



# Shelby County Tennessee

Mark H. Luttrell, Jr., Mayor

## SEALED BID Shelby County Government Purchasing Department

160 N. Main, Suite 550  
Memphis, TN 38103

*Issued: August 20, 2012*  
*Due, September 21, 2012 at 2:30 P.M. (Central Standard Time)*

**SEALED BID # I-000180**

### **STATE ROAD ASPHALT RESURFACING PROJECT**

Shelby County Government is soliciting Sealed Bids for the provision of Construction Services to provide milling, and overlay for State Road in Shelby County, Tennessee. The Sealed Bid is located on the County's website at [www.shelbycountyttn.gov](http://www.shelbycountyttn.gov) and click the link "Department" at the top, then P for the Purchasing Department, then click on the link "Bids."

**A voluntary pre-bid conference will be held at 9:00 A.M., Wednesday, September 12, 2012 at the following location, Shelby County Roads, Bridges and Engineering Department, Conference Room, at 6449 Haley Road, Memphis, Tennessee 38134.**

The bid, as submitted, should include all estimated cost related to the services requested in this SEALED BID. If selected, you will contract with Shelby County Government pending completion of all requirements contained herein. Respondents requesting additional information or clarification are to contact, Nelson Fowler at [nelson.fowler@shelbycountyttn.gov](mailto:nelson.fowler@shelbycountyttn.gov).

Bids must be received in the office of the Administrator of Purchasing **no later than 2:30 P.M. on Friday, September 21, 2012.** **Bids will be publicly opened at that time and all interested bidders are invited to attend.**

**Bids should be addressed to:**

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

The package containing an original (**clearly identified as original**) and four (4) copies of your proposal must be sealed and marked with the bidders name and “**CONFIDENTIAL, STATE ROAD ASPHALT RESURFACING PROJECT # I000180, State Road Asphalt Resurfacing Project**” noted on the outside.

**THE LABEL, WHICH IS ATTACHED TO THE BID NOTIFICATION LETTER SHALL BE COMPLETELY FILLED OUT AND ATTACHED TO THE BID SUBMISSION ENVELOPE. YOU MUST DISPLAY YOUR CURRENT E.O.C. ELIGIBILITY NUMBER ON THE OUTSIDE OF YOUR ENVELOPE. UNLESS THE LABEL IS COMPLETELY FILLED OUT AND YOUR CURRENT CERTIFICATION NUMBER OR ELIGIBILITY NUMBER IS NOTED THEREON, YOUR BID WILL BE RETURNED TO YOU UNOPENED. SHOULD YOUR LABEL BE LOST OR MISPLACED, PLEASE NOTE THE APPROPRIATE INFORMATION IN THE LOWER LEFT-HAND CORNER OF YOUR ENVELOPE.**

Sincerely,

Nelson Fowler, Manager A  
Purchasing Department, Shelby County Government

**SECTION A**

**SHELBY COUNTY GOVERNMENT  
ENGINEERING DEPARTMENT**

**SEALED BID DOCUMENTS**

**Roads, Bridges & Engineering Department**  
**6449 Haley Road**  
**Memphis, Tennessee 38134**

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## I. INTRODUCTION

Shelby County Government (the “County”), is soliciting qualified contractors to provide Construction Services for milling and asphalt overlay on State Road in Shelby County Tennessee. This Sealed Bid 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 SEALED BID.

## II. MINIMUM BIDDER REQUIREMENTS

All bidders must:

1. **Prime** and **LOSB** contractors must **apply** and **qualify** for an Equal Opportunity Compliance (EOC) certification number through our EOC Administration **prior to submitting your response**.
2. 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.
3. Meet all other requirements for the performance such as LOSB and performance requirements for Services in accordance with the provisions of this SEALED BID.
4. Must submit a Bid Bond in the amount of 5% of their bid. This bond must be submitted with your bid.
5. 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.
6. Must submit LOSB Form A and B with their bid.
7. Have all appropriate licenses and certifications required in the State of Tennessee to perform the Services.
8. A written statement of compliance to Title VI and the Living Wage Ordinance must be provided by the successful contractor. Please see item “**H**” for the Living Wage Ordinance and item, “**I**” for Title VI.
9. Also see item # M for forms to be submitted with your bid.
10. Independent contractors (sole proprietors) must adhere to State of Tennessee Public Chapter No. 436, know as the “Tennessee Lawful Employment Act” (effective date of 01/01/12). Proof and documentation of employment eligibility must be included with the proposal.

**Please Note: As a part of doing business with Shelby County, each individual, company or organization is required to obtain a vendor number and an “Equal Opportunity Compliance” certification number.**

**You can access the online application to receive the numbers indicated above at [www.shelbycountyttn.gov](http://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.**

### III. CORRESPONDENCE

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

Nelson Fowler, Manager A  
Shelby County Government  
160 N. Main St. Suite 550  
Memphis, TN 38103  
(901) 222-2250

Respondents requesting additional information or clarification are to contact Nelson Fowler in writing at [nelson.fowler@shelbycountyttn.gov](mailto:nelson.fowler@shelbycountyttn.gov) or at the address listed above. Questions should reference the section of the SEALED BID 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 Monday, September 17, 2012 @ 12:00 p.m.***

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

*These guidelines for communication have been established to ensure a fair and equitable process for all respondents. 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 SEALED BID may disqualify your company from further consideration.*

*The vendor number is obtained through the Purchasing Department and the EOC certification is obtained through the Shelby County EOC Administration.*

*If you have any questions regarding the vendor number, please call the Purchasing Department @ 901-222-2250 or download the Bidder's List Application & W-9 form at [www.shelbycountyttn.gov](http://www.shelbycountyttn.gov). and click the link "Department" at the top, then P for the Purchasing Department, then click on the link "Conducting business with Shelby County" and then select, "Vendor Registration."*

*If you have any questions regarding the EOC qualification, please call 901-222-1100.*

### IV. PROPOSAL SUBMISSION DEADLINE

All proposals must be received at the address listed above no later than **2:30 pm, Friday, September 21, 2012.** 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.

**Sealed Bids Released**  
**Pre-Bid Conference**  
**Deadline for Questions**  
**Proposal Due Date**  
**Notification of Award**

**Monday, August 20, 2012**  
**9:00 AM, Wednesday, September 12, 2012**  
**12:00 PM, Monday, September 17, 2012**  
**2:30 PM, Friday, September 21, 2012**  
**October, 2012**

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 SEALED BID 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 SEALED BID.

### **C. Proposal Submission**

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

### **D. Incurred Costs**

This SEALED BID does not commit the County to pay any costs incurred in the preparation of a proposal in response to this SEALED BID and Bidders agree that all costs incurred in developing this SEALED BID 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 one hundred twenty (120) calendar days from the due date unless otherwise qualified.

### **G. Disclosure of Proposal Contents**

Proposer 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.

### **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 (LOS B) PROGRAM  
FOR CONSTRUCTION SERVICES**

**STATE ROAD ASPHALT RESURFACING PROJECT**

**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 (LOS B'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 LOS B'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 LOS B vendors. For assistance and information regarding LOS B participation, Bidders shall contact:

Ms. Carolyn Griffin  
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: Carolyn.Griffin@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 (LOS B)”** 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-LOS B”** 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, other reasons deemed appropriate by Shelby County **Questions and Information**

Questions regarding this LOSB Program and requests for information should be directed to:

Ms. Carolyn Griffin  
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: Carolyn.Griffin@shelbycountytg.gov

### **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 **LOS B 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.

- **LOS B Form B -- LOS B Utilization Plan**

A Contractor is required to submit **LOS B 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 **LOS B Form "B,"** if the entity is a legitimate LOSB. Additionally, if such entity will provide services, Contractors may only list LOSB's on **LOS B 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 Sealed Bid)

**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 SEALED BID 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 SEALED BID's purpose.

Reasons for the "Unavailability"

---

---

Submitted by:

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Shelby County  
LOS B Program

LOS B FORM B

**LOS B UTILIZATION PLAN**  
(To Be Submitted with the Sealed Bid)

**Company:** \_\_\_\_\_

**Bid No.:** \_\_\_\_\_

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

Name	Description of Work	Contract Value	LOS B Number

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

TOTAL CONTRACT VALUE: \_\_\_\_\_

TOTAL % OF LOS B 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 LOS B 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 LOS B 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 **Sealed Bid** 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**

**LOS B 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 percent (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 sub-contractors 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:**

**CODE OF ETHICS**  
**Section 18-59**

**SHELBY COUNTY GOVERNMENT**  
**GRATUITY DISCLOSURE FORM**

**INSTRUCTIONS:** *This form is for all persons receiving any Shelby County Government contract, subcontract, land use approval or financial grant of 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.*

**1. NAME:**

---

**2. DATE OF GRATUITY:**

---

**3. NATURE AND PURPOSE OF THE GRATUITY:**

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**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:**

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**7. DESCRIPTION OF THE GRATUITY:**

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**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 good faith estimate of the cost of the gratuity.)

