any claims against the Provider as a result of or relating to obligations under this Contract.

(e) Provider shall immediately notify the County, c/o Shelby County Government, Contracts Administration, 160 N. Main Street, Suite 550, Memphis, TN 38103, of any claim or suit made or filed against the Provider or its sub-providers regarding any matter resulting from

or relating to Consultant's obligations under this Contract and will cooperate, assist and consult with the County in the defense or investigation thereof.

(f) The Consultant shall immediately notify the County, c/o Shelby County Government, Contracts Administration, 160 N. Main Street, Suite 550, Memphis, TN 38103, of cancellation or changes in any of the insurance coverage required.

2. Insurance Requirements. Provider will provide evidence of the following insurance coverage:

PROFESSIONAL SERVICES/CONSULTANT PROJECTS LESS THAN \$1,000,000

Minimum Limits of Insurance

The Consultant/provider shall maintain coverage with limits of no less than:

- 1) *Commercial General Liability Insurance* \$1,000,000 limit per occurrence bodily injury and property damage/\$1,000,000 personal and advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. Shelby County Government, its elected officials, appointees, employees and members of boards, agencies, and commissions shall be named as additional insured. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) Products/Completed Operations
 - c) Contractual
 - d) Independent Contractors
 - e) Broad Form Property Damage
 - f) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 each accident for property damage and personal injury. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for \$1,000,000 per accident.
- 4) *Professional Liability* - coverage with minimum limit of \$1,000,000.00 per occurrence/\$2,000,000.00 annual aggregate. Insurer to be rated A- or better by A. M. Best & Co.

Shelby County shall be named as additional insured. All policies will provide for 30 days written notice to Shelby County of cancellation or material change in coverage provided.

C. Right to Monitor and Audit

Access to Records. During all phases of the work and services to be provided hereunder the Provider agrees to permit duly authorized agents and employees of the County, to enter Provider's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The Provider will maintain all books, documents, papers, accounting records, and other evidence pertaining to the fee paid under this Contract and make such materials available at their offices at all reasonable times during the period of this Contract and for three (3) years from the date of payment under this Contract for inspection by the County or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof; copies of said records to be furnished if requested.

IX. AWARD OF CONTRACT:

Bidders are advised that the lowest responsive proposal per set will be awarded the contract.

SECTION B

SPECIAL INSTRUCTIONS TO BIDDERS

INTERSECTION LIST

BID FORM

PROPOSAL

CONTRACT BOND

**SHELBY COUNTY
A.D.A.
CURB & RAMP
INSTALLATION
PROJECT**

SPECIAL INSTRUCTIONS TO BIDDERS

ADA CURB RAMP INSTALLATION PROGRAM

1. This contract shall consist of installing removal and replacement concrete sidewalk, curb and gutter and installation of curb ramps compliant with **Title II** of the Americans with Disabilities Act of 1990 (ADA) in existing conditions at various locations within unincorporated Shelby County as directed by the County Engineer.
2. All materials, construction methods and workmanship used in curb ramp installation shall conform to the City of Memphis Construction specifications, the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Part 101-19.6), the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) and/or the 2002 Edition of the North Carolina Accessibility Code with the 2004 amendments (NCAC) as adopted in the Memphis and Shelby County building codes.
3. Relocation of obstructions within the construction work zones shall be incidental to Payment Item No. 02775-03, "Curb Ramp (Existing Conditions)". Sign posts that are within the affected curb ramp area shall be removed by the Contractor and relocated to the proper location prior to the placement of concrete.
4. Contractor shall install and maintain traffic control devices including, but not limited to signs, warning barrels and flashers as specified in STATE OF TENNESSEE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) Part VI Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operations. Part VI of the Manual on Uniform Traffic Control Devices as required by the County Engineer to assure the safety of the public in the work zones. Traffic considerations at some location may necessitate the restriction the work hours to the time period 9:00 AM to 4:00 PM as directed by the County Engineer. All work in accordance with this provision shall be incidental to Payment Item No. 01551-5.01, "Traffic Control Devices for Construction Work Zones".
5. Curb ramps will be paid for at the contract unit price per each unit as Payment Item No. 02775-03, "Curb Ramp (Existing Conditions)". This shall include the removal of existing curb/gutter, sidewalks, water tables, and asphalt within the ramp area necessary to install a new ramp according to the listed in article 2 of these Special Instructions. Sidewalk removal at the nearest joint shall be saw cut. No chisels will be allowed on the existing surfaces. The full curb and gutter shall be removed in the ramp area. The installation of new curb/gutter, ramp, flares, landings, water tables, asphalt and coping walls within the ramp area shall be included in the unit price per each ramp. For bidding purposes, allow a minimum of 120 square feet of concrete in place per ramp

6. Installation of sidewalk, curb/gutter, water tables, and asphalt outside of the ramp area shall be paid separately under its bid item. Additional items and their limits shall be pre-approved approved by the County Engineer or his designee and will be limited to the minimum amount necessary to meet the specification listed in article 2 of these Special Instructions or to provide a quality adjoining section. The cost to remove existing material for the installation of additional items shall be considered incidental to the cost of installation of that item. Failure to get pre-approval will result in non payment for that item.
7. All materials removed shall be saw cut to a smooth, straight joint. The cost of saw cutting shall be considered incidental to the cost of that item.
8. No brick pavers (truncated domes) shall be required in completion of this project.
9. All asphalt replaced shall be a 411 D- surface mix. Asphalt removal and replacement within the ramp area; whether in the gutter or to remove existing curb/gutter shall be considered incidental to Payment Item No. 02775-03, "Curb Ramp (Existing Conditions)". Payment for all other asphalt work outside of the ramp area is to be charged to Payment Item No. 411.03SP "Asphalt Surface Repair".
10. Curb ramp throats shall be made flush with the original gutter grade (no lip) or as directed by the County Engineer or his designee.
11. If the gutter has an asphalt overlay, the ramp lip shall be built to match existing conditions or as directed by the County Engineer or his designee.
12. Care shall be taken to assure a uniform grade on the ramp, free of sags and short grade changes. Side slopes shall be free of sags and short grade changes.
13. When ramps have to be adjusted with asphalt to match the existing street asphalt grade, the Contractor shall complete the ramp, including asphalt adjustments to the ramp and street pavement disturbed during the construction process, within two (2) weeks after the ramp is poured and deemed compliant by applicable regulations.
14. Manholes, traffic signal pull boxes, street light pull boxes will be adjusted by the Contractor with close supervision by the proper authority to insure that no damage is done to conduit or wiring. Gas and water value boxes, utility and street lighting poles and fire hydrants will be adjusted by Memphis Light Gas and Water Division or the contractor. This cost is incidental to Payment Item No. 02775-03, "Curb Ramp (Existing Conditions)".
15. When a utility pole, street sign post, fire hydrant, meter or value box remains in the work limits each item will be blocked out with wood forms and one-half inch thick expansion joint material. The wood form will be removed and concrete shall be poured in the block-out to complete the work. This cost is incidental to Payment Item No. 02775-03, "Curb Ramp (Existing Conditions)".

16. Time Warner Communications cable vaults will be adjusted by their designee. Telephone cable boxes will be adjusted by their designee. Any communications vault or equipment encountered in the ramp area will be adjusted by the owner, or authorized designee.
17. The Contractor shall provide full time security at the job site. Vandalized or ruined work as deemed by the County Engineer shall be replaced at the Contractor's expense. All work in accordance with this provision shall be incidental to Payment Item No. 013553, "On Site Security".
18. Concrete shall be Shelby County Class A limestone (3,500 psi). All exposed concrete shall be protected by an approved curing compound. The Contractor shall produce a minimum of two (2) concrete test cylinders per week or 21 cubic yards, whichever quantity is less. The contractor shall be responsible for providing the concrete cylinder molds, making and protecting the concrete strength test cylinders. The cost of cylinder preparation shall be considered incidental to the cost of that item. The County will be responsible for picking up and testing the cylinders.

SHELBY COUNTY A.D.A. Curb Ramp Installation Program
Spring 2012

PAGE 1 of 1

Area 1	Intersection	Ramp Configuration	Number of Ramps	Radius Location
1	Godwin Rd @ O'Neil Dr	SC1	2	NE, NW
2	O'Neil Dr @ O'Heil Cv	SC1	2	NW, SW
3	O'Neil Dr @ Betty Lu Dr	SC1	2	SE, SW
4	Betty Lu Dr @ Leighton Dr	SC1	2	SE, SW
5	Leighton Dr @ Godwin Dr	SC1	2	NE
6	Godwin Dr @ Penny Ln	SC1-WT	2	NE, NW
7	Penny Ln @ Betty Lu Dr	SC1	2	SE, SW
8	Godwin Dr @ Robena Ln	SC1-WT	2	NE, NW
Area 2				
9	Raible Dr @ Bethuel Rd	SC1	2	NW, SW
10	Raible Dr @ Martin Rd	SC1-WT	2	NE, SE
11	Martin Rd @ Brockman Rd	SC1	2	NE, SE
12	Brockman Rd @ Bethuel Rd	SC1-WT	2	NW, SW
13	Martin Rd @ Leamont Rd	SC1	2	NE, SE
14	Martin Rd @ Woodgreen Dr	SC1	2	NE, SE
15	Martin Rd @ Martin West Dr	SC1	2	NE, SE
16	Martin Rd @ Martinwood Rd	SC1-WT	2	NE, SE
Area 3				
23	Northaven Dr @ Mike Dr	SC1	2	NE, NW
24	Mike Dr @ Carol Ann Cv	SC1	2	NE, SE
25	Northaven Dr @ Libby Ln	SC1	4	NE, NW, SE, SW
26	Libby Ln @ Margie Dr	SC1	4	NE, NW, SE, SW
27	Libby Ln @ Archie Dr	SC1	4	NE, NW, SE, SW
28	Northaven Dr @ WM Carey Dr	SC1	2	NE, NW
29	Ruthie Cv @ WM Carey Dr	SC1	2	NW, SW
30	Northaven Dr @ Northaven Cv	SC1	2	SE, SW
31	Northaven @ Edenwood	SC1	4	NE, NW, SE, SW
Total Ramps			58	

- WT "Bottom Landing Area" consists of concrete water table. Additional area outside curb ramp is charged as #02950-01-02
- SC1 Ramps do not have sidewalk or "Top Landings" behind them
- SC2 Ramps have some sidewalk or "Top Landings" behind them which is charged as #02950-02
- Note: No SC2 types have been selected in this contract
- ST Ramps not within a radius

SHELBY COUNTY ADA CURB RAMP INSTALLATION PROGRAM						
12/6/2011						Page 1 of 1
Item No.	Description	Quantity	Unit	Unit Cost	Total Cost	
<u>BASE BID QUANTITIES</u>						
* 717-01	MOBILIZATION, INCLUDING BOND AND INSURANCE	1	LS			
01551-5.01	TRAFFIC CONTROL DEVICES FOR CONSTRUCTION WORK ZONES	1	LS			
* 411.03SP	ASPHALT SURFACE REPAIR	260	SY			
02775-03	CURB RAMP (EXISTING CONDITIONS)	58	EA			
* 02950-02	CONCRETE SIDEWALK, 4" THICKNESS, REMOVAL AND REPLACEMENT	3000	SF			
02950-04.6-30	6-30 CONCRETE CURB AND GUTTER, REMOVAL AND REPLACEMNT	100	LF			
02950-01-02	CONCRETE "8" THICKNESS, REMOVAL AND REPLACEMENT	120	SF			
803-01	SODDING (NEW SOD)	40	SY			
03051-5.01	CONCRETE FOR GENERAL USE (CLASS A)	8	CY			
013553	ON SITE SECURITY	1	LS			
				TOTAL BID		

*** TDOT Specification**
All other are City of Memphis Specifications

PROPOSAL

TO THE SHELBY COUNTY ADMINISTRATOR OF PURCHASING, SHELBY COUNTY, TENNESSEE.