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**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**

*A copy of your completed form will be placed on the Shelby County Internet Website.*

**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 Work**

The County wishes to engage in a contractual relationship with the lowest responsive Contractor selected through a low bid process

**B. Project Time Frame**

The Provider must be prepared to begin immediately upon receipt of a Notice to Proceed. The work under this contract shall be substantially complete within **NINETY (90) CALENDAR DAYS.**

**Work hours are from 9 a.m. to 4 p.m. Monday through Friday to prevent traffic congestion.**

**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 SEALED BID, or to issue a new SEALED BID.

**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. AWARD OF CONTRACT:**

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

## **IX. NOTICE TO BIDDERS**

### **Time and Place of Opening of Bids:**

Sealed bids for the improvements described herein will be received and opened at THE OFFICE OF THE SHELBY COUNTY ADMINISTRATOR OF PURCHASING, ROOM 550, SHELBY COUNTY ADMINISTRATION BUILDING, 160 NORTH MAIN, MEMPHIS, TENNESSEE 38103, at **2:30 pm, Friday, September 21, 2012**. All interested bidders are invited to attend our bid opening at the above place and time.

### **Description of Work:**

- (a) The proposed work is officially known as: **STATE ROAD ASPHALT RESUFACING PROJECT**
- (b) **WORK HOURS ARE FROM 9 A.M. TO 4 P.M. MONDAY THROUGH FRIDAY.**
- (c) The work shall include milling, and asphalt resurfacing for State Road. Manhole adjustments shall be incidental.

### **Pre-Bid Meeting:**

Bidders are encouraged to attend a voluntary pre-bid meeting to be held on Wednesday, **September 12, 2012 at 9:00 am**, at the Shelby County Road, Bridges, and Engineering Department Office, Conference Room at 6449 Haley Road, Memphis, Tennessee 38134.

### **Instruction to Bidders:**

- (a) The SEALED BID MUST BE DOWNLOADED FROM THE SHELBY COUNTY GOVERNMENT WEBSITE at [www.shelbycountyttn.gov](http://www.shelbycountyttn.gov) and click the link "Department" at the top, then P for the Purchasing Department, then click on the link "Bids."
- (b) All bids must be accompanied by a bank cashier's check or bank draft, letter of credit issued by any national bank or certificate of deposit therein, duly assigned, or certified check or approved bid bond for not less than five (5) percent of the amount of the bid. All proposal guarantees shall be made out to the COUNTY OF SHELBY.
- (c) All bidders must be licensed by the Tennessee State Board of Licensing
- (d) General Contractors Evidence of this license must appear on the title page of the Proposal in the space provided, and also on the exterior of the sealed envelope. The envelope enclosing each bid must show the Contractor's name, license number, expiration date thereof, and license classification of the contractor(s) bidding for the prime contract and for the masonry, electrical, plumbing, heating, ventilation, and air conditioning subcontracts in accordance with TCA 62-6-119. Lacking all of this information, the bid shall be rejected and returned to the bidder unopened.

**EOC Requirements:**

As a condition precedent to bidding, bidders shall have received a current "Equal Opportunity Compliance Eligibility Number" which must be attached to each bid submission. To receive an E.O.C. Eligibility Number, specific information must be received by the E.O.C. Department at least 48 hours prior to the bid opening. To verify your E.O.C. Number or to receive information for obtaining a number, contact the E.O.C. Department, **901-222-1100**.

Use of Locally Owned Small Business (LOSB) participation on County projects is mandatory.

Bidders are encouraged to contact County-certified LOSB firms from the listing that can be obtained from Shelby County EOC department. Bidders may also provide the names of firms they believe would qualify as LOSB firms, by notifying the E.O.C. Department and filing the required forms at least five (5) working days prior to the bid opening

A Locally Owned Small Business is defined as a sole proprietorship, corporation, partnership, or joint venture located within Shelby County and at least 51% owned, operated and managed by a Shelby County resident and having an average annual sale of \$5,000,000.00 or less over the past three (3) years.

**Rejection of Bids:**

The **COUNTY OF SHELBY** reserves the right to reject any and all proposals and to waive technicalities in any proposal.

**BY ORDER OF: CLIFTON DAVIS**

**PURCHASING ADMINISTRATOR  
SHELBY COUNTY GOVERNMENT**

\_\_\_\_\_, 2012

**SECTION B**

**SHELBY COUNTY GOVERNMENT  
ENGINEERING DEPARTMENT**

**PROPOSAL**

# PROPOSAL

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

1. Name of Bidder: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
Federal I.D. Number \_\_\_\_\_  
Phone Number: \_\_\_\_\_

PROJECT NAME: STATE ROAD APHALT RESURFACING PROJECT

2. Specifications: The term "plans" for this project refers to the submittal of design furnished by or under the supervision of the SHELBY COUNTY ENGINEER and approved for construction by the Engineer. All construction shall conform to the latest edition of the Shelby County Government General Requirements and Conditions or the special provisions included in the Bid Documents. Please see General Conditions Section 4.01 for additional information.
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 the 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 the 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. Term:  
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 shall be 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. **NOT USED**
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 it is determined by the Engineer 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 provide required licensure to execute the contract and to 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, 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 a 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 prior to the execution of the final contract. Each contractor or contracting firm who is a member of a joint venture shall sign the contract 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.

20. **NOT USED**

**BID FORM**

**STATE ROAD ASPHALT RESURFACING PROJECT**

**STATE ROAD ESTIMATED QUANTITIES**

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL
1	411 Asphalt Overlay – 165 lb/sy	TON	600		
2	Milling (1 1/2-inches)	SY	7,500		
3	Painted Pavement Marking (Double Yellow)	LF	2,300		
4	Patching (307 Asphalt)	TON	50		
5	Message Boards	EA	2		
				<b>SUBTOTAL</b>	
	<b>ALTERNATE 1 – Arterials Roads at Peggy Edmiston</b>				
6	411 Asphalt Overlay – 165 lb/sy	TON	550		
7	Milling (1-inch)	SY	7,500		
8	Painted Pavement Marking (Double Yellow)	LF	280		
9	Stop Bars	LF	75		
				<b>SUBTOTAL</b>	
				<b>TOTAL</b>	

**NOTE: WORK HOURS ARE FROM 9 A.M. TO 4 P.M. MONDAY THROUGH FRIDAY TO PREVENT TRAFFIC CONGESTION.**

**TACK COAT IS INCIDENTAL TO ASPHALT QUANTITY.**

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

**ATTACHMENT**

Proposal Response Sheet

**STATE ROAD ASPHALT RESURFACING PROJECT**

Name of firm: \_\_\_\_\_

Firm's Website: \_\_\_\_\_

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

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

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

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

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Payment Terms: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

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

Signature (Person Authorized to negotiate with the County on behalf of the organization/firm)

Email address: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

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

Signature (Person Authorized to negotiate with the County on behalf of the organization/firm)

Email address: \_\_\_\_\_

The signature(s) above certifies that:

- i. The Proposer's signatory is an agent authorized to submit proposals on behalf of the organization/firm;
- ii. All declarations in the proposal and attachments are true to the best of reasonable knowledge;
- iii. All aspects of the proposal, including cost, have been determined independently, without consultation with any other prospective Proposer or competitor for the purpose of restricting competition;
- iv. The offer made in the proposal is firm and binding for 90 days after receipt of the proposal by the County;  
and
- v. All aspects of this SEALED BID and the proposal submitted are binding for the duration if this proposal is selected and a contract awarded.

EOC#: \_\_\_\_\_ (If you do not have a valid EOC#, please contact the EOC office at 901-222-1100)

\_\_\_\_\_ Check here if you qualify as MBE \_\_\_\_\_, or WBE \_\_\_\_\_

(Minority or Woman owned Business Enterprise) If so, please indicate the classification below:

African-American  Hispanic American  Asian American  Native American  Other \_\_\_\_\_

\_\_\_\_\_ Check here if you qualify as an LOSB (Locally Owned Small Business)

\_\_\_\_\_ Check here if you qualify as an DBE (Disadvantaged Business Enterprise)

**This page MUST be printed on your company letterhead or stationery.**

**CONTRACT**  
**by and between**  
**SHELBY COUNTY GOVERNMENT**  
**And**

**STATE ROAD ASPHALT RESURFACING PROJECT**

This contract (the "Contract") entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, and between SHELBY COUNTY GOVERNMENT, hereinafter referred to as "COUNTY" and \_\_\_\_\_, hereinafter referred to as "CONTRACTOR".