1. Name of Bidder: _____
Business Address: _____
Federal I.D. Number: _____
Phone Number: _____
Tennessee License Number: _____

PROJECT NAME: SHELBY COUNTY ADA CURB RAMP INSTALLATION PROJECT

2. **Plans and Specifications:**
The term "plans" for this project refers to the City of Memphis, Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Part 101-19.6), Americans with Disabilities Act Accessibility Guidelines for Building and Facilities (ADAAG), and/or 2002 North Carolina Accessibility Code with the 2004 revisions (NCAC) as adopted by the Memphis and Shelby County Building code.
3. **Interested Parties:**
In submitting this proposal, the undersigned Contractor or bidder declares that the only persons or parties interested in the proposal as principals are those named herein; and that the proposal is made without collusion with any person, firm or corporation.
4. **Bidder Familiar with the Plans, Specifications and the Site:**
The undersigned further declares that the proposal, plans and specifications, general requirements and conditions, form of contract and contract bond, and special provisions have been carefully examined and the site of the proposed work has been inspected in detail. The undersigned further declares to be familiar with all the local conditions affecting the contract and the detailed requirements of construction, and understands that, in making this proposal, all rights to plead any misunderstanding regarding the same are waived. The Bidder declares that the wording herein, which may contain changes from similar documents from previous projects of Shelby County Government, has been reviewed. The Bidder further declares that the instructions regarding the Shelby County Equal Opportunity Compliance, which is bound with this proposal, have been examined, and agrees that these documents are an integral part of this bid.
5. **Bidder to Furnish:**
The undersigned further understands and agrees to furnish and provide all necessary materials, equipment, labor and incidentals required to produce and install the items as listed in this proposal upon acceptance of the proposal by Shelby County Government, except such materials as are to be furnished by the County, in the manner and at the time therein prescribed, and in accordance with the requirements therein set forth.
6. **Quantities and Payment:**
The undersigned understands that the quantities provided herein by the County are approximate only and that they are subject to increase or decrease; that the undersigned shall take in full payment therefore the amount of the total bid as shown on the bid form, after accounting for any and all bid alternates made and accepted by the County.
7. **Unit Prices:**
The undersigned further agrees that the unit prices submitted herewith are for the purpose of obtaining a gross sum, and for use in computing the values of extras and deductions; that if there is any discrepancy between the gross sum bid and that resulting from the summation of the quantities multiplied by their respective unit prices, the latter shall apply.

8. Alteration of Work:
The undersigned further agrees that if the County decides to extend or shorten the improvement, or otherwise alter the work by extras or deductions, including the elimination of any one or more of the items, by an amount not to exceed twenty-five (25%) percent of the total money value of the original contract price or contract price corrected as provided in the general conditions, the undersigned shall perform the work as altered, increased or decreased at the contract unit prices.
9. Extra Work or Changes:
The undersigned further agrees that the Engineer may at any time during the progress of the work covered by this contract, order other work or materials incidental thereto and that all such work and materials as do not appear in the proposal or contract as a specific item accompanied by a unit price, and which are not included under the bid price for other items in this contract, shall be performed as extra work, and that the undersigned accepts as full compensation for the extra work, payment as provided for in the general conditions.
10. Time of Execution of Contract:
The undersigned further agrees to execute a contract for the contract work and present same to the County within fourteen (14) days after the date of notice of award of the contract.
11. Contract Bond:
The undersigned further agrees that within fourteen (14) days after the date of notice of the award of the contract, the undersigned, along with an appropriate surety shall execute a contract bond satisfactory to and in the form prescribed by the County in the penal sum of the full amount of the contract, guaranteeing the faithful performance of the work in accordance with the terms of the contract.
12. Prosecution of Work:
The undersigned further agrees to begin work on the project not later than ten (10) days after the execution and approval of the contract and contract bond and on receipt of a notice to commence work, unless otherwise provided, and to prosecute the work in such manner and with sufficient materials, equipment and labor as will insure completion of the work within the time limit specified herein, it being understood and agreed that the completion within the time limit is an essential part of the contract. The undersigned agrees to complete the work within 90 calendar days, unless additional time is granted by the Engineer in accordance with the provisions of the general conditions. In case of failure to complete the work within the time described herein or within such extra time as may have been allowed by extensions, the undersigned agrees that the County shall withhold, from such sums as may be due under the items of his contract, the costs as set forth in Section 8 of the General Conditions, which costs shall be considered and treated not as a penalty but as damages due the County from the undersigned by reason of inconvenience to the public, added cost of engineering, supervision, maintenance of detours, and other items which have caused an expenditure of funds resulting from the failure of the undersigned to complete the work within the time specified in the contract.
13. Erosion Control:
The undersigned further agrees to provide necessary erosion control, such as seeding for gentle slopes and grass sod for sharper slopes, with special grading and terracing as specified by the Engineer. All freshly excavated and embanked areas not covered with satisfactory vegetation shall be fertilized, mulched and seeded and/or sod as required by the Engineer to prevent erosion. In the event it is determined that necessary erosion control is not being provided by the undersigned, the Engineer shall officially notify the undersigned of the problem. If the undersigned has not begun to provide satisfactory erosion control within fifteen (15) days after the notice, then the Engineer shall make the necessary improvement to eliminate the erosion problem, documenting all expenses incurred performing the work. Prior to releasing any securities covering this contract, all expenses incurred by the County shall be paid in full by the undersigned. Erosion control shall be paid according to the unit prices bid for erosion control devices on the proposal sheet and no additional compensation shall be afforded.
14. Clean-Up of Construction Site:

The undersigned further agrees to provide necessary clean-up of construction areas, such as collection of debris, construction materials, dirt piles, etc., and any other unsightly and unnecessary items. In the event the Engineer determines that necessary clean up is not being provided by the undersigned, the Engineer shall officially notify the undersigned of the problem. If the undersigned has not begun to provide satisfactory clean-up of the area within fifteen (15) days after the notice, then the Engineer shall take the necessary steps to eliminate the problem including, but not limited to, performing the work with County forces, or contracting with outside forces at the Engineer's option, documenting all expenses incurred performing the work. Prior to releasing any securities covering this contract, all expenses incurred by the County in said clean-up operation shall be paid in full by the undersigned.

15. Forfeiture of Bid Bond:

The undersigned further agrees that in the event of failure to execute the contract and present a contract bond to the County within fourteen (14) days as per Paragraph #10 above, the Contractor's bid bond shall be forfeited as damages for project delay and the notice of award shall be automatically cancelled. The contract shall then be awarded to the next lowest qualified bidder.

16. Bid Bond:

Accompanying this proposal shall be a bank cashier's check, certified check, letter of credit issued by any national bank or a duly assigned certificate of deposit, bank draft or approved bid bond, complying with the requirements of the general conditions and/or as shown on the Notice to Contractors, made payable to THE COUNTY OF SHELBY. The amount of the check, draft, letter of credit issued by any national bank or certificate of deposit therein, duly assigned, or approved bid bond shall be no less than five percent (5%) of the total bid. If this proposal is accepted and the undersigned fails to execute a contract and contract bond as required herein, it is hereby agreed that the amount of the check, draft, letter of credit issued by any national bank or certificate of deposit therein, duly assigned, or approved bid bond shall be considered as payment of damages due to delay and other causes suffered by the County because of failure to execute the contract and contract bond. Otherwise, said check, draft, or letter of credit, issued by any national bank or certificate of deposit therein, duly assigned or approved bid bond shall be returned to the undersigned.

ATTACH BANK DRAFT, BANK CASHIER'S CHECK, LETTER OF CREDIT
ISSUED BY ANY NATIONAL BANK OR CERTIFICATE OF DEPOSIT THEREIN,
DULY ASSIGNED APPROVED BID BOND OR CERTIFIED CHECK HERE. THE
UNDERSIGNED SHALL PROVIDE BELOW THE FOLLOWING INFORMATION

TOTAL AMOUNT OF BID BOND \$_____.

In the event that one check, draft or approved bid bond or other indemnity as set out above is intended to cover two or more proposals, the amount must be equal to the sum of proposal guarantees required for the projects covered. If this check, draft or approved bid bond, or other indemnity as set out above is placed in another proposal, the undersigned shall provide below, the name of said proposal.

LOCATION OF BID BOND_____.

17. Schedule of Prices:

The undersigned shall complete and submit the provided schedule of prices covering the work performed under this contract. Unit prices shall be bid for each of the items in the schedule and extensions showing the total contract price shall be provided. Failure to provide said unit prices in their entirety or to provide extensions, including the total contract price, may result in rejection of this proposal as informal or irregular.

18. Joint Ventures:

Each Contractor or contracting firm who is a member of a joint venture shall provide a current license number and each shall sign the bid proposal holding each, both jointly and severally liable to the total project. In a joint venture, each member's classification limits shall be equal to or greater than those classifications' proportionate share of the total cost of the project. A joint venture

shall allow the members to combine their license limits in order to undertake a larger project than each would normally be able to perform with their individual license. The classification of each member in the joint venture shall be a necessary and integral part of the total project.

19. Acceptance or Rejection of Bid(s):

The Shelby County Government reserves the right to reject any and all bids. The Shelby County Government also reserves the right to select the lowest responsible bidder for any one project to the rejection of all other bidders or award any or all projects to the lowest responsible bidder or bidders.

IF AN INDIVIDUAL:

SIGNATURE OF BIDDER:

BUSINESS ADDRESS:

IF A CO-PARTNERSHIP:

FIRM NAME:

BY:

BUSINESS ADDRESS:

NAME AND ADDRESS
OF ALL MEMBERS OF
FIRM

IF A CORPORATION:

CORPORATE NAME

SIGNED BY:

President

BUSINESS ADDRESS:

(Corporate Seal)

NAME OF OFFICERS

President

Secretary

Treasurer

ATTEST:

Secretary

CONTRACT BOND (Corporation)

KNOW ALL MEN BY THESE PRESENTS, That we _____
a corporation organized under the laws of the State of _____ and licensed to do
business in the State of Tennessee, as Principal, and _____ a
corporation organized and existing under the laws of the State of _____ with
authority to do business in the State of Tennessee, as Surety, are held and firmly bound unto THE
COUNTY OF SHELBY, TENNESSEE, in the penal sum of _____
DOLLARS(\$ _____), lawful money of the United States, well and truly to be paid unto
said SHELBY COUNTY, TENNESSEE, for the payment of which we bind ourselves, our successors and
assigns, jointly, severally, and firmly by the presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH that whereas, the said Principal
has entered into a written contract with THE COUNTY OF SHELBY, TENNESSEE, for the construction of
the work designated as **ADA CURB RAMP INSTALLATION PROJECT**, which contract is hereby referred
to and made a part hereof, as if written herein at length, and whereby the said Principal has promised and
agreed to perform to pay all sums of money due for any labor, materials, apparatus, fixtures or machinery
furnished to such Principal for the purposes of performing such work and has further agreed to pay all
direct and indirect damages to any person, firm, company or corporation suffered or sustained on account
of the performance of such work during the time thereof and until such work is completed and accepted;
and has further agreed that this bond shall insure to the benefit of any person, firm, company or
corporation, to whom any money may be due from the Principal, sub-contractor or otherwise, for any such
labor, materials, apparatus, fixtures or machinery so furnished and that suit may be maintained on such
bond by any such person, firm company or corporation, for the recovery of any such money ON OR
BEFORE THE EXPIRATION OF ANY GUARANTEE PERIOD AND/OR THE REQUIRED
ADVERTISEMENT PERIOD.

NOW, THEREFORE, if the said Principal shall well and truly perform said work in accordance with
the terms of said contract, and shall pay all sums of money due or to become due to any labor, materials,
apparatus, fixtures or machinery furnished to him for the purpose of constructing such work, and shall
commence and complete the work within the time prescribed in said contract, and shall pay and
discharge all damages, direct and indirect, that may be suffered or sustained on account of such work
during the time of the performance thereof and until the said work shall have been accepted and shall
hold THE COUNTY OF SHELBY, TENNESSEE, harmless, its officials, agents, and employees in account
of any such damages, and shall in all respects full and faithfully comply with all the provisions, conditions,
and requirements of said contract, then this obligation to be void; otherwise to remain in full force and
effect.

Approved this _____ day of _____,
A.D., 2012.

IN WITNESS WHEREOF, We have
duly executed the foregoing
obligation this _____ day
of _____ AD, 2012.
FOR SHELBY COUNTY GOVERNMENT:

Corporate:
Name: _____
President

Mayor of Shelby County, TN

Attest: _____
Secretary

Director of Public Works

SURETY _____ (Seal)

BY: _____ (Seal)
Attorney in Fact

APPROVED AS TO FORM:

BY: _____ (Seal)
Attorney in Fact

County Attorney

State of _____.

County of _____.

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____ who is to me personally known to be the same person who signed the above and foregoing instrument as the Attorney in Fact for _____, appeared before me this day in person and acknowledged that he signed the name of _____ thereto, as his Principal and his own name as Attorney in Fact, as the free and voluntary act of his said Principal for the uses and purposes therein set forth, and that he executed the said instrument under authority given him by said Principal.

Given under my hand and Notary Seal the _____ day of _____ A.D. 2012.

Notary Public

SECTION C

**GENERAL REQUIREMENTS
AND
CONDITIONS**

**SHELBY COUNTY
A.D.A.
CURB & RAMP
INSTALLATION
PROJECT**

SHELBY COUNTY GOVERNMENT
ENGINEERING DEPARTMENT
GENERAL REQUIREMENTS AND CONDITIONS

SECTION 1. DEFINITION OF TERMS

Whenever in the Specifications and Contract the following terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

1.01 County:

Shall be interpreted to mean THE COUNTY OF SHELBY, TENNESSEE, or its authorized representative.

1.02 Director

Shall be interpreted to mean THE SHELBY COUNTY DIRECTOR OF PUBLIC WORKS.

1.03 Engineer

Shall be interpreted to mean The SHELBY COUNTY ENGINEER, and/or the Project Manager delegated by the County Engineer to act as the County's authorized representative.

1.04 Project Manager:

The representative of the SHELBY COUNTY ENGINEER who has been delegated to act with the authority of the Engineer.

1.05 Bidder:

Any individual, firm, joint venture, or corporation submitting a proposal for work contemplated, acting directly or through a duly authorized representative.

1.06 Contractor:

The successful bidder to whom the contract is awarded.

1.07 Sub-contractor:

Any individual, firm, partnership, or corporation to whom the Contractor, with the written consent of the County, sublets, assigns, or otherwise disposes of any part of the work governed by the contract.

1.08 Surety:

Any corporation, individual or individuals, who engage to be responsible for the bidder's action in the execution of the contract upon the award of such; or who are bound with and for the Contractor to insure acceptable performance of the contract, payment of all obligations pertaining to the work, and fulfillment of such other conditions as may be specified or otherwise required by law.

1.09 Notice of Letting:

The official notice, sent to all prospective bidders, inviting proposals for all proposed improvements included in any one letting.

1.10 Notice to Bidder:

The official notice, included with the proposal form, inviting bids for the proposed improvement.

1.11 Plans:

All official drawings or reproductions of drawings detailing the work to be performed by the Contractor.

1.12 Proposal:

The written offer of the Bidder to perform the proposed work.

1.13 Specifications:

The collection of general directions, provisions, requirements and any supplements duly authorized and distributed by the County. This shall include written agreements, bonding requirements, quantities of materials to be furnished, and other documents detailing the methods or manner to be used to perform the work in a satisfactory manner.

1.14 Special Provisions:

Any and all directions, details, and requirements prepared to govern the method or manner of performing work of a specific nature which may not be adequately covered by the specifications. The special provisions shall govern the work and shall take precedence over the specifications and plans wherever they conflict therewith, but they shall not operate to annul those portions of the specifications with which they are not in conflict.

1.15 Proposal Guarantee:

Security required as assurance that the bidder, if determined to be the lowest, responsive and responsible bidder, will post the required bond and enter into a contract with the County for the acceptable performance of the work.

1.16 Award:

The acceptance of the lowest, responsive and responsible bidder subject to the execution and approval of a satisfactory contract, bonding to secure the performance thereof, submittal of the required certifications of insurance, and adherence to any and all other conditions as may be specified or otherwise required by law.

1.17 Contract:

The written agreement covering the performance of the work and the furnishing of labor and materials for the construction of the work. The contract includes the proposal, contract bond, plans, specifications, general requirements and conditions, special provisions, and all other material bound herewith, and any and all supplemental agreements.

1.18 Supplemental Agreement:

The written agreement executed by the County and the Contractor, with the assent of the surety, governing modifications or alterations of the terms of the original contract.

1.19 The Work:

The total construction process necessary to satisfactorily complete the contract including any and all authorized alterations, extensions, and deductions. Also included are all labor, tools, equipment, materials and incidentals necessary for the satisfactory completion of the contracted improvement.

1.20 Word Usage and Gender:

Except where the context clearly indicates to the contrary, words in the present tense include the future, words in the singular include the plural and words in the plural include the singular.

The masculine gender shall include the feminine, the feminine gender shall include the masculine, and the neuter gender shall include both masculine and feminine.

The word "shall" refers to mandatory requirements.

The words "Authorization" and "Authorized" shall mean authorization in writing by the appropriate authority.

1.21 Latent Defect:

A defect that existed at the time of County acceptance but could not be discovered by a reasonable inspection.

SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS

2.01 Contents of Proposal Form:

The County shall furnish a set of contract documents to each potential Bidder upon receipt of a non-refundable deposit as set forth in the official notice to bidders. All documents bound with or attached to the contract shall be included as part of the Bidder's proposal form and shall not be detached or altered. Any subsequently issued addenda shall be attached to the set of contract documents and shall become part of the contract bid documents.

2.02 Interpretation of Estimate of Quantities:

A table of estimated quantities of materials to be furnished by the Contractor shall be included as part of the contract documents. The estimated quantities are given only as a basis for comparison of the proposals and the award of the contract. The County does not expressly or by implication agree that the actual quantities shall correspond to the estimated quantities. The Bidder shall not plead misunderstanding or deception because of errors or discrepancies in said estimates of quantities, or in the character, locations, or other conditions pertaining to the work.

Final payment shall be based upon actual quantities used to complete the work at the contract unit prices as bid, but in no case shall payment be made for quantities over and above those specified by the plans, specifications, or special provisions unless otherwise directed by the Engineer. In the event of disputes over actual quantities to be paid, the Engineer's decision shall be final. The County reserves the right to omit bid items entirely or to increase or decrease any or all bid items. No allowance shall be made for any change in anticipated profits due to an increase, decrease, or deletion in the original estimated quantities.

2.03 Examination of Plans, Specifications, Special Provisions, and Site of Work:

Each Bidder shall, before submitting a bid, carefully examine the proposal, plans, specifications, special provisions, and contract and bonding forms. The Bidder shall inspect, in detail, the site of the proposed work and shall become familiar with any local conditions or detailed requirements of construction that may affect the progress of the work. The Bidder shall be responsible for proposal errors resulting from failure or neglect to comply with these instructions. The County shall not be responsible for any circumstances, events, or interpretations that cause or may cause a change in anticipated profits resulting from such failure or neglect.

2.04 Preparation of the Proposal:

Each Bidder's proposal shall be submitted on the form furnished by the County. The proposal shall be executed properly and bids shall be made for all items indicated on the proposal form. Except where requested or allowed by the special provisions, alternate bids will not be required, nor will alternate bids be used in the bid evaluation process. The Bidder shall indicate, in figures, a lump sum for the entire work or a unit price for each of the separate items stipulated in the proposal. For unit price contracts, the Bidder shall calculate the products of the respective quantities and unit prices in the column provided for that purpose. The gross sum of the proposal shall be the summation of the said products and shall be entered on the proposal form in the space provided. All bids shall be conditional upon furnishing of a bid bond executed by a corporate surety company satisfactory to the County. All writing shall be printed in

ink or by typewriter except the signature of the Bidder, which shall be written with the printed name beneath. Unit prices shall govern and any errors found in the product of a unit price and quantity shall be corrected and the correction reflected in the gross sum.