**WITNESSETH**

**WHEREAS**, the COUNTY has the need for resurfacing improvements; and

**WHEREAS**, the COUNTY issued a Sealed Bid ("SBI") Number I-000180, State Road Asphalt Resurfacing Project and CONTRACTOR responded to said Sealed Bid by the required deadline of \_\_\_\_\_; and

**WHEREAS**, the CONTRACTOR has the knowledge and expertise to provide such products and services; and

**WHEREAS**, the COUNTY awarded the contract to CONTRACTOR on or about \_\_\_\_\_, 2012; and

**WHEREAS**, the parties are desirous of entering into a new contract setting forth the terms and conditions under which the CONTRACTOR will provide said services.

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

**I. SCOPE OF WORK**

1. The CONTRACTOR shall provide the services as outlined within the County's Sealed Bid Number I-000180 State Road Resurfacing Project and CONTRACTOR'S response thereto which are attached hereto as Exhibits "A" and incorporated herein by reference as if stated verbatim (the "Services").

**II. TERM AND COMPENSATION**

1. The term of this Contract (the "Term") will commence upon execution of this Contract and continue for **90 days** or until project completion, but in no event shall this Contract extend beyond ninety days after completion and acceptance of the construction.
2. The COUNTY agrees to compensate the CONTRACTOR for the provision of the Services the sum total amount not to exceed \$ \_\_\_\_\_ Dollars ("the Fee") during the term of this Contract which shall include all reimbursable expenses. In any event, the sum total of the total for the services provided by consultant shall not to exceed \$ \_\_\_\_\_ during any term of this Contract which shall include all reimbursable expenses. It is the duty of the CONTRACTOR to monitor such fees, costs, and expenses to ensure the CONTRACTOR does not exceed this total dollar amount. The COUNTY expressly reserves the right to deny payment of any amount billed in excess of \$ \_\_\_\_\_.
3. The CONTRACTOR shall submit invoices to the COUNTY on a monthly basis. Invoices shall be submitted in duplicate to the address set forth in the NOTICE section of this Contract to the attention of Mr. Darren Sanders, P.E., Administrator of Roads,

Bridges, and Engineering. The COUNTY shall pay such invoices within sixty (60) days of its receipt and approval of said invoices. The COUNTY is not obligated to pay, and will withhold from payment, any amounts the COUNTY has in dispute with the CONTRACTOR based on CONTRACTOR'S non-performance or negligent performance of any of the Services under this Contract. In the event any invoice contains errors, the CONTRACTOR shall correct same and resubmit the invoice to the COUNTY. The COUNTY will have sixty (60) days from the date of the receipt of the corrected invoice to remit payment for same.

4. The contractor shall give a Performance Bond and Labor and Material Bond in addition to the required insurance set forth below. The Performance Bond and Labor and Material Bond shall each be equal to 100% of the amount of the amount of the Contract, with surety to be approved by the COUNTY, conditioned upon the full and faithful performance of all the terms and conditions of the Contract with special reference to paying in full in lawful money of the United States, all just and valid claims for material and labor entered into for the said work covered by this Contract. That further, this Contract shall not take effect until these Bonds have been executed and approved by the County.

### III. GENERAL CONDITIONS

The parties further agree as follows:

#### 1. CONTROL

All Services by the CONTRACTOR 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. CONTRACTOR'S PERSONNEL

The CONTRACTOR certifies that it presently has adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be supervised by the CONTRACTOR. The CONTRACTOR 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 CONTRACTOR who, in the opinion of the COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

#### 3. INDEPENDENT STATUS

- a. Nothing in this Contract shall be deemed to represent that the CONTRACTOR, or any of the CONTRACTOR's employees or agents, are the agents, representatives, or employees of the COUNTY. The CONTRACTOR will be an independent CONTRACTOR over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the COUNTY the right to direct the CONTRACTOR as to the details of the performance of the Services under this Contract or to exercise a measure of control over the CONTRACTOR is solely for purposes of compliance with local, state and federal regulations and means that the CONTRACTOR 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 CONTRACTOR that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that CONTRACTOR has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by CONTRACTOR for the Services performed shall be on the CONTRACTOR's letterhead.

#### 4. REPORTS

CONTRACTOR shall prepare and submit quarterly reports of its activities, funded under this Contract, to the originating department and the Contract Administration Department of the COUNTY. The reports shall include an itemization of the use of COUNTY's funds, pertinent information pursuant to the applicable Living Wage Ordinance, and shall be inclusive of specific Services delivered. Any such reports provided to the COUNTY shall be prepared with the understanding that the COUNTY may make such reports available to the public. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Contract may be subject to audit by the Director of the Division of Administration and Finance of the COUNTY. The COUNTY shall have the right to withhold future disbursement of funds under this Contract and any future Contracts until this provision has been met.

#### 5. TERMINATION OR ABANDONMENT

- a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
  - i) Either the CONTRACTOR or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled 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; or
  - ii) CONTRACTOR has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or
  - iii) CONTRACTOR has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of CONTRACTOR assets.
- b. The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the CONTRACTOR for CONTRACTOR'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 (the "Termination Date"). In the event of such termination, the CONTRACTOR shall be paid for all Services rendered prior to the Termination Date, provided the CONTRACTOR shall have delivered to COUNTY such statements, accounts, reports and other

materials as required under this Contract; however, CONTRACTOR shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by CONTRACTOR prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.

- d. Notwithstanding the above or any section herein to the contrary, CONTRACTOR shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Contract by CONTRACTOR and the COUNTY may withhold any payments to CONTRACTOR for the purpose of setoff until such time as the exact amount of damages due the COUNTY from CONTRACTOR is determined.
- e. The COUNTY has the option to cancel the Agreement and/or any Renewals if the County is put on notice of legal problems with CONTRACTOR or any of its principals, partners, corporate officers, or agents, involving allegations of dishonesty, improper business conduct, or criminal activity. Cancellation under this provision shall be immediate and effective upon notice. The COUNTY reserves the right to exercise this provision at its discretion and any decision rendered by the COUNTY under this provision constitutes a final determination of the matter the public welfare requiring it.

#### 6. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to CONTRACTOR pursuant to this Contract for any CONTRACTOR's Services performed by the CONTRACTOR in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the CONTRACTOR to properly fulfill any of his obligations as set forth in this Contract.

#### 7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

- a. 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 CONTRACTOR from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the CONTRACTOR's obligations to its transferors or subcontractors.
- b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

#### 8. CONFLICT OF INTEREST

The CONTRACTOR 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 the Services. The CONTRACTOR warrants that no part of the total Contract Fee 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, subcontractor or consultant to the CONTRACTOR in connection with any work contemplated or performed relative to this Contract.

9. CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONTRACTOR, 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 CONTRACTOR 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.

10. EMPLOYMENT OF COUNTY WORKERS

The CONTRACTOR will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

11. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, CONTRACTOR agrees to permit duly authorized agents and employees of the COUNTY to enter CONTRACTOR'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 CONTRACTOR 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 Term 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 shall be furnished to the COUNTY upon request.

12. ARBITRATION

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

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- a. CONTRACTOR 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 Services hereunder, whether performed by the CONTRACTOR its subcontractors, agents,

employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

- b. CONTRACTOR expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the CONTRACTOR 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 CONTRACTOR or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against CONTRACTOR as a result of or relating to performance of the Services 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 CONTRACTOR as a result of or relating to performance of the Services under this Contract.
- e. CONTRACTOR shall immediately notify the COUNTY of any claim or suit made or filed against CONSULTANT or its subcontractors regarding any matter resulting from or relating to CONTRACTOR's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

14. GENERAL COMPLIANCE WITH LAWS

- a. 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 the Services under this Contract.
- b. 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 performance of the Services. 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).
- c. 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.

15. NON-DISCRIMINATION

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 subrecipients 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.

16. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

17. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

18. 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 legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

19. 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.

20. 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.

21. 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.

22. 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. No travel advances will be made by the County.

23. PREVAILING WAGE ORDINANCE

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.

24. NON-LIABILITY FOR CONSULTANT EMPLOYEE TAXES

Neither CONTRACTOR nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide CONTRACTOR's personnel with any benefits and shall have no liability for the following:

- a. Withholding FICA (Social Security) from CONTRACTOR's payments;
- b. Making state or federal unemployment insurance contributions on behalf of CONTRACTOR or its personnel;
- c. Withholding state and federal income tax from payment to CONTRACTOR;

- d. Making disability insurance contributions on behalf of CONTRACTOR;
- e. Obtaining workers' compensation insurance on behalf of CONTRACTOR or CONTRACTOR's personnel.

25. INCORPORATION OF OTHER DOCUMENTS

- a. CONTRACTOR shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for Proposals/Bids as well as the Response of CONTRACTOR thereto, all of which are maintained on file within 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 Sealed Bid Documents 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.

26. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

The CONTRACTOR shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the COUNTY are utilized when possible as sources of supplies and equipment, construction and services.

27. 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.

28. RIGHT TO REQUEST REMOVAL OF CONTRACTOR'S EMPLOYEES

The COUNTY may interview the personnel CONTRACTOR assigns to COUNTY's work. COUNTY shall have the right, at any time, to request removal of any employee(s) of CONTRACTOR, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, CONTRACTOR shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

29. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

30. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CONTRACTOR, CONTRACTOR 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 CONTRACTOR 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.

31. CONFIDENTIAL INFORMATION

- a. CONTRACTOR acknowledges that, in dealing with individuals in the provision of the Services for COUNTY, any information gathered for the provision of the Services is confidential information. CONTRACTOR agrees to hold all confidential information in strict confidence, and except as expressly set forth herein, will not disclose such confidential information to any third party(s), including but not limited to any corporation, company, group, partnership, agency or individual. CONTRACTOR shall:
- i) use the confidential information only in connection with the provision of the Services;
  - ii) disclose the confidential information only to its officers, directors, and employees who need to know the confidential information to accomplish the preparation of the audits and/or auditing process; and
  - iii) safeguard the confidential information with the same or greater degree of care to avoid unauthorized disclosure as the CONTRACTOR uses to protect its own confidential information.
- b. In the event that the CONTRACTOR or anyone to whom it transmits confidential information becomes legally compelled to disclose any of the confidential information, the CONTRACTOR will provide the COUNTY with prompt written notice before such confidential information is disclosed so that the COUNTY can seek a protective order or other appropriate remedy. Unauthorized disclosure of confidential information by the CONTRACTOR shall result in immediate termination of the Contract.

32. ORGANIZATION STATUS AND AUTHORITY

- a. CONSULTANT 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 CONTRACTOR 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 CONTRACTOR, any provision of any indenture, agreement or other instrument to which CONTRACTOR is a party, or by which CONTRACTOR'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.

33. INSURANCE REQUIREMENTS

- a. The CONTRACTOR shall purchase and maintain, in a company or companies

licensed to do business in the State of Tennessee, such insurance as will protect the COUNTY from claims which may arise out of or result from the CONTRACTOR'S operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the CONTRACTOR or subcontractor may be liable.

b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be named as additional insured. The CONTRACTOR will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements. All policies shall provide for thirty (30) days written notice to COUNTY of cancellation or material change in coverage provided:

- i) Professional Liability Insurance - \$1,000,000.00 per claim/\$3,000,000.00 annual aggregate, indicating if coverage is on occurrence basis or claims-made.
- ii) Commercial General Liability Insurance - \$1,000,000.00 limit per occurrence bodily injury and property damage/\$1,000,000.00 personal and advertising injury/\$2,000,000.00 General Aggregate/\$2,000,000.00 Products-completed Operations Aggregate, indicating the coverage is provided on a claims-made or on an occurrence basis. The insurance shall include coverage for the following:
  - a. Premises/Operation;
  - b. XCU coverage, where applicable;
  - c. Products/Completed Operations;
  - d. Contractual Liability;
  - e. Independent Contractors;
  - f. Broad Form Property Coverage;
  - g. Personal Injury.
- iii) Workers Compensation and Employers' Liability Insurance – Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for \$1,000,000.00 per accident.
- iv) Business Automobile Liability Insurance - \$1,000,000.00 each accident for property damage and personal injury. Coverage is to be provided on all owned/leased autos, non-owned autos and hired autos.

c. CONTRACTOR shall provide County with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

Shelby County Government  
Purchasing Department  
160 N. Main, Suite 550  
Memphis, TN 38103

d. Upon termination or cancellation of insurance currently in effect under this Contract, the CONTRACTOR shall purchase an extended reporting endorsement and furnish evidence of same to the County.

34. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Government  
Roads and Bridges  
6449 Haley Road  
Memphis, Tennessee 38103  
Attn.: Mr. Darren Sanders, P.E.

*and*

Shelby County Government  
Contract Administration  
160 N. Main St., Suite 550  
Memphis, Tennessee 38103

VENDOR:

**IN WITNESS WHEREOF**, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

**APPROVED AS TO FORM  
AND LEGALITY:**

**SHELBY COUNTY GOVERNMENT**

\_\_\_\_\_  
Contract Administrator/  
Assistant County Attorney

\_\_\_\_\_  
Mark H. Luttrell, Jr. Mayor

**VENDOR**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the \_\_\_\_\_, the within named bargainer, a corporation, and that he as such \_\_\_\_\_, executed the foregoing instrument for the purpose herein contained, by signing the name of the corporation by himself/herself as \_\_\_\_\_.

Witness my hand and official seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

**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 STATE ROAD ASPHALT RESURFACING 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 \_\_\_\_\_ A.D.2012

FOR SHELBY COUNTY GOVERNMENT:

Corporate  
Name: \_\_\_\_\_  
President

\_\_\_\_\_  
Mayor of Shelby County, TN

Attest: \_\_\_\_\_  
Secretary

\_\_\_\_\_  
Director of Public Works

SURETY \_\_\_\_\_ (Seal)



**SECTION C**

**SHELBY COUNTY GOVERNMENT  
ENGINEERING DEPARTMENT**

**SPECIAL PROVISIONS**

## SPECIAL PROVISIONS CONTENTS

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SHELBY COUNTY, TENNESSEE  
SPECIAL PROVISION 105.05  
DUTIES OF THE CONTRACTOR

The Contractor shall be responsible for submitting asphalt mix design(s), concrete mix design(s), shop drawing(s), certification report(s), etc. for approval at the preconstruction conference or no later than thirty (30) days after the preconstruction conference. This is to allow sufficient time for review and approval.

Under no circumstances shall any materials be used or construction begin using any mix design or shop drawing prior to approval of submittals.

CONCRETE PLANTS, ASPHALT PLANTS, CEMENT TREATED BASE PLANTS, ETC.:

Regarding mix design submittal(s): The Contractor shall designate the plant location for the item(s) to be produced as per the mix design. The designated location shall not be changed by the Contractor without prior approval of Shelby County. The Contractor shall not be permitted to send any item(s) to the project without this approval. Any approved change(s) in plant location(s) shall require a mix design for that specific location. Any change(s) shall have prior approval and the approved design shall be on file with Shelby County per the requirements for the item(s) being produced per the mix design. Contractor(s) shall not change plant locations at will. Any change(s) shall only be made for an emergency type situation or with prior approval and a notification that such change is to take place. Convenience or poor planning shall not constitute being a valid reason for plant change(s). It shall be the Contractor's responsibility for coordinating the project work with the item(s) being produced and shipped.

REGARDING PROCESS CONTROL PLAN(S):

The Contractor shall submit a process control plan, with mix design submittals, which shall be approved by the Engineer. This process control plan shall be used by the Contractor per the specification requirements of the item being produced or supplied. This plan shall not be changed or otherwise altered without submittal and approval of a "new" plan.

**Construction Traffic** – It shall be the duty of the Contractor to insure that vehicles belonging to the Contractor or his employees or sub-contractor(s) and their employee are parked in a safe and orderly manner away from roadway traffic. The Contractor's employees shall not be allowed to park on the shoulders and/or medians during all the construction phases of the contract.

SHELBY COUNTY, TENNESSEE  
SPECIAL PROVISION 105.15ASP  
ACCEPTANCE  
ASPHALT PAVING

Upon completion of the contract, Shelby County will inspect the "newly paved" areas for failure. All failed areas shall be repaired to the satisfaction of Shelby County prior to the final contract payment.

The Contractor shall be responsible for all repair and patch work necessary to and provide for a satisfactory finished product. When the repair work includes removal of the asphaltic concrete surface or part thereof, the Contractor shall score the surface in straight, even lines. The defective asphaltic concrete shall then be removed. Any base material which is deemed insufficient to support the overlaying asphalt shall then be removed. The scored edges shall then be covered with a tack coat and asphaltic concrete material shall be added to bring the patched area to finished grade. In the event that the depth of the failure to be repaired exceeds four (4) inches, the asphaltic material shall be placed in a standard two-lift operation with the top lift not to exceed a depth of two (2) inches. This repair operation shall be provided entirely by the Contractor's expense, with the exception of the asphaltic concrete used in the pavement repairs. Shelby County will pay for the replacement asphalt mixture used in these repairs based on the actual certified asphalt tickets. All other expenses shall be considered as incidental and as a NO pay item.

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Sheet 1 of 1

STATE

OF

TENNESSEE

SPECIAL PROVISION

REGARDING

PROJECT COMPLETION AND LIQUIDATED DAMAGES

This project shall be substantially completed within 120 consecutive calendar days from the date included in the written Notice to Proceed issued by the Owner and shall be completed in its entirety and ready for final payment within 120 consecutive calendar days from the date included in the written Notice to Proceed issued by the Owner.