2.05 Proposal Guaranty:

Each proposal shall be accompanied by a bank draft, a cashier's check, a properly certified check, a letter of credit by a national bank or certificate of deposit therein, duly assigned, or an approved bid bond for not less than the percentage designated in the Notice to Bidders of the amount of the bid made payable to the County. In no case shall a bank cashier's check, bank draft, certified check, or other indemnity, as set out above, for less than \$300 be accepted.

2.06 Delivery of Proposals:

Proposals shall be delivered prior to the time of opening, to the place indicated in the Notice to Bidders. Each proposal shall be placed in a sealed envelope, plainly marked to indicate its contents including the sealed bid number and project name. Only sealed proposals shall be accepted.

Proposals sent by mail or special courier service shall not be opened, unless received at the place of letting prior to the time of opening proposals. Envelopes postmarked prior to the time of opening proposals but not received at the place of letting prior to the time of opening proposals shall not be accepted.

2.07 Withdrawal of Proposals:

Permission shall be given a Bidder to withdraw a proposal if a request is made in writing and received by the County before the time for opening proposals. If a proposal is withdrawn, the Bidder shall not be permitted to submit a proposal for the same work section at the same letting.

2.08 Public Opening of Proposals:

Proposals shall be opened and read publicly at the time and place specified in the Notice to Bidders. Bidders, their authorized agents, and other interested parties are invited to be present.

2.09 Rejection of Proposals:

Proposals not accompanied by an approved form of proposal guaranty or which contain omissions, erasures, alterations, additions or alternates not specified by the original contract documents or other irregularities, may be rejected by the County as informal or insufficient.

2.10 Disqualification of Bidders:

All bidders are hereby advised that no award of contract will be made to any firm or individual that is currently debarred by the STATE OF TENNESSEE or the FEDERAL HIGHWAY ADMINISTRATION.

Any one or more of the following reasons may be considered sufficient for rejection of bids and disqualification of a Bidder:

- (a) More than one proposal for the same work from an individual, firm, partnership, or corporation under the same or different names.
- (b) Evidence of collusion among Bidders. Participants in such collusion shall receive no recognition as Bidders for any future lettings by the County.
- (c) Unbalanced proposals in which the prices for items are not in proportion to prices for other items.
- (d) Failure to submit a unit price for each item of work listed in the proposal.
- (e) Unsatisfactory performance record as shown by past work for the County, judged from the standpoint of workmanship and progress.

- (f) Contractor's uncompleted workload, which, in the judgment of the County, might hinder or prevent the prompt completion of work covered by these contract documents.
- (g) Lack of competency as revealed by financial statement or experience questionnaire, which may be required.

2.11 Competency of Bidders:

The bidder, if a corporation, shall show the name of the state in which the corporation is chartered.

Each Bidder, upon request, shall furnish the County with satisfactory evidence of competency to perform the work contemplated. The Bidder, upon request, shall submit to the County a financial statement prepared by a public accountant attesting to the overall financial state of the Bidder.

Before an award is made, the Bidder shall, at the request of the County, be required to file a statement of inventory of all equipment available to perform the work contemplated. This statement shall include an assessment of the condition and operational status of each piece of equipment. This statement shall also include an outline stipulating how the work will be conducted.

Before an award is made, the Bidder shall, at the request of the County, be required to furnish a statement showing the value of all uncompleted contract work for which the Bidder is committed. For complex projects, the County reserves the right to require a construction schedule showing major tasks to be completed and duration of the various activities.

SECTION 3. AWARD AND EXECUTION OF CONTRACTS

3.01 Consideration of Proposals:

The unit price proposals received shall be compared on the basis of the summation of the products of the items of work listed and the unit prices offered. In case of a discrepancy between the gross sum shown in the proposal and that obtained by the summation of the products of the quantities of work and the unit prices, the unit prices shall govern, and any errors found in said products shall be corrected by the County. This corrected gross sum shall be the amount used to evaluate the proposal.

The County reserves the absolute right to reject any or all proposals, to advertise for new proposals, or to proceed to do the work otherwise, if, in the judgment of the County, the best interest of the County will be promoted thereby.

3.02 Award of Contract:

Except in cases where the County exercises the right reserved to reject any or all proposals, the contract will be awarded by the County, as soon as practicable after the opening of the bids, to the Bidder who has submitted the lowest, responsive and responsible bid.

If a contract is not awarded within 120 days of the opening of proposals, a Bidder may withdraw bids upon written notification to the County.

3.03 Return of Proposal Guaranty:

The proposal guarantees of all except the two lowest responsible Bidders shall be returned promptly after the proposals have been checked, tabulated, and the relation of the proposals established. Proposal guarantees of the two lowest responsible Bidders will be returned as soon as the contract and bond of the successful Bidder have been properly executed and approved.

3.04 Requirement of Contract Bond:

The successful Bidder, at the time of the execution of the Contract, shall deposit with the County a surety bond for the full amount of the contract. The form of bond and the surety shall be acceptable to the County.

3.05 Execution of Contract:

The Contract, executed by the Bidder, and the bond, executed by the principal and the sureties, shall be presented to the County within 14 days after the date of written notification of the award of the Contract.

3.06 Failure to Execute Contract:

Failure on the part of the successful Bidder to execute a contract and an acceptable bond, as provided herein, within 14 days from the date of notice of the award of the Contract, shall be considered as just cause for annulment of the award and forfeiture of the proposal guaranty to the County. This forfeiture of proposal guaranty shall not be considered a penalty, but, rather, as payment of liquidated damages sustained as a result of such failure.

3.07 Government Funding Clause:

This Contract is subject to annual appropriations of funds by the County. In the event the County does not appropriate funds for any fiscal period, this Contract may be terminated. In the event of such termination, Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date. Any retainage being held or payments due the Contractor will be paid to the Contractor within sixty (60) days of termination.

SECTION 4. SCOPE OF THE WORK

4.01 Intent of the Plans and Specifications:

The intent of the plans and specifications is to define the complete works contemplated by the County, which are to be undertaken by the Contractor in full compliance with the contract.

The Contractor shall perform all specified construction and such additional, extra, and incidental construction as may be necessary to complete the work to the finished lines, grades, cross-section and descriptions in a substantial and acceptable manner. The Contractor shall furnish all required materials, equipment, tools, labor and incidentals, unless otherwise provided in the contract, and shall include the cost of these items in the bid.

Unless otherwise specified in the plans, specifications or special provisions, all applicable site, road and bridgework shall be performed in accordance with the latest edition of the Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction, and the Standard Roadway and Structures Drawings of the Tennessee Department of Transportation which are incorporated herein by reference and made a part hereof.

4.02 Special Work:

Should any construction or requirements not covered by the specifications be anticipated on any proposed work, special provisions for the same shall be prepared and included in the proposal form. These special provisions shall be considered as part of specifications, the same as though fully contained therein.

4.03 Alterations, Cancellations, Extensions and Deductions:

The County reserves the right to alter the plans, increase or decrease the improvement, add such incidental work as may be necessary, and increase or decrease the quantities of work to be performed in accordance with such changes, including, in the case of Unit Price contracts, the deduction or cancellation of any one or more of the unit price items. Such changes shall not be considered as a waiver of any

conditions of the contract nor to invalidate any of the provisions thereof. If an increase in cost and/or time is necessary, it will be agreed upon prior to beginning any work on the change except when the project will be unduly delayed. In such case, the work will be started on a force account until final agreement is reached and confirmed in writing.

In Lump Sum contracts, a negotiated supplemental agreement between the Contractor and the County shall be required for any change increasing or decreasing contract price and/or time. The negotiations will be based on a proposal submitted by the Contractor to the Engineer detailing the elements that require contract modification in cost and/or time.

In Unit Price contracts, a written supplemental agreement between the Contractor and the County shall be required for each individual change which involves a net increase or a net decrease in the amount of the contract of more than 25 per cent of the original total contract price. A series of separate changes amounting to more than 25 percent of the original total contract price over the duration of the contract are not subject to this requirement.

Should such changes in the plans result in an increase or decrease in the quantities of the work to be performed, the Contractor shall accept payment as follows:

- (1) All work that appears in the contract as specific items accompanied by unit prices shall, except as provided in Paragraph (2) below, be paid for at the contract unit prices. No allowance shall be made for delays or decreases of anticipated profits.
- (2) All such work not appearing in the contract under specific unit prices shall be designated as extra work and paid for as specified in Section 9, Measurement and Payment. This shall include work, which involves a substantial change in the location or in the nature of the design or in the type of construction which materially increases or decreases the cost of the work and which is not included in the prices bid for other items in the contract.
- (3) In cases where the total value of the work involved in the changes requires a supplementary agreement and the nature and scope of such work is such to require working methods or equipment at variance with and more costly than those required for the original quantities as shown on the plans and stated in the proposal, the Contractor may ask for an adjustment in unit prices which may be made by a negotiated agreement between the Contractor and the Engineer. No adjustment of prices shall be approved by the County without submittal of a cost/time proposal from the Contractor satisfactory to the Engineer.

If directed by the Engineer, the Contractor's cost proposal will be broken down into direct and indirect labor, overhead and profit, material costs, and equipment rental or ownership costs and other such factors as may be necessary to properly evaluate any cost proposal.

Once a supplemental agreement is agreed upon, it will be confirmed in writing and forwarded with a "Notice to Proceed" for the changed work. If an adjusted price cannot be thus agreed upon, the work may, by agreement between the Contractor and the Engineer, be done as extra work on a force account basis as provided in Section 9.07 (3), Payment for Extra Work.

Claims for extra work that have not been authorized in writing by the County shall be rejected.

4.04 Maintenance of Detours:

If and when detours are authorized, the Contractor shall, at the direction of the Engineer, set up, mark, and maintain suitable detour signs. The responsibility for maintenance of detours, including all traffic control devices, shall specifically be the responsibility of the Contractor, at no additional compensation, except as otherwise provided for in the special provisions or as noted on the plans. All road signs, pavement markings or other traffic control devices shall be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices.

4.05 Removal and Disposal of Structures and Obstructions:

Existing structures, such as manholes, sewer pipes, culverts, fences and buildings, which are not to remain in place, shall be removed by the Contractor in accordance with the special provisions. Salvageable material shall be transported or stored as directed by the Engineer.

4.06 Final Cleanup and General Surface Restoration:

Before final acceptance of the work to be done under this contract, the Contractor shall restore the job site to its original or better condition and shall repair or replace all private and public property damaged, moved or otherwise displaced in the construction of the improvement. No additional compensation shall be allowed for this work.

4.07 Closing of Traveled Ways:

No public or private thoroughfare including, but not limited to, entrances, exits, pedestrian walkways, or other established routes of transportation shall be closed, diverted, or otherwise restricted without prior written authorization of the Engineer.

If and when authorized by the Engineer, the closing of roads, driveways, sidewalks and parking areas required for the construction of the improvement including the placement and maintenance of any barricades or traffic control devices shall be the sole responsibility of the Contractor as noted in Paragraph 4.04 Maintenance of Detours, above, and in Paragraph 7, Barricades and Warning Signs, at no additional compensation.