No partial payments, including payments for stockpile materials, shall be made before work begins.

In the event the work is not completed within the time periods stipulated at this Special Provision, deduction for liquidated damages shall be made in accordance with Subsection 108.07, as amended, and this Special Provision.

Any delay in completing the project within the time periods stipulated at this Special Provision will be cause to deduct \$150.00 per consecutive calendar day from monies due the Contractor, not as a penalty, but as liquidated damages.

SHELBY COUNTY, TENNESSEE  
SPECIAL PROVISION 206  
REGRADING OF SHOULDERS; PROJECT CLEANUP  
ASPHALT PAVING

This work shall consist of the clipping by motor grader and re-grading of material to the top of the existing shoulders adjacent to the newly laid asphalt and to adjust the shoulder grade to that of the asphalt. Prior to beginning paving, the existing pavement and shoulder shall be cleared of non-bituminous material by "clipping" to the existing asphalt grade for a distance of 150 millimeters (6 inches) beyond the edge of new pavement. When new asphalt is laid and cured, the clipped material shall be replaced to the edge of the new asphalt. Shoulder re-grading shall begin at the edge of "new" asphalt, and extend beyond the pavement edge for a distance of 150 millimeters (6 inches) where maintained lawns exist and up to a maximum of 1 meter (3 feet) or the center of the adjacent ditch, whichever is less. In no case shall re-grading be the cause of, or a contributing factor to the blockage drainage within a roadside ditch.

Existing material that is available on the shoulders and in the adjacent side ditch shall be used for this purpose. Any suitable or excess material shall be removed and disposed of at a location provided by the Contractor and approved by the Engineer. The Contractor must sweep or otherwise clean all loose material from existing driveway aprons and other pavements adjacent to or connecting to the work of this contract.

This work shall be completed as soon after the placing of the asphaltic surface course as practical. Any damage to the shoulders or pavement caused by delay in completion or re-grading said shoulders shall be repaired by the Contractor entirely at his expense. Any additional material(s) needed for this repair also shall be furnished by the Contractor at his expense.

No additional compensation shall be made for the re-grading described herein. The cost shall be incidental to the items in this contract.

SHELBY COUNTY, TENNESSEE  
SPECIAL PROVISION 307  
BITUMINOUS PLANT MIX BASE (HOT MIX)

Description: This work shall consist of the preparation of the existing base and the application of a bituminous concrete plant mix base course, of the specified thickness, in accordance with the applicable articles of Section 307 of the "Standard Specifications" dated March 1, 1995 and revisions to date, with the following additions or revisions:

Materials: The bituminous concrete plant mixtures used for this base course shall meet the requirements for Bituminous Plant Base (Hot Mix) of Section 307 of the "Standard Specifications." The specified mineral aggregates and asphalt cement shall be combined in such proportions as to produce mixtures within the following limits: Grading "B", "BM", "BM-2", "C", and "CW" (combined mineral aggregates tolerances 93.8-95.8 with asphalt cement of 4.2-6.2).

Where 307-Bituminous plant mix base is being placed, and when requested by the Engineer, intermediate rolling shall be performed by the pneumatic tired roller(s) described in Subsection 407.07 revised.

Where 307-Bituminous plant mix base and R.A.P. (Recycled Asphalt Pavement) are blended together to meet a job mix formula, the following criteria shall be met:

1. R.A.P. shall be separated by the project it was milled from and be of a known origin and quality and shall be compatible with the proposed mix design.
2. The maximum amount of R.A.P. allowed in the mix design shall be 20 percent.
3. Tests for A.C. Content, Gradation, and Moisture shall be performed on the R.A.P. with copies made available to Shelby County weekly, unless amended by Shelby County during production.
4. At least 65 percent of the Asphalt Cement shall be "new" material.
5. Recycling agents, as needed, shall be approved by Shelby County.
6. After incorporation into the mix, the moisture content of the total mix shall be no more than 0.1 percent, as determined by oven drying. This moisture test shall be performed daily, or as directed by the Engineer, with results given to Shelby County.

Payment: Revise article 307.08 and 307.09 under method of measurement and basis of payment to read:

Payment for this work shall be paid for at the contract unit price specified 307 grading, which price shall include all necessary labor, material, and equipment needed to produce, furnish, and apply the bituminous concrete base course, complete in place, as specified herein and/or directed by Shelby County.

SHELBY COUNTY, TENNESSEE  
SPECIAL PROVISION 407  
BITUMINOUS PLANT MIX PAVEMENTS (GENERAL)  
QUALITY ASSURANCE (HOT BITUMINOUS MIXTURE)

These specifications include general requirements that are applicable to all types of bituminous pavements.

**QUALITY CONTROL AND ACCEPTANCE PROCEDURES**

The Contractor shall be responsible for the quality of construction and materials incorporated therein. Shelby County will perform sampling and testing for acceptance purposes on a random basis. The requirements for the Contractor's quality control plan for sampling and testing will remain in effect until final project acceptance. All sampling and testing of materials for the Contractor's quality control plan shall be performed in strict conformance with methods presented in the Tennessee Department of Transportation Standard Specifications dated March 1, 1995 and revisions to date with the following exceptions:

**Sample sizes:**

All 411 mixes – 1800 grams plus or minus 200 grams  
307 mixes – 2500 grams plus or minus 200 grams

1. Asphalt contents shall be determined by a Nuclear Asphalt Content Gauge or by an Asphalt Quality Analyzer Troxler Model 4155 or equivalent thereof. A minimum of three (3) asphalt content tests shall be performed daily, or as frequently as needed, to ensure compliance. These tests shall be performed daily at the onset of production. Additional tests shall be performed when requested by Shelby County.
2. A minimum of one (1) gradation test shall be performed for each half-day production, provided the mix is within design specifications. Additional tests shall be required if the mix is not within design specifications. If more than two successive tests fail, production shall cease until all specifications of the mix design are met.
3. The Contractor shall be allowed either 250 tons or the first day's production, whichever is less, for plant adjustments to insure that the mix meets specifications. After this initial adjustment period, all asphaltic concrete shall be tested and all requirements of this Special Provision regarding testing shall be met.

**RECLAIMED ASPHALT (R.A.P.)**

When reclaimed asphalt is approved for use as a component material, the Contractor's quality control plan shall include determination of the gradation and asphalt content of the reclaimed asphalt pavement material. A minimum of one (1) stockpile sample per production day shall be taken and the following specifications met:

R.A.P. shall be separated by project, of known origin and quality, and shall be compatible with the proposed mix design. It shall be extracted and the bulk specified gravity will be used in the calculation of the V.M.A. This information shall be presented in the mix design submittal. The maximum amount of R.A.P. allowed in the mix design shall be 20 percent.

Tests for A.C. Content, Gradation and Moisture shall be performed on the R.A.P. with copies made available to Shelby County weekly unless amended by Shelby County during production. At least 65 percent of the Asphalt Cement shall be of "new" material.

Recycling agents, as needed, shall be approved by Shelby County. After incorporation into the mix, the moisture content of the total mix shall be no more than 0.1 percent, as determined by oven drying. This moisture test shall be performed daily, or as directed by the Engineer, with results to go on daily plant.

### QUALITY CONTROL TO BE USED BY THE CONTRACTOR

#### FUNCTIONS AND RESPONSIBILITIES

1. The Contractor shall submit to the Shelby County Engineer for approval, a mix design for each of the asphaltic concrete mixes specified in this contract. Along with the mix design, the Contractor shall submit a total of six (6) Marshall Test specimens. Two (2) specimens shall contain asphalt cement at a quantity of 0.5% below the submitted mix design quantity. An additional two (2) specimens shall contain asphalt cement at a quantity equal to the submitted mix design quantity. The final two (2) specimens shall contain asphalt cement at a quantity of 0.5% above the submitted mix design quantity. The Contractor shall construct the Marshall Test specimens using dual hammers with rotating molds and slanted hammers that produce a modified kneading action. All other conditions of the Marshall Test Method MS II shall be followed. The Contractor shall submit, with test specimens, an uncompacted sample containing asphalt cement at the submitted mix design quantity. This uncompacted sample shall be used for determining the maximum specific gravity of bituminous paving mixtures as specified by AASHTO-T-209-82. The submitted mix design shall contain a minimum tensile strength ratio (TSR) of no less than 70% when tested in accordance with ASTM D-4867. The design TSR each mix shall be included with the submitted mix design. The Contractor shall also submit a combined mineral aggregate sample with the mix design. This sample shall be used to determine the specific gravity and absorption of the mineral aggregates used in the job mix formula.
2. The Contractor shall be responsible for setting and calibration of all metering devices (dials, gauges, scales, meters, etc.)
3. The Contractor shall furnish a Nuclear Asphalt Content Gauge (Troxler Model 3241 or updated version or equivalent) or an Ignition Furnace (Troxler Model 4155 Asphalt Quality Analyzer or equivalent.) This gauge or furnace shall have been calibrated and in place prior to actual paving. If the gauge or furnace fails to perform properly, a "new" or different gauge or furnace shall be employed. The Contractor may produce mix for 48 hours while recalibrating or calibrating "new" or different gauge as long as all the other specifications are met. The Contractor shall be responsible for the calibrations and operation of the Nuclear Asphalt Content Gauge and/or Ignition Furnace. During the initial calibration Shelby County shall be present to observe the Contractor and witness

the results. Re-calibration shall be performed if tests indicate the gauge is not within manufacturer's tolerances.

4. At the pre-construction conference, the Contractor shall submit, in writing, his proposed quality control plan and it shall contain items listed in this provision under **CONTRACTOR'S QUALITY CONTROL PLAN**. This plan shall contain the sampling, testing, inspection and the anticipated frequencies of each. This plan shall not be amended, once it is approved, without prior approval of Shelby County.

#### **MINIMUM REQUIREMENTS FOR A CONTRACTOR QUALITY CONTROL PLAN**

##### **TESTS NEEDED (MINIMUM AMOUNT)**

##### **1. ALL PLANTS:**

###### **Stockpile**

- a. Determine gradation of all incoming aggregates (weekly)
- b. Inspect stockpiles for separation, contamination, segregation, etc. (weekly).
- c. Conduct a fractured face count when gravel is used as course aggregate (weekly). (Minimum fractured face count shall be 70 %.)
- d. Determine the percent of glassy particles in slag course aggregate (only when requested by Shelby County.)
- e. Determine gradation and asphalt content of reclaimed asphalt pavement when used as a component material (weekly).

##### **2. Cold Bins**

- a. Calibrate the cold gate settings (initially and when requested by Shelby County).
- b. Observe operation of cold feed for uniformity (weekly).
- c. Insure that bins have proper dividers to prevent materials from spilling over into adjacent bins. (Initially and then monthly).

##### **3. Dryer**

- a. Observe pyrometer for aggregate temperature control (as needed).
- b. Observe efficiency of the burner (as needed).

##### **4. Bituminous Mixture/All Plants**

- a. Determine percent bitumen (AC contents 1 per each 300 tons produced).
- b. Determine mix gradation (one for each 1/2 days production). Vacuum Extraction Method.
- c. Check mix temperature (every third load and write on ticket and initial).
- d. Determine Loss-On-Ignition (L.O.I.) of aggregate in mix (as needed or requested by Shelby County with Marshall tests).
- e. Determine percent moisture in mix when reclaimed asphalt pavement is a component material (daily, oven method).
- f. The Engineer shall make Field Cores for surface and base mixes when and at intervals determined necessary.
- g. Check mix for un-coated aggregate (boil test as per TDOT Sampling & Testing).
- h. Insure that handling procedures do not contribute to segregation of the mix (weekly).

5. Batch Plant Hot Bins (Sampling to be performed at beginning of Project, then as needed due to gradation problems.)
  - a. Determine gradation of aggregates in each bin (as needed).
  - b. Determine theoretical combined grading (as needed).
  - c. Determine the percent dust coating on +4 material (as needed).
  - d. Check dried aggregate for contamination due to incomplete combustion of fuel (as needed).
  - e. Batch weights – determine percent used and weight to be pulled from each bin to assure compliance with job mix formula. (Initial set-up)
  - f. Check mixing time (both dry and wet as needed).
  - g. Check operations of weigh bucket and scales (initial set-up as needed).
  - h. Document accuracy of all weighing and metering devices
    1. Asphalt cement (monthly)
    2. Aggregate (monthly)
    3. Anti-strip additive (monthly)
6. Drum Mixer Plant
  - a. Calibrate the cold feed and prepare a calibration chart for each cold gate (initial setup and each time restart plant).
  - b. Develop information for the synchronization of the aggregate feed and the bituminous material feed (initial set-up & restart).
  - c. Determine moisture content of aggregate being fed into dryer (daily).
  - d. Determine the percent dust coating and dried +4 material (as per TDOT).
  - e. Check dried aggregate for incomplete combustion of fuel.
  - f. Document accuracy of all weighing and metering devices
    1. Asphalt cement (monthly)
    2. Aggregate (monthly)
    3. Anti-strip additive (monthly)

The activities shown in these specifications are considered the minimum requirements needed to control the plant operations. Any alterations in the above testing, including frequency, shall be done only on approval by Shelby County.

**Plant Technician:** The Contractor shall provide a Certified Plant Technician to perform all testing and mix design submittals as required in these Special Provisions. Minimum requirements for personnel shall be a current certification from Tennessee Department of Transportation in both the Marshall Mix Design Methods and Certified Plant Technician. A copy of these certifications shall be posted in the lab, and copies shall be submitted with the mix design submittal. Persons not approved at the pre-construction meeting shall not be allowed to perform quality control testing except with written permission of Shelby County. Testing personnel shall be at the asphalt plant any time mix is being produced and shipped. A certified Quality Control Technician shall perform all plant testing. When it becomes evident that the Technician cannot perform or will not perform or does not follow common prudent practices to insure valid results, Shelby County reserves the right to require that Technician be replaced with another Certified Technician. All plant operations shall cease until the Contractor provides another Certified Technician.

**Asphalt Storage:** All items in TDOT Section 407 shall be enforced with the exception in this Special Provision to include the revision of subsection 407.09 item number 7, referring to Silos or Storage Bins.

Bituminous materials (Hot Mix) gradings 307 and 411 may not be stored. They are to be used the same day as produced.

**Records:** The Contractor shall maintain adequate records of all inspections and tests. These records shall indicate the nature and number of tests made, the number and type of deficiencies found, and the nature of corrective action taken. Copies of records documenting the Contractor's quality control tests and inspections shall be furnished to Shelby County. Shelby County will furnish all forms needed for testing and inspection to the Contractor. All conforming and nonconforming tests and inspections shall be current, complete, and recorded only on forms provided. All tests and documents showing inspections shall be available to Shelby County.

**Corrective Actions:** The Contractor shall take immediate action to correct any errors, equipment malfunctions, process changes, or other assignable causes which have resulted or could result in the submission of materials, products, and completed construction which does not conform to the requirements of the specifications. When it becomes evident to Shelby County that the Contractor is not controlling his process and is making no effort to take corrective action, Shelby County will require that plant operations cease.

**Lab:** The Contractor shall furnish a fully equipped lab (lab size shall conform to TDOT requirements). The lab size (permanent or portable) shall be a minimum of three hundred (300) square feet at the production site in accordance with the provision of 106.06 of the Tennessee Highway Specifications. The lab shall be equipped with the necessary testing equipment and supplies for performing all quality control testing and sampling, and also include the following: Air conditioning/heat (to provide comfortable working conditions), a telephone in the lab, electronic scales (Metler PC 16 or equivalent), and a water source adequate for all needed testing. A nuclear asphalt content gauge, (Troxler Model 3241 or updated model or equivalent), or an Ignition Furnace and a furnace to perform loss on ignition.

**Job Mix Formula (Mix Design):** At the pre-construction conference or no later than 30 days after the pre-construction conference, the Contractor shall submit, in writing, a duplicate of the proposed job mix formula, a laboratory design where applicable, and an asphalt barge certification with temperature-viscosity curve for each mixture, to Shelby County for approval. The lab design (mix design) must be prepared and signed by a Certified Laboratory Technician; the Technician must have completed the Marshall Method of Mix Design School conducted by Tennessee Department of Transportation, including the written and hands-on performance testing.

The following information shall be furnished:

1. The specific project or program on which the mixture is to be used.
2. Plant location that will supply bituminous material to the project.
3. The source and description of all materials to be used in the mix.
4. The gradations and approximate proportions of the raw materials as intended to be combined in the paving mixture.

5. A single percentage of combined aggregate passing each specified sieve. The combined aggregate gradation shall be plotted on a gradation chart with sieve sizes raised to 0.45 power.
6. The loss of ignition (L.O.I.) results on the combined aggregate of the 411 gradings used as a wearing curve.
7. The bulk specific gravity, apparent specific gravity, and absorption on the combined mineral aggregate in the paving mixture.
8. The fractured face count and glassy particle count of the plus 4 material, of applicable.
9. A single percentage of asphalt, by weight of total mix, intended to be incorporated in the complete mixture.
10. The dosage rate and source of anti-stripping additive meeting the requirements as stated in this special provision.
11. The maximum specific gravity of the asphalt mixture.
12. A single temperature at which the mixture is intended to be discharged from the plant.
13. Evidence that the completed mixture will conform to all specified physical requirements set forth in 903.06 or 903.11.
14. The Tensile Strength Ratio (TSR) indicating the stripping and moisture susceptibility characteristics of the mix.
15. The name of the individual responsible for the Quality Control of the mixture during production.
16. In order to identify critical mixes and make appropriate adjustments, the mix design should have the required design properties for the bitumen content range of Optimum Asphalt Content +0.35 loss of Ignition and Tensile Strength Ratio (TSR) shall be determined in accordance with TDOT Standard Specifications.