When authorized by the Engineer, the Contractor shall, within no less than seven (7) days prior to the closure of the road, notify the following individuals or agencies completely describing the affected roads and the approximate duration of the construction. These parties include, but are not limited to:

- 1). County Sheriffs Department
- 2). County Fire Department
- 3). Ambulance service(s)
- 4). County School Superintendent
- 5). United States Postal Service
- 6). County Road Department
- 7). Civil Defense/Emergency Management Agency
- 8). Shelby County Public Affairs Office

4.08 Schedule of Prices-Lump Sum Contracts:

The Contractor shall submit a Schedule of Prices to the Engineer prior to the first request for payment. The Schedule of Prices shall breakdown the contract to major line item elements for the purposes of estimating progress payments. Each line item will show, with as much accuracy and balance as possible, the quantity, unit, and unit price. The Schedule of Prices will not be used as a firm basis in estimating future additive and deductive supplemental agreements.

SECTION 5. CONTROL OF WORK

5.01 Contractor to Supervise the Work:

The Contractor shall have control and be in charge of the work under this contract. The Contractor shall have and retain full and complete responsibility for construction means, methods, techniques, sequences or procedures; and for all safety precautions and programs for all employees, agents, servants or representatives, including all sub-contractors and for the public in general. The Contractor specifically agrees to assume these responsibilities. The Engineer shall not be responsible for any of the above procedures.

5.02 Authority of the Engineer:

The Engineer shall be the interpreter of the requirements of the contract and associated documents and shall be the sole judge of the performance and acceptability of the Contractor's work. The Engineer shall have the right to reject defective work so that the completed project will conform to the requirements of the contract. The Engineer shall also be the final authority in deciding any and all disputes involving quality and acceptability of materials furnished, interpretation of the plans, specifications and special provisions, acceptable fulfillment of the contract, compensation, disputes and mutual rights of the Contractors under the contract.

In case of failure on the part of the Contractor to execute work ordered by the Engineer, the Engineer may, at the expiration of a period of 48 hours after delivering notice in writing to the Contractor, proceed to execute such work as may be deemed necessary, and the cost thereof shall be deducted from compensation due or which may become due the Contractor under the contract.

5.03 Contractor's Representative:

The Contractor shall designate a management representative to be on the job site whenever construction work is being performed. This representative shall have the authority to make any and all decisions pertaining to the completion of all contracted responsibilities and shall be responsible for the supervision of all Contractor's and sub-contractor's work crews.

The Contractor's management representative shall also have the authority to deviate from normal procedures as needed, satisfy complaints in a timely manner, and respond to any unforeseen circumstances which would require direct management decisions. If a situation arises that would require decisions that the Contractor's management representative cannot make, then all work shall cease until the Contractor designates a new management representative capable of making the decisions necessary to satisfactorily complete the work. This new management representative will then assume all duties and responsibilities of the previous representative.

5.04 Plans and Shop Drawings:

Five (5) copies of the plans and two (2) copies of the specifications and special provisions will be furnished to the Contractor by the County.

The Contractor shall submit to the Engineer, for approval, four (4) copies of each shop, working, or layout drawing pertaining to the construction of the work as required in the contract documents. All such documents shall be stamped and signed by a Licensed Professional Engineer registered by the State of Tennessee. Any work done or materials ordered prior to the approval of such plans or drawings shall be at the Contractor's risk.

The Engineer will approve or reject said shop drawings or similar documents and return two (2) annotated copies to the contractor. Engineer's approval of the shop drawings or similar documents shall in no way relieve the Contractor from responsibility for errors, omissions, or other irregularities in said shop drawings or documents. It shall specifically be the responsibility of the Contractor to verify all dimensions, coordinate with job site conditions, review and approve all information which relates to the process of fabrication or techniques of construction, and be responsible for the coordination of the work of all trades.

The cost of furnishing such drawings shall be incidental to the contract and no additional compensation shall be allowed the Contractor for any delays resulting therefrom.

5.05 Conformity With Plans:

The finished work shall conform to the plans, with the exception of such deviations as may be authorized by the Engineer.

5.06 Coordination of Specifications, Plans, Proposal and Special Provisions:

The specifications, the accompanying plans, the proposal, the special provisions, the general requirements and conditions, easement agreements, permit requirements and all supplementary documents are intended to describe a complete work and are essential parts of the contract.

A requirement occurring in any of them shall be binding. In case of discrepancy, dimensions shown in figures shall govern over scaled dimensions, specifications shall govern over plans, special provisions shall govern over both specifications and plans, and quantities shown on the plans shall govern over those shown in the proposal. Conditions of easement agreements and permit requirements shall govern over all other documents providing their requirements exceed the requirements of said other documents. The Contractor shall take no advantage of any apparent error or omission in the plans or specifications, and the Engineer shall be permitted and shall have the final authority to make such corrections and interpretations as deemed necessary for the fulfillment of the intent of the plans and specifications.

5.07 Cooperation by Contractor:

The Contractor shall notify the Engineer, in writing, a minimum of two working days in advance, of intention to begin work on the proposed improvement.

The Contractor will be furnished five (5) copies of the plans, and two (2) copies of the specifications and special provisions at no cost to the contractor. The Contractor shall keep one legible copy (field copy) of each available on the work site at all times during its prosecution. The Contractor shall make available to the Engineer or his representative the field copy of the plans and/or specifications for review. The Contractor shall be responsible for supplying sub-contractors, materials suppliers and others with copies of plans and specifications as needed.

The Contractor shall give attention to the work sufficient to produce optimum progress thereof and shall fully cooperate with representatives of the County. There shall be on the work site at all times a competent English speaking representative authorized to receive orders and act for the Contractor, as designated in Section 5.03, Contractor's Representative, above.

5.08 Cooperation with Utilities:

The Contractor shall notify all utility companies, public and private, in advance of commencing work. The responsibility for moving water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cable ways, signals and all other utility appurtenances which are located within the limits of the proposed construction shall be assumed by the Contractor at no additional compensation, except as otherwise provided for in the special provisions or as noted on the plans.

It is understood and agreed that the Contractor has considered all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation shall be allowed for any delays, inconvenience, or damage sustained due to any interference from the said utility appurtenances or the operation of moving them either by the utility companies or by said Contractor, or on account of any special construction methods required in prosecuting the work due to the existence of said appurtenances either in their present or relocated positions. The Contractor shall be liable for any and all damage done to utilities by his forces.

Where water lines and sewer lines conflict, water lines shall be placed over sewer lines unless otherwise directed by the Engineer and shall conform to requirements of the State of Tennessee, Department of Public Health, Division of Sanitary Engineering and the Shelby County Health Department.

5.09 Encroachment on Rights-of-Way and Easements:

Except where otherwise specified in the plans, specifications or special provisions, the Contractor shall be responsible for following any special instructions or requirements to work within the rights-of-way or easements of any public or private utilities, railroad companies, gas transmission companies, or any other public or privately owned entities where work may occur. The Contractor shall also be responsible for fully complying with the established procedures of the above applicable entities including, but not limited to, obtaining permits, notification of when work is to be performed, providing any required insurance coverage, providing any required special construction procedures, and payment of any fees required by the above mentioned entities. No additional compensation shall be allowed for the expense involved in following the above instructions and any and all costs shall be included with the contract unit prices. The

Contractor shall not be responsible for obtaining rights-of-way or easements for the County in order to perform the work described in the contract documents.

5.10 Construction Permits:

All construction permits such as grading, road cuts and other necessary and related permits, shall be obtained by the Contractor from the County Engineering Department prior to commencing the pertinent phase of the work.

5.11 Authority and Duties of Project Manager:

The Project Manager has been delegated authority by the County Engineer to act as the "Engineer" (see Section 5.02). This authority has been limited only as to final resolution of disputes. The Project Manager has full authority to permit changes in cost and time. Any cost or time increase authorized by anyone other than the Project Manager or the County Engineer will be disallowed. Any such increase will be authorized in writing except in unusual cases in which undue delay or cost may be occasioned in which a verbal "Notice to Proceed" will be issued followed as soon as possible by written confirmation.

5.12 Authority and Duties of Inspector:

Inspectors employed or contracted by the County shall be authorized to inspect work and materials, and to perform such other duties as may be designated by the Engineer. The inspector shall have the authority to accept or reject any and all work to insure proper compliance to the plans and specifications except matters involving changes in cost or time will be referred to the Project Manager.

5.13 Removal of Defective and Unauthorized Work:

All work that has been rejected or condemned shall be remedied or removed and replaced in a manner approved by the Engineer, at the Contractor's expense. Upon failure on the part of the Contractor to comply promptly with any order of the Engineer made under the provisions of this article, the Engineer will, after giving notice to the Contractor, have the authority to cause defective work to be remedied, or removed and replaced, or to cause unauthorized work to be removed and to deduct the cost thereof from any compensation due, or to become due, the Contractor.

Work done without lines and grades being given, or beyond the lines shown on the plans, or any extra work done without authority, shall be considered as unauthorized and at the expense of the Contractor, and shall not be measured or paid for. Work so done may be ordered removed or replaced at the Contractor's expense.

5.14 Orderly Work Site Conditions:

The Contractor shall, at all times, keep the work site free from waste material and rubbish, which may accumulate during the construction process. All stored materials and equipment shall be placed so as to cause a minimum of inconvenience to other contractors and/or the public.

5.15 Final Inspection:

The Engineer, or his representative(s), shall make final inspection of all work included in the contract, or any portion thereof, as soon as practicable after notification by the Contractor that the work is complete and ready for acceptance. If the work is not acceptable to the Engineer at the time of such inspection, the Contractor shall be informed in writing as to the particular defects to be remedied before final acceptance can be made.

SECTION 6. CONTROL OF MATERIALS AND EQUIPMENT

6.01 Quality of Materials:

It is the specific intent of this contract to insure that only materials and/or equipment which conform to the requirements of the plans, specifications, and special provisions be used in all aspects of the construction

process. All work shall be performed in such a manner as to produce a completed project that is workmanlike and acceptable in every detail. Copies of all tests shall be furnished to the Engineer.

6.02 Defective Materials or Equipment:

All materials or equipment not conforming to the plans, specifications, and special provisions shall be considered defective and shall be removed from the work and, if in place, they shall be removed at the Contractor's expense and replaced with acceptable materials or equipment meeting the said specifications. Any and all work done to correct defective construction shall proceed only after the corrective procedures have been approved by the Engineer. Upon failure of the Contractor to comply with any order of the Engineer pursuant to these provisions, the Engineer shall have authority to remove and replace defective materials and/or equipment and to deduct the cost of the removal and replacement from any monies due or to become due the Contractor.