**Composition of Mix:** Tolerances shall be as follows aggregate passing:

<b>SIEVES</b>	<b>TOLERANCES</b>
3/8" sieve or larger	7 percent plus or minus
No. 4 sieve	5 percent plus or minus
No. 8 to No. 50 sieve	4 percent plus or minus
No. 100 to No. 200 sieve	2 percent plus or minus
Bitumen	0.4 percent plus or minus

**Temperature of Mix:** The temperature for mixing and compacting shall conform to AASHTO T-245 (Mixing Section 3.31) (Compaction Section 33.2). The temperature of the mix when it is discharged from the mixer shall not deviate from that temperature by more than plus/minus 20 degrees F. Asphalt cement used in the mix design shall conform to AASHTO M-226 Section 4 Table 2.

**Job Mix Revisions:** The approved mix design formula shall remain in effect until Shelby County authorizes a change in writing. The Contractor, at any time after construction has started, may request that the job mix be revised, providing evidence is shown that the revision is necessary and the revised aggregate gradation will meet all applicable gradation requirements. A "new" Mix Design shall be submitted for approval, meeting all requirements of this section, and shall not be used until approved by Shelby County. A new job mix formula shall be required for any change in a source of materials or and

when Shelby County determines that an undesirable surface texture is being produced due to mix conditions. A new job mix formula shall be required when it becomes apparent that the approved

formula cannot be met. All operations shall cease until the new job mix formula has been submitted and approved. A test strip shall be required using the new job mix formula. The test strip shall be of no more than 100 tons and shall include Marshall Test specimens, cores, and density requirements. These steps are conditions to approval of the new job mix formula. No additional mix shall be laid until design approval is complete. If the redesigned job mix formula does not meet all required specifications, then Shelby County will not accept additional mix until the Contractor can prove this mix is in compliance and will remain so. Mix used for this compliance testing shall not be laid on any project governed by Shelby County. Shelby County will again begin accepting mix only after the mix design is proven to be in total compliance to specifications. If the redesigned job mix formula does not meet specifications, Shelby County will require another job mix formula.

**voids:** The percent voids in the total mix shall be based on the Maximum Specific Gravity of the bituminous mixture (Rice Gravity) as determined by AASHTO T-209. The voids in the mineral aggregate (VMA) shall be calculated using the Bulk Specific Gravity of the aggregates.

**Coarse Aggregates:** Coarse aggregate (aggregate retained on the No. 4 sieve) shall be crushed stone, crushed granite, crushed gravel, crushed slag, or combination of these materials. This material shall conform to the quality requirements of ASTM D692 except that the sodium sulfate soundness loss on limestone shall not exceed nine (9) percent, and the aggregate shall contain no more than five (5) percent soft of non-durable particles. Crushed gravel shall consist of siliceous particles processed from washed material. At least seventy (70) percent by count of the gravel retained on the No. 4 sieve shall have a minimum of two fractured faces, one of which must be fractured for the approximate average diameter or thickness of the particle. The addition of pea gravel or uncrushed particles shall not be permitted. After drying in the plant, the aggregate retained on the No. 4 sieve shall have a loss of not more than 0.75 percent by weight when washed over a No. 8 sieve in accordance with the coating test in 903.21 of this special provision.

**Pavement Irregularities:** Unevenness of texture, segregation, tearing or shoving of the bituminous mixture which occurs during the paving operation shall be immediately removed and replaced or repaired as directed by the Engineer or his representative. Excessive throwing back of the bituminous mixture shall not be permitted.

**Hand Work:** All hand work shall be neat and blend in. All hand work shall be performed by the Contractor and approved by the Engineer.

**Rollers:** The use of vibratory rollers will be permitted when the particular make and/or type roller proposed for use is approved by the Engineer.

**Pavers:** All paver extensions shall be full assembly extensions, including activated and heated screeds, and auger extensions. Strike off boxes shall not be permitted, except on continuously varying width sections. Materials for shoulders less than 8 feet in width and similar construction may be placed by means of approved mechanical spreading. A paving machine shall not be fed from more than one

asphalt plant. Plant production and paving operations shall be so coordinated that there is constant forward movement of the pavers. Repetitive interruptions or stopping of the paver shall be cause for the Engineer to stop work until the cause of the stoppage is corrected. If the paver must be stopped for a significant period of time, and at the end of the day's paving, a paper joint shall be constructed and paver moved from the roadway before the bituminous mixture has cooled sufficiently to prevent proper compaction. If the bituminous mixture is permitted to cool to the extent that the required density cannot be obtained, the mixture shall be removed and replaced at the Contractor's expense.

**Weather Limits:** Unless permitted in writing by Shelby County, no bituminous plant mix shall be placed between November 30 and March 1. When permission is granted, the low temperature in the previous 24 hours shall have not been below 32 degrees F and the temperature requirements, as stated in subsection 407.09 Weather Limitations, shall be modified to read "less than 1 1/2 inches – 55 degrees, and more than 1 1/2 inches – 45 degrees.

The outside ambient temperature shall be at the above noted temperature before mix is permitted to be shipped from the plant. No allowances for expected temperature rise shall be made. At any time the temperature falls below the prescribed requirements in this section and/or Tennessee Department of Transportation "Standard Specifications" Section 407, paving shall cease and shall not resume until such time as the temperature requirements are again met.

**Revise 407.15 Compaction to read as follows:**

1. Bituminous Plant Mix Base, Section 307, Gradings B and BM. An average of 92 percent of maximum theoretical density shall be required. No individual density test shall be less than 90 percent. Daily average of density tests shall not fall below 92 percent for acceptability.
2. Asphaltic Concrete Surface Course, Section 411 Gradings D, SP-D, and E (E to be used for shoulders only when specified in the contract). Two Marshall test specimens shall be made at the plant as soon as the adjustment period is complete and the mix conforms to the job mix formula. The Marshall Mix Method (75 blows) shall be used to determine requirements for density. Ninety-five (95) percent of the lab density shall be required with no individual test falling below 92 percent. Total daily field density tests shall average 95 percent of the lab density to be acceptable. For shoulder construction, the average density requirements shall not be less than 92 percent of the lab density with no test falling below 88 percent. Four Marshall test specimens shall be made biweekly. Marshall test specimens shall be made immediately upon individual start-up, if that plant has not produced mix for this contract within the preceding 24 hour period. Two specimens shall be made available intact to Shelby County for verification tests. The Contractor shall also test a minimum of two (2) companion specimens and submit results to Shelby County for comparison. All density requirements shall be determined as per the results of these specimens. All specimens shall be made from one mix sample of sufficient quantity to perform the following tests: (1) extraction (2) LOI (3) Marshall Test Method. All samples shall be of sufficient quantity to permit "quartering" of the mix.
3. The density (Bulk Specific Gravity) determination for a compacted asphalt mixture shall be performed in accordance with AASHTO T-166, Method A.

**Revise Section 407.20, Basis of Payment in its entirety and substitute the following:**

**PAYMENT:** All work performed as prescribed in this section will be paid for as provided in the respective sections for each type specified. Tests and reports shall be considered part of the Contractor's Quality Control Plan and shall not be paid for as a separate item.

When the Contractor is not in compliance with the specifications and/or the approved job mix formula, Shelby County reserves the right to reject the entire area produced and laid or request the removal and relaying of the area. Each day's production shall be considered a lot and will be accepted or rejected as such.

**MATERIAL TESTING:** The Engineer or his representative shall have free access to the plant, stockpiles, and the field laboratory for the purpose of inspection or materials, operations of plant, observation of tests and the conducting of random testing.

**TOLERANCES:** Gradation and Asphalt – When quality control testing indicates a trend toward borderline values, the Contractor's Quality Control Technician shall initiate immediate action to reverse the trend.

**TRUCKS:** Trucks used for hauling bituminous mixtures shall be weighed empty each time prior to loading and shall have a plainly legible identification mark.

**TICKETS:** Each load of material delivered to the job site by the Contractor or sub-contractor shall have a weight ticket that shall be provided to Shelby County. When any chemical additives are added at the plant, the type and amount shall be fully noted on the ticket. A certification of quality for that additive shall be provided to Shelby County.