6.03 Submittal and Testing Plan:

The Contractor shall carefully review all contract provisions, plans and specifications and prepare, for submittal at the pre-construction conference, a list of all submittals required by this contract. Additionally, a separate list shall be provided of all testing to be performed by the Contractor or his laboratory.

6.04 Sampling, Testing, Cited Specifications:

When requested by the County, the Contractor shall furnish a completed written statement of the origin, composition, and manufacture of any or all materials (manufactured or produced), which are to be incorporated in the work.

Unless otherwise provided, all materials shall be sampled and tested in accordance with the latest published standard methods of the American Society for Testing Materials (A.S.T.M) and/or the American Association of State Highway and Transportation Officials (AASHTO) and revisions thereof, in effect on the date of the invitation of bids, where such standard methods exist. In case there are no A.S.T.M. or AASHTO standards that apply, applicable standard methods of other recognized standardizing agencies shall be used as directed by the Engineer. The Contractor shall furnish an affidavit from the manufacturer or material supplier that the materials meet the specified requirements and tests.

The Engineer or his authorized representative shall have full authority to decide the sampling or testing methods to be used, and shall have the power to reject any and all materials or equipment which fails to meet the terms of the specifications. Such materials or equipment shall be removed from the work hereunder at the Contractor's expense. All materials or equipment that develop defects during the storage or construction period shall be removed and replaced, notwithstanding that they may have previously passed prescribed inspections or tests.

6.05 Inspection and Testing of Materials:

Unless otherwise provided, all testing shall be made by an independent testing laboratory designated or approved by the Engineer. The Contractor shall pay for the costs of tests, unless otherwise provided in the Special Provisions and/or in the Specifications. The Contractor shall furnish the materials to be tested, incidental materials and labor required at the site in connection with the tests and the transportation of materials to be tested to the laboratory. Any and all costs involved in the inspection and testing of materials shall be included in the unit prices as set forth in the contract and no additional compensation shall be allowed.

6.06 Stored Materials:

If it is necessary to store materials, they shall be protected in such a manner as to insure the preservation of their quality and suitability for the work. All stored materials shall be inspected at the time of use in the work, even though they may have been inspected and approved before being placed in storage. The Contractor shall be responsible for the loss, theft, or damage of all stored material on the job site even if partial payment has been made for said stored materials.

6.07 Warranty and Guarantees:

All work performed under this contract shall be constructed in accordance with the plans, specifications, general requirements and conditions, special provisions, and/or standard construction codes, and shall be guaranteed against defective material and workmanship by the Contractor and the Surety for a period of one year from the date of final acceptance.

The Contractor and the Surety shall guarantee that the type, quality, design, and performance of all items and equipment to be incorporated into the completed project meet all requirements of the contract documents and any other provisions provided by the Engineer.

The Contractor shall require of all equipment and material manufacturers and suppliers a written guarantee that all equipment and material shall function satisfactorily as an integral part of the completed project in accordance with the contract documents and any and all other provisions as supplied by the Engineer. This guarantee shall insure that the manufacturer or supplier will replace or repair, to the satisfaction of the Engineer, any and all defects in equipment and materials, which may develop within a period of one year from the date of final acceptance. This guarantee shall be submitted to the Engineer prior to incorporation of the equipment, material or supplies into the project.

This guarantee shall in no way relieve the Contractor of any responsibility for providing for satisfactory completion of the project in accordance with the contract documents and any other provisions as supplied by the Engineer. Enforcement of this guarantee shall be the responsibility of the Contractor.

SECTION 7. LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

7.01 Laws to be Observed:

The Contractor shall, at all times, observe and comply with all Federal and State laws, local laws, ordinances, and regulations which in any manner affect the conduct of the work, and all such orders or decrees as exist at the present and which may be enacted later, of legislative bodies or tribunals having legal jurisdiction or authority over the work. No plea of misunderstanding or ignorance thereof shall be considered. The Contractor shall indemnify and save harmless the County and all of its officers, agents, employees, and servants against any claims or liability arising from or based on the violation of such law, ordinance, regulation, order, or decrees whether by said Contractor, its' employees or its sub-contractors. No additional compensation shall be allowed for increased costs due to enacting of laws, ordinances, or regulations during the time of the contract.

7.02 Workmen's Compensation Insurance:

Prior to the approval of the contract by the County, the Contractor shall furnish to the County, certificates of insurance covering Workmen's Compensation or satisfactory evidence that this liability is otherwise satisfactorily addressed in accordance with the Tennessee Code Annotated, 50-6-101 et. seq., State of Tennessee.

Such insurance or other means of protection as herein provided shall remain in force until all work to be performed under the terms of the contract has been completed and accepted in accordance with the contract. It is hereby understood and agreed that the maintenance of such insurance or other protection, until acceptance of the work by the County, is a part of the contract. Failure to maintain such insurance, cancellation by the Industrial Commission of its approval of such other means of protection as might have been elected, or any other act which results in lack of protection under said "Workmen's Compensation Act" may be considered as a breach of the Contract.

7.03 Patented Devices, Material and Processes:

The Contractor shall provide suitable legal agreements with patentees or owners of any device, material, or process covered by letter, patent, or copyright for the use of such device, material or process. The agreement shall guarantee to hold harmless the County from and against all claims for infringement. Any

and all costs for registration and certification to use protected devices, materials, or processes shall be included in the appropriate unit prices for the work.

It shall be the duty of the Contractor, if so demanded by the County, to furnish said County with a copy of the legal agreement with the patentee or owner, and, if such copy is not furnished when demanded, the County may, if it so elects, withhold any and all payments to the said Contractor until said legal agreement is furnished. If a suitable legal agreement with the patentee or owner is not made as required herein, the Contractor and surety shall indemnify and save harmless the County from any and all claims for infringement by reason of the use of such patented design, device, materials, or process, or any trademark or copyright in connection with the work agreed to be performed under the contract, and shall indemnify the County for any cost, expense, and damages which it may be obliged to pay by reason of any such infringement at any time during the prosecution or after the completion of the work.

7.04 Permits and Licenses:

The Contractor shall procure all required permits and licenses, pay all charges, taxes and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. No additional compensation or reimbursements shall be paid to the Contractor for procurement of such licenses, charges, taxes, or fees.

7.05 Sanitary Provisions:

The Contractor shall observe all rules and regulations of the State or local Health Departments and shall take precautions to avoid creating unsanitary conditions.

7.06 Barricades and Warning Signs:

It shall be the sole responsibility of the Contractor to provide, erect and maintain all traffic control devices used on road or street construction or maintenance work and to maintain the project in such a manner as to adequately provide for the safety of the traveling public at all times. Any detour or interruption of normal traffic patterns or flow shall be approved in advance by the Engineer or the County Traffic Engineer acting for the Engineer.

All such traffic control devices shall conform to the applicable specifications set forth in the latest edition of the Manual on Uniform Traffic Control Devices and revisions to date. Prior to placing any such devices, the Contractor shall prepare and submit to the Engineer a traffic control plan, unless such a plan has been prepared as a part of the plans and specifications.

Traffic control devices shall be installed by the Contractor for all maintenance operations, and shall be properly maintained and/or operated during times as such special conditions require.

Traffic control devices shall remain in place only as long as needed and shall be immediately removed by the Contractor thereafter.

During stage operations, there shall be in place only those devices that apply to the conditions present. Signs not applicable to existing conditions shall be removed, covered, or turned so as not to be readable by oncoming traffic.

Barricade and sign supports shall be constructed and erected in a manner acceptable to the Engineer.

Weeds, shrubbery, construction materials or equipment, spoil, etc. shall not be allowed to obscure any traffic control device.

7.07 Use of Fire Hydrants:

If the Contractor desires to use water from fire hydrants, application shall be made by the Contractor to the proper authorities and shall conform to the municipal ordinances, rules or regulations concerning their use. Metering devices shall be used unless specifically exempted by the appropriate authorities.

Access to fire hydrants shall be maintained at all times for the use of the Fire Department. No material or other obstruction shall be placed closer to a fire hydrant than permitted by municipal ordinances, rules or regulations, or within 5 feet of a fire hydrant, in the absence of such ordinances, rules or regulations. Under no circumstances shall metering devices or other connectors remain affixed to fire hydrants except when the hydrant is actually being used.

7.08 Protection and Restoration of Property:

If public, corporate or private property interferes with the work, the Contractor shall notify, in writing, the owners of such property, advising them of the nature of the interference and shall arrange to cooperate with them for the protection or disposition of such property. The Contractor shall furnish the Engineer with copies of such notifications and with copies of any agreements between the Contractor and the property owners concerning such protection or disposition.

The Contractor shall be responsible for and shall take all necessary precautions for the protection of corporate or private property, including but not limited to walls and foundations of buildings, vaults, underground structures of public utilities, underground drainage and fences contiguous to the work, of which the contract does not provide for removal. The Contractor shall protect and carefully preserve all official survey monuments, property marks, section markers, and Geological Survey Monuments, and other similar monuments until the owner or an authorized surveyor or agent has witnessed or otherwise referenced their location or relocation. The Contractor shall take reasonable precautions to avoid disturbing any archaeological and other historic remains encountered during construction. The Contractor shall notify the Engineer of the presence of any such survey or property monuments or archaeological and historic remains, as soon as they are discovered.

The Contractor shall be responsible for any and all damage to public and private property, which may result from the following causes:

- 1) Neglect or misconduct
- 2) Omission of required special procedures
- 3) Failure to execute work properly
- 4) Failure to execute required work
- 5) Defective workmanship
- 6) Use of unsatisfactory materials
- 7) Any other action, whether willful or not, which results in damage.

The Contractor shall be required to repair all damage and to replace items deemed by the Engineer not able to be repaired. Upon failure of the Contractor to repair or replace damaged property within a period of 48 hours of notification by the County, the Engineer shall have the option of otherwise restoring the damaged property as necessary, and the cost thereof shall be deducted from any compensation due, or which may become due, the Contractor under the terms of the contract. The Contractor's responsibility shall continue until the Engineer's final acceptance of the work.

The Contractor shall remove all mailboxes within the limits of construction, which interfere with construction operations and shall erect them at temporary locations, maintaining suitable access for the delivery of mail.

As soon as construction operations permit, the Contractor shall set the mailboxes at their permanent location. This work shall be performed as directed by the Engineer. Damaged mailboxes, posts, or other associated items shall be replaced at the Contractor's expense.

The cost of all materials required and all labor necessary to comply with the above provisions shall not be paid for separately, but shall be considered as incidental to the contract.