SHELBY COUNTY, TENNESSEE  
SPECIAL PROVISION 407.10  
BASE OR SURFACE PREPARATION

This work shall consist of the preparation of the existing roadway base or surface, prior to application of the specified asphaltic concrete base or surface course.

In general, the preparation work shall be done in accordance with the Applicable Articles of the "Tennessee Department of Transportation Standard Specifications," dated March 1, 1995 and revisions thereof, covering preparation of the bases or surfaces to receive the asphaltic base and/or surface course.

**RURAL SECTIONS:** On rural type streets or highways (without curbs and gutters), the Contractor shall cut back the shoulder of the roadway at the edge of the existing pavement to provide for the width as shown on the list contained hereinafter. The cutting back of the shoulder shall be done in a manner, which will remove all vegetation on the area to be paved. Any materials removed from the pavement edge during this cutting back of the shoulder, which is suitable for backfill, shall be retained and unsuitable material shall be disposed of at locations provided by the Contractor and/or approved by the Engineer.

Freshly primed area subject to traffic (driveways) shall be blotted with sand to prevent pick-up.

The freshly cut area adjacent to the existing pavement shall be compacted, rolled and primed with a tack coat in an amount not less than 0.20 nor more than 0.30 gallons per square yard. The tack coat shall be placed approximately six (6) inches outside the area to be paved. The tack coat materials for this freshly cut area shall be tar, meeting the requirements of Section 403 and Article 904.03 of the "Standard Specifications."

Any failures in the existing pavement or base that, in the judgement of the Engineer, requires repair prior to the placement of the new asphaltic surface course shall be removed and replaced with the appropriate asphaltic concrete mixtures. The Engineer will direct the area to be removed, the depth and method of the removal and the disposal of any unsuitable pavement and base materials, and shall select and direct the placement of the appropriate asphaltic concrete mixtures. In the event that the depth of the failure to be repaired exceeds four (4) inches, the asphaltic material used in the repair shall be placed in a standard two-lift operation with the top lift not to exceed two (2) inches.

The existing pavement shall be cleaned by sweeping prior to the application of a tack coat. The tack coat shall be as specified in Section 403 of the "Standard Specifications."

**BASIS OF PAYMENT:** The cleaning of the existing pavement, the removal and repair of the existing pavement and base and the furnishing and application of the required tack coat shall not be paid for separately. Asphaltic concrete used in base and pavement repair shall be paid for as per contract unit prices for the types of asphaltic mixtures involved.

SHELBY COUNTY, TENNESSEE  
SPECIAL PROVISION 407.15  
MAXIMUM THEORETICAL DENSITY TEST  
411 and 307 MIXES WITH A.C. – 20 or 30

DESCRIPTION: All mix designs to be submitted to the Engineering Department for approval shall include Maximum Theoretical Density which will be determined by ASTM-D-2041 and is to include Stability, Flow, VMA, and Voids to be determined by the Marshall Test Method (75) blows.

REFER TO THE CONTRACT FOR THE SPECIFIC MIX(ES) TO BE USED.

The following specifications shall govern these mixes:

411-D

Flow – 8-16  
Voids – 3.0-5.5  
Stability – 2000 p.s.i. min.  
DAR – 0.6-1.2

411-SP-D

Flow – 8-16  
Voids – 3.0-5.5  
Stability – 2000 p.s.i. min.  
DAR – 0.6-1.2

307 – B

Flow – 8-16  
VMA – 13.5 Min.  
Voids – 3.0-5.5  
Stability – 2000 p.s.i. min.  
DAR – 0.6-1.2

307 – B

Flow – 8-16  
VMA – 13.5 Min.  
Voids – 3.0-5.5  
Stability – 2000 p.s.i. min.  
DAR – 0.6-1.2

307 – C

Flow – 8-16  
VMA – 13.5 Min.  
Voids – 3.0-5.5  
Stability – 2000 p.s.i. min.  
DAR – 0.6-1.2

307 - SP

Flow – 8-16  
VMA – 14 Min.  
Voids – 3.0-5.5  
Stability – 2000 p.s.i. min.  
DAR – 0.6-1.2

SHELBY COUNTY, TENNESSEE  
SPECIAL PROVISION 411.03SP  
ASPHALTIC CONCRETE SURFACE MIX  
411-SP-D

**DESCRIPTION:** This work shall consist of the application of a bituminous concrete surface, of the specified thickness, in accordance with the applicable articles, Section 411 of the Standard Specifications dated March 1, 1995 and revisions to date, with the following revisions and or additions:

**ASPHALTIC CONCRETE SURFACE COURSE, MIX NO. 411 SP-D  
MASTER RANGE**

<u>SIEVE SIZE</u>	<u>TOLERANCES PASSING</u>
3/4 inch	100 percent
3/8 inch	78-92 percent
No. 8	40-70 percent
No. 30	20-50 percent
No. 100	2-12 percent
No. 200	0-8 percent
Asphalt Cement	5.3-7 percent

Asphalt Cement shall be A.C. grade 20 or 30.

When gravel is used as the coarse aggregate for 411-SP-D mix, a minimum of 20 percent by weight of limestone screenings, agricultural limestone, and/or mineral filler shall be required. Natural sand content shall not exceed 30 percent of the total mix design. Reclaimed Asphalt Pavement shall not be a component of this mix.

**PAYEMNT:** Revise article 411.09 and 411.10 under method of measurement and basis of payment to read:

Payment for this work shall be paid for at the Contract Unit Price per ton for the following items:

1. Item Number 411.01.01 Mineral Aggregate (ACS) Grading D
2. Item Number 411.01.02 Asphalt Cement (ASC) Grading D

These items shall be paid as follows: each day, daily plant report(s) with gradation(s), and the asphalt content clearly noted (to include the report(s) from the Asphalt Nuclear Content Gauge or the Ignition Furnace) shall be submitted to Shelby County. The asphalt cement percentage noted on these reports shall be a basis for payment for that day's production. When more than one test is required for that day, the average of the tests for that day will be used for payment. When the daily report and the Nuclear Method of Ignition Furnace Method differ, the Nuclear Method or Ignition Furnace shall be used for the basis of payment. If the Nuclear Method or Ignition Furnace Method for Asphalt testing and vacuum extraction method differ by 0.4 percent on two continuous days production, the methods for sampling

shall be reevaluated for errors (to include if needed the reprogramming of the Asphalt Cement Nuclear Gauge).

These unit prices shall include labor, materials, and equipment necessary to produce, finish, and apply the Bituminous Concrete Plant Mix, complete in place as specified herein and/or directed by the Engineer.

**Shelby County Tennessee  
Special Provision**

**State Road Asphalt Resurfacing Project**

This project is divided into two comprehensive functions, asphalt patch repair and pavement resurfacing. All materials, construction methods and workmanship used shall conform to TDOT specifications. Selected contractors must submit mix designs for any material that applies. Work shall be completed and paid for in the following manner:

Asphalt patch repair - For each site marked, the contractor will remove and haul off the asphalt and sub-grade up to a depth of 8 inches. Sites with markings across asphalt shall be saw-cut to a smooth, straight joint following the marked pavement. Markings which follow curb and gutter shall be removed to the water table. The area is to be replaced by asphalt surface mix. Contractor must use 411E or 411SP surface mix. Cut-outs must be inspected by the inspector before repair is made. The work areas should be kept free of loose material and cleaned and swept at the end of each day. Finished asphalt surfaces should be smooth and free from uneven grades.

Sub-grade undercut repair - Upon inspection and approval by the Shelby County inspector any cut-out found to have unacceptable base material shall be excavated an additional 6" inches in depth, hauled off and replaced with 6" of CTB. Again the undercut area must be inspected by the inspector before the CTB is placed. If the cut-out area again is found to have an unacceptable base, additional 6" of sub-grade undercut repairs can be approved up to a total of 2 feet in depth. CTB shall be compacted in 6" lifts and be proof-rolled before the placement of the layer above.

Additional patch area – Upon the inspection and approval by the Shelby County inspector the square footage of a marked site may be expanded to a new dimension depending on surface asphalt and sub-grade conditions. Repair of the additional area shall be paid in accordance with the methods above at the same unit price submitted.

**Contractor will not be paid for additional work that is not pre-approved by the inspector.**

**SECTION D**

**SHELBY COUNTY GOVERNMENT  
ENGINEERING DEPARTMENT**

**GENERAL REQUIREMENTS  
AND  
CONDITIONS**

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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**SECTION E**

**SHELBY COUNTY GOVERNMENT  
ENGINEERING DEPARTMENT**

**PROJECT LOCATION MAP**



Alternate #1

Mill/Repave State Road  
from Sycamore View  
Road to Mullins Station  
Road.

Map Traffic

Map navigation controls (compass, zoom in, zoom out, street view)

Scale bar: 200 ft, 700 m