7.09 Responsibility for Damage Claims:

The Contractor shall indemnify, defend and hold harmless Shelby County Government including, but not limited to, the Shelby County Division of Public Works, the Engineering Department, and all officers, agents, servants or employees of Shelby County Government, from all suits, actions, or claims of any character brought because of any injuries or damages received or sustained by any person, persons or

property on account of the operations of the said Contractor, its employees, agents or anyone directly or indirectly employed by it or its Sub-contractors; or on account of, or in consequence of, any neglect in safeguarding the work, or because of any act or omission, neglect, or misconduct of said Contractor; or because of any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the "Workmen's Compensation Act" or any other law, ordinance, order or decree. It is agreed that the Contractor shall be responsible for these provisions regardless of whether or not the loss for which indemnity is sought is caused in part by the County. While not limiting the amount recoverable, an amount of money due said Contractor, under and by virtue of the contract as shall be considered necessary by the County for such purposes, may be retained until such suit(s), action(s), claim(s) for injuries or damages shall have been settled and suitable evidence to that effect furnished to the County.

7.10 Contractors Insurance - Amounts

The Contractor shall carry Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate premises/operations; \$2,000,000 aggregate products/completed operations; \$1,000,000 personal and advertising injury limit; \$500,000 fire damage limit (any one fire), and \$5,000 medical expenses limit (any one person). Broad Form Endorsement is to apply. Coverage for explosion, collapse and underground hazards is to be included.

The Contractor shall carry, during the life of this contract, Commercial Automobile Liability Insurance in amounts not less than \$1,000,000 combined single limit on any motor vehicles engaged in operations within the terms of this contract.

The Contractor shall carry Workers' Compensation insurance as required by statute, including \$500,000 employer's liability.

The Contractor shall furnish to the County satisfactory proof of compliance with the insurance requirements, by insurers acceptable to the County, before commencing any work. Such proof shall consist of Certificates of Insurance executed by the representative insurance companies and filed with the County. Said Certificates shall contain a clause to the effect that, for the duration of the contract, the insurance coverages shall be cancelled or materially changed only after written notification thirty (30) days in advance to the County. In the event the County Engineer determines that increased limits or additional coverage is necessary for certain projects, the Contractor will be notified in writing by the County Engineer allowing for compliance with the request within fourteen (14) days.

The Contractor's liability insurance shall specifically cover, among other things, claims arising out of installation of barricades, signs, other traffic control devices, excavations, stored materials and equipment, and all other similar facilities in connection with this contract, with Shelby County shown as an additional insured.

The Contractor shall require Sub-contractors, if any, not protected under the Contractor's insurance policies, to take out and maintain insurance of the same nature and amounts as required of the Contractor. The Contractor shall provide to the County proof of insurance of all sub-contractors retained to perform work in conjunction with this contract.

7.11 Personal Liability of Public Officials:

In carrying out any of the provisions of this contract or in exercising any granted power or authority thereby, the Contractor waives any claims, and agrees that there shall be no personal liability upon the Director of Public Works, the Engineer or any of their authorized representatives, it being understood that in such matters the above mentioned act as agents and representatives of the County.

7.12 Waiver of Legal Rights:

The County shall not be precluded or estopped by a measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the contract. The County shall not be precluded or estopped,

notwithstanding any such measurement, estimate or certificate and payment in accordance therewith, from recovering from the Contractor and his sureties such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the contract. Neither the acceptance by the County or any representative of the County, nor any extension of time, nor any possession taken by the County, shall operate as a waiver of any portion of the contract, any power herein reserved, or any right to damages herein provided. A waiver of any breach of the contract shall not be held to be a waiver of any other or subsequent breach.

7.13 Right-of-Way:

The County will be responsible for securing all necessary rights-of-way in advance of construction. The Contractor waives any and all claims for interference, delay or damage upon acceptance of an order to proceed with the construction with the knowledge that the rights-of-way are still encumbered.

7.14 Load Restrictions on Project Under Construction:

The operation of equipment of such weight or so loaded as to cause damage to structures or the roadway or to any other type of construction shall not be permitted. Hauling of materials over the base course or surface under construction shall be limited as directed by the Engineer. No loads shall be permitted on a concrete pavement, base or structure before the expiration of the curing period. The Contractor shall be responsible for all damages done by any equipment including, but not limited to, that of the Contractor, sub-contractors, and materials suppliers.

SECTION 8. PROSECUTION AND PROGRESS

8.01 Subletting or Assignment of Contract:

No less than fifty percent (50%) of the total contract cost of the work shall be performed by the Contractor's own organization, thus limiting the total allowable amount of subletting to no more than fifty percent (50%) of the total contract cost of the work to be performed. All transactions, negotiations, and correspondence of the County shall be with the Contractor. The County will refer all matters regarding payments, changes, scheduling, work progress, etc. of sub-contractors to the Contractor. Sub-contractors shall be recognized only in the capacity of employees or work crews of the Contractor and shall be subject to the same requirements as to character and competence. The Contractor shall not assign, transfer, convey, sell, or otherwise dispose of the whole or any part of the contract to any person, firm, or corporation without the written consent of the County. Subletting any part of the work to be done under the contract shall not, under any circumstances, relieve the Contractor of any liabilities or obligations.

8.02 Progress Schedule:

During the pre-construction conference, the Contractor shall submit to the Engineer, in a form acceptable to the Engineer, a satisfactory progress schedule, which shall show the proposed sequence of work, and how the Contractor proposes to complete the various items of work within the number of calendar days set up in the contract. Monthly updates of this schedule will be required if deviations have occurred. This schedule shall be used as a basis of establishing major construction operations, and for checking the progress of the work.

8.03 Prosecution of the Work:

The Contractor shall prosecute in such a manner and with such a supply of materials, equipment, and labor as is considered necessary to insure completion of the work in accordance with the progress schedule.

8.04 Limitations of Operations:

The Contractor shall conduct all work so as to create a minimum amount of inconvenience to vehicular and pedestrian traffic. At any time when, in the judgment of the Engineer, the Contractor has obstructed or closed a road or is carrying on operations on a greater portion of a road than is necessary for the proper

prosecution of the work, the Engineer may require the Contractor to finish the section on which work is in progress before work is started on an additional section

Any closure of a roadway or detour shall be requested in writing and expressly approved by the County Engineer before any action is taken to divert traffic.

8.05 Character of Workmen:

The Contractor shall be responsible for efficient completion of the work and shall be responsible for control and discipline of all employees. The Contractor shall employ only competent and efficient laborers, mechanics, or artisans. Whenever, in the opinion of the Engineer, any employee is careless, incompetent, obstructs the progress of the work, acts contrary to instruction, or acts improperly, the Contractor shall, upon request of the Engineer, remove said employee from the work and shall not permit the employee to return to the project, except with the written consent of the Engineer.

8.06 Completion Dates:

The Contract Completion Date (CCD) shall be calculated on a calendar day basis, which shall consist of the number of calendar days stated in the Contract beginning with the effective date of the Engineer's order to commence work, including all Sundays, holidays and non-work days but not including the day notice is given. All calendar days elapsing between the effective dates of any orders of the Engineer to suspend work and to resume work for suspensions not the fault of the Contractor shall be excluded from the contract time.

The contract completion time shall be a fixed calendar date and it shall be the date of final acceptance of all work as specified under the contract including any and all additions, changes, and/or deletions as directed by the Engineer.

The number of days for performance allowed in the contract as awarded is based on the original of materials as defined in Sub-Section 2.02, "Interpretation of Estimate of Quantities". If satisfactory fulfillment of the contract requires performance of work in greater quantities than those set forth in the proposal, the contract time allowed for performance shall be increased on a basis commensurate with the amount and difficulty of the added work as determined by the Engineer.

If the Contractor finds it impossible for reasons beyond his control to complete the work within the contract time as specified or as extended in accordance with the provisions of this sub-section, he may, at any time prior to the expiration of the contract time specified or as extended, make a written request to the Engineer for an extension of time setting forth therein the reasons for the request. The Contractor's plea that insufficient time was specified shall not be a valid reason for extension of time. It is expressly understood and agreed that the said Contract time described herein is a reasonable time for the completion of the work.

Extension of time will not be granted for delays caused by unsuitable weather or ground condition unless it can be shown that the weather for the construction period was unusually harsh-that the number of inclement days was above annual averages for the period. The burden of proof is on the Contractor to obtain National Weather Service or other data to support his plea.

If the Engineer finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the Engineer may extend the time for completion by a properly executed Supplemental Agreement in such amount as the conditions justify. The extended time for completion shall be in full force and effect the same as though it were the original time for completion.

The daily time charge will cease when the Engineer has duly made final acceptance, as prescribed above in Section 5.14, "Final Inspection".

Nothing in this section shall be deemed to authorize the Contractor to incur expense on behalf of the County, or to authorize compensation to the Contractor in excess of the original contract price for the work.

8.07 Liquidated Damages:

Should the Contractor fail to complete the work within the time specified in the contract or within such extended time as may be allowed, the Contractor shall be liable to the County for all costs incurred for engineering and inspection, and such other expenses directly attributed by reason of the Contractor's failure to complete the work within the specified time, not as a penalty but as damages sustained. For each calendar day that any construction shall remain incomplete after the Contract Completion Date, the sum specified in the proposal form or as calculated from the following table, shall be deducted by the Engineer from monies due the Contractor.

<u>Amount of Original Contract Proposal</u>	<u>Amount of Liquidating Damages per Calendar Day</u>
\$0 to \$25,000	\$ 30.00
\$25,000 to \$50,000	\$ 50.00
\$50,000 to \$100,000	\$ 75.00
\$100,000 to \$200,00	\$100.00
over \$200,000	\$100.00 plus \$50.00 for each additional \$100,000 or fraction thereof.

8.08 Termination of the Contract:

The County reserves the right to terminate the contract if the Contractor:

- (1) Fails to begin construction in accordance with the terms of the order to begin work.
- (2) Fails to furnish proper materials, or to utilize proper construction methods and equipment.
- (3) Fails to remove and replace portions of the work, which are found to be unsatisfactory.
- (4) Discontinues prosecution of the work without the consent of the Engineer, or fails to resume operations at any time the Engineer directs.
- (5) Fails to maintain traffic in a safe and efficient manner, or to maintain completed portions of the work effectively.
- (6) Fails to maintain a rate of construction progress that, in the opinion of the Engineer, is sufficient to assure completion of the work within the specified time.
- (7) Fails, in any degree, to maintain the same financial responsibility on the basis of which the Contractor was prequalified for submitting the proposal for the work and of which award of this contract was made.
- (8) Fails or refuses to follow the proper orders of the Engineer.

Under any circumstances, the Engineer will serve written notice of intent to terminate the contract to the Contractor and the surety for reasons that will be set forth therein. If, within fifteen days of delivery of such notice, the surety, or the Contractor and the surety, have not taken sufficient steps to correct the circumstance(s) at fault to the satisfaction of the Engineer, the County may, in its absolute discretion, order the contract terminated.

The County may then appropriate or use any or all stockpiled materials and equipment on the ground or job site as may be suitable in accordance with Section 9.03, "Stockpiled Material and Equipment". The County may, at its' sole discretion, enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of said contract in an acceptable manner.

In the event of termination, the Contractor shall be paid for work satisfactorily completed through the effective date of termination. All costs and charges incurred by the County, together with the cost of completing the work under contract, shall be deducted from any monies due or which may become due

said Contractor. If such expense exceeds the sum which would have been payable under the contract, the Contractor and the Surety shall be liable and shall pay to the County the amount of such excess.

8.09. General Compliance with Laws

If required, the Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

The Contractor is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).

This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this contract the Contractor agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

8.10 Nondiscrimination

The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subject to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap, 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 non-discrimination, and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

8.11. Severability

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible, and be legal, valid and enforceable.

SECTION 9. MEASUREMENT AND PAYMENT

9.01 Payment to Contractor:

The County will pay the Contractor for satisfactory work completed. Such payment will be based upon monthly estimates prepared by the Engineer in accordance with procedures set forth as herein provided.

9.02 Partial Payments:

Payments to the Contractor will be estimated by the Engineer based upon statements consisting of the Inspector's Daily Progress Reports, itemized job delivery or materials tickets, or other documents showing the quantity of work completed or materials supplied. These statements shall be prepared in a format satisfactory to the Engineer. Such estimates shall be approximate only and may not necessarily be based on detailed measurement. Lump sum items shall be estimated in accordance with the percentage of completion of the lump sum item. Following approval by the Engineer, monthly progress payments shall

be made to the Contractor in an amount equal to ninety (90%) of the earned amount, said earned amount being defined as the portion of the project work completed in accordance with the contract as determined by the Engineer. Upon satisfactory completion of seventy (70%) percent of the work, the Engineer may, at his discretion, reduce the retainage to five (5%) percent. Progress payments shall not be deemed as final acceptance of the work performed by the Contractor. The retainage shall be retained until completion of the entire work to the satisfaction of the Engineer.

9.03 Stockpiled Material and Equipment:

An estimate may, at the discretion of the County and upon presentation of receipted bills and freight bills, be made for payment of the value of acceptable materials and equipment delivered and suitably stored on the work site and not used at the time of such estimate. The Engineer will determine items eligible for partial payment upon delivery. Payment will be made as a percentage of either the unit price of the item or the invoice price of the material. From the value of such material or equipment estimate, there will be deducted a retainage of up to ten percent (10%) as provided in 9.02, "Partial Payments". Such materials and equipment, when so paid for by the County, shall become the property of the County, and, in case of default on the part of the Contractor, the County may use, or cause to be used, such materials in the construction of the work provided in the contract. The amount thus paid by the County shall be deducted from estimates due the Contractor as the materials or equipment are used in the work.

9.04 Measurement of Quantities:

All work completed under the contract will be measured by the Engineer according to United States Measures. Quantities will be calculated from measurements made in accordance with requirements set forth under the basis of payment for each item.

9.05 Scope of Payment:

The Contractor shall receive and accept the compensation as herein provided in full payment for furnishing all materials, labor, tools, and equipment; for performing all work contemplated and embraced under the contract; for all loss or damage arising out of the nature of the work or from the action of the elements; for any unforeseen difficulties or obstructions which may arise or be encountered during the prosecution of the work until its final acceptance by the Engineer; for all expense incurred by or in consequence of suspension or discontinuance of such prosecution of the work herein specified; for any infringement of patents, trademarks or copyrights; and for completing the work in an acceptable manner according to the plans and specifications.

The payment of any current estimate prior to final acceptance of the work by the County shall not constitute an acknowledgment of the acceptance of the work and shall not be deemed as final acceptance of any work performed by the Contractor. The payment of any estimate shall in no way abrogate or affect the obligation of the Contractor to repair, correct, or replace any defects or imperfections in the construction due to quality of materials or workmanship. The Contractor shall, regardless of any estimates paid, continue to be responsible for any and all damage discovered on or before final inspection and acceptance of the work. The Engineer will be the sole judge of any and all defects, imperfections, or damage, and the Contractor shall be liable to the County for failure to correct the same.

9.06 Increased or Decreased Quantities:

In the event of an increase or decrease in any item or work as given in the proposal, payment will be made according to the revised quantities as calculated by the Engineer. In no case, however, shall the actual pay quantities exceed that which is actually used to perform the work.

9.07 Payment for Extra Work-Unit Price Contract:

Extra work will be paid for under the following classifications:

(1) Lump Sum - This classification shall include all qualified extra work on which unit prices are not practical, and on which a fair price can be established agreeable to the Engineer and the Contractor in accordance with the provisions of Section 4.03, above or on proposals from not less than two

sub-contractors qualified and acceptable to do the particular work. The contractor will be allowed reasonable mark-ups for overhead and profit on subcontract work.

Payment shall be made only after the Contractor has submitted a bill to the County and this bill has been approved by the Engineer.

(2) Unit Price - This classification shall include all qualified extra work that can be broken down or divided into units or work similar, in the opinion of the Engineer, to units on which bid prices have been received in this contract or on units based on a fair price agreeable to the Engineer and the Contractor in accordance with the provisions of Section 4.03, above. Work shall not be paid from over-runs or under-runs of unrelated quantities shown on the bid items of the proposal sheet in this contract.

Payment for this classification shall not include any markup or percentage increase if the contract unit price is used as the contract unit price already contains such increases. Payment shall be made only after the Contractor has submitted a bill to the County and this bill has been approved by the Engineer.

(3) Force Account - This classification shall include all qualified work that cannot be identified in either lump sum or unit price classifications.

The Contractor is warned that payment for this classification of extra work cannot be paid unless the following requirements have been fulfilled:

The Engineer's representative or inspector shall be furnished with a book or pad titled, "FORCE ACCOUNT", on which a complete record shall be recorded in triplicate. This record shall show the date and identity of the project, the Contractor, location, and shall describe the work to be done. All labor, material and equipment essential to the completion of the work shall be recorded, showing the actual time or quantity used. The Contractor's supervision of labor shall be limited to a foreman, and the time of said foreman shall be recorded only during the actual supervision of the laborers. The inspector and the Contractor's representative shall both sign all three copies of this record. Immediately after the completion of this record, the original copy shall be submitted to the County, the first carbon shall be retained by the Contractor, and the second carbon shall be retained in the record book for the inspector's job record.

Before the end of the pay period, the Contractor shall submit a bill to the County for the force account described on the inspector's report. The Contractor's bill shall show the rate of pay on labor and foremen (if used), the unit price or lump sum cost of the material, and the size and rate of rental on the equipment. The rate on the equipment shall conform to those included in the monthly rates of the Rental Rate Blue Book for Construction Equipment published by Dataquest, Incorporated, latest edition. Hourly rates shall be obtained by dividing the monthly rate by 176. The weekly, daily, or hourly rates published in the Blue Book shall not be used. No allowances or pay shall be allowed for fuel, lubricants, repairs, transportation, or any other incidental costs.

To the net total of labor, material and equipment costs, the Contractor will be allowed to add eighteen percent (18%) of the labor cost only. This addition is estimated to cover the total average mandatory labor costs.

The Contractor shall furnish the County with a certified copy of the month's payroll and material billing to support the prices shown on this bill.

Before payment is made, this bill shall be approved by the Engineer.

In the event the accumulated cost of extra work on this contract exceeds the allowable on the proposal sheet, all excess payment due the Contractor for extra work will be deferred until the final estimate.

9.08 Payment for Items Omitted When Partially Completed:

Should the County cancel or alter any portion of the contract which results in the elimination or noncompletion of any portions of the work partially completed, the Contractor shall be allowed a fair and equitable amount covering all items of work incurred prior to the date of cancellation, alteration, or suspension of such work. Should the County cancel or alter any portion of the contract which results in a

total decrease of not more than 25 percent of the original contract price, the Contractor shall not be allowed any extra compensation other than the unit price extensions of the work actually completed. When such elimination or noncompletion involves a net decrease in the amount of the contract of more than twenty five percent (25%) of the original contract price, a supplemental agreement between the Contractor and the County shall be required.

Acceptable materials ordered by the Contractor or delivered on the work prior to the date of its cancellation, alteration, or suspension by the Engineer shall be purchased from the Contractor by the County at actual cost and shall thereupon become the property of the County, or, at the option of the Engineer, the unused acceptable material shall remain the property of the Contractor and such shall be paid the actual cost including freight, unloading, and hauling costs less the actual salvage value as determined by the Engineer. Materials ordered after the date of cancellation, alteration, or suspension shall not be eligible for any compensation and shall remain the Contractor's property.

9.09 As-Built Drawings:

The Contractor shall, prior to request for final payment, provide the Engineer one set of the construction plans amended to indicate the actual improvements constructed during the term of this Contract. The "as-built" drawings will depict any changes made in plan or elevation and will be sealed by a Professional Engineer licensed by the State of Tennessee and acceptable to the Engineer. The Engineer will review these plans within thirty (30) days of receipt to determine whether any corrections or re-work will be required prior to final payment and release of retainage.

9.10 Acceptance and Final Payment:

Whenever the improvement(s) provided for, and all conditions called for, by the contract have been completely performed and/or met on the part of the Contractor, and all parts of the improvement have been approved by the Engineer and accepted by the County, a final estimate showing the value of the work will be prepared by the Engineer as soon as the necessary measurements and computations can be made. All prior estimates upon which approximate payments have been made shall be corrected in the final payment. The amount of this estimate less any sums that have been deducted or retained under the provisions of the contract, will be paid the Contractor as soon as practicable after the final acceptance and the period of necessary advertisement has expired; provided the Contractor has furnished the County satisfactory evidence that all sums of money due for labor, materials, equipment, fixtures, or machinery furnished for the purpose of such improvements have been paid or that the person or persons to whom the same may be due have consented to such final payment.

The acceptance by the Contractor of the final payment shall constitute a release and waiver of any and all rights and privileges under the terms of the contract; further, the acceptance by the Contractor of final payment shall relieve the County from any and all claims or liabilities from any person or entity, regardless of where situated, for anything done or furnished to the work or in connection with the work or any act or neglect on the part of the County relating to or connected with the contract.

9.11 Latent Defects:

Neither the final payment on this contract nor any provision in these specifications shall relieve the Contractor of the responsibility of faulty materials or faulty workmanship which may show up within the extent and period provided by law or within the guarantee period of one year from final acceptance of the work performed under this contract, whichever is greater, nor of the responsibility of remedying such faulty workmanship, materials and/or equipment.

9.12 Audit and Inspection of Records:

The Contractor agrees to maintain books, records and accounts pertaining to the contracted improvements for a period of not less than three (3) years from the date of final payment, and to make these records available to authorized representatives of the County. Should State or Federal funds be used in the project, Contractor agrees to make these records available to the authorized representatives of the State of Tennessee or the Federal Government as necessary.

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