Shelby County

Tennessee

Mark H. Luttrell, Jr., Mayor

SEALED BID

Shelby County Government

Purchasing Department

160 N. Main, Suite 550
Memphis, TN 38103

Issued: March 25, 2013
Due April 11, 2013 at 2:30 P.M. (Central Standard Time)

SEALED BID # I-000204

RALEIGH MILLINGTON ROAD BRIDGE PROJECT

Shelby County Government is soliciting Sealed Bids for the provision of Construction Services to provide Road Improvements and Bridge construction on Raleigh Millington Road in Shelby County, Tennessee. The Sealed Bid is located on the County's website at www.shelbycountytn.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 10:00 A.M., Monday, April 8, 2013 at the following location, Shelby County Roads 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, your proposal will be the basis for negotiating a contract with Shelby County Government. Respondents requesting additional information or clarification are to contact, Nelson Fowler at nelson.fowler@shelbycountytn.gov.

Bids must be received in the office of the Administrator of Purchasing **no later than 2:30 P.M. on April 11, 2013. Bids will be publicly opened at that time and all interested bidders are invited to attend.: Bids should be addressed**

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, "RALEIGH MILLINGTON ROAD PROJECT", SEALED BID # I-000204** 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

Roads, Bridges & Engineering Section
6449 Haley Road
Memphis, Tennessee 38134

INDEX

SECTION A REQUEST FOR PROPOSAL

I. INTRODUCTION 5
II. MINIMUM PROPOSER REQUIREMENTS 5
III. CORRESPONDENCE 5
IV. PROPOSAL SUBMISSION DEADLINE 6
V. PROPOSAL TIMELINE 7
VI. PROPOSAL CONDITIONS 7
A) CONTINGENCIES
B) MODIFICATIONS
C) PROPOSAL SUBMISSION
D) INCURRED COSTS
E) FINAL AUTHORITY
F) PROPOSAL VALIDITY
G) LIVING WAGE
H) NON-DISCRIMINATION AND TITLE VI
I) LOSB
J) DRUG-FREE WORKPLACE AFFIDAVIT
K) GRATUITY DISCLOSURE FORM
L) FORMS TO BE SUBMITTED
VII. GENERAL REQUIREMENTS 26
VIII. AWARD OF CONTRACT 26
IX. NOTICE TO BIDDERS 27

SECTION B PROPOSAL AND CONTRACT REQUIREMENTS

I. PROPOSAL 1-3
II. BID FORM 4-8
III. PROPOSAL RESPONSE SHEET 9
IV. CONTRACT 10-22
V. CONTRACT BOND 23-24

SECTION C SPECIAL PROVISIONS

SECTION D GENERAL REQUIREMENTS AND CONDITIONS

END OF PAGE

SECTION A

SHELBY COUNTY GOVERNMENT

ENGINEERING DEPARTMENT

SEALED BID

I. INTRODUCTION

Shelby County Government (the "County"), is soliciting currently registered contractors to provide Construction Services for bridge replacement in Shelby County Tennessee. This Sealed Bid ("SBI") 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 SBI.

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 SBI.
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 B and A 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.shelbycountytn.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 SBI 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@shelbycountytn.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 Thursday, April 4, 2013 @ 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.shelbycountytn.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 SBI may disqualify your company from further consideration.

Respondents requesting additional information or clarification are to contact Mr. Nelson Fowler in writing at nelson.fowler@shelbycountytn.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.

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.shelbycountytn.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 the EOC Department @ 901-222-1100.

IV. PROPOSAL SUBMISSION DEADLINE

All proposals must be received at the address listed above no later than **2:30 pm, Friday, April 11, 2013.** Facsimile or electronically transmitted proposals will not be accepted since they do not

contain original signatures. Postmarks will not be accepted in lieu of actual receipt. Late or incomplete proposals may not be opened and considered.

V. PROPOSAL TIMELINE

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

Request for Proposals Released	**Monday, March 25, 2013**
Pre-Bid Conference	**10:00 am, Monday, April 1, 2013**
Deadline for Questions	**12:00 pm, Thursday, April 4, 2013**
Proposal Due Date	**2:30 pm, Thursday, April 11, 2013**
Notification of Award	**May 2013**

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 SBI does not commit the County to pay any costs incurred in the preparation of a proposal in response to this SBI 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 (LOSB) PROGRAM
FOR CONSTRUCTION SERVICES

RALEIGH MILLINGTON ROAD BRIDGE 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 it's purchasing and contracting practices encourage the use of Locally-Owned Small Businesses (LOSB's) in all solicitations. In furtherance of these policy objectives, Shelby County seeks to afford all citizens equal opportunities to do business on county contracts and to ensure that all bidders, or Contractors doing business with Shelby County provide to LOSB's, maximum practicable opportunities, commensurate with availability, price and capabilities required, to participate on contracts which are paid for, in whole or in part, with monetary appropriations from Shelby County.

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

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

Ms. 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@shelbycountytn.gov

Definitions

The definitions used in this document are as follows:

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

Requirements and Compliance

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

Policies and Procedures

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

1. **Pre-Bid Activity**
   a. Bid Language

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

b. Notification

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

2. Contractor's Responsibilities

a. Efforts to Achieve LOSB Participation

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

b. Utilization

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

c. Commercially Useful Functions

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

d. Unavailability

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

e. Pre-Work Conference

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

f. Post-Award Change

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

g. LOSB Certification

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

3. **LOSB Responsibilities**

a. Commercially Useful Function

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

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

  A Contractor is required to submit **LOSB Form "B"** with its Proposal in order to identify all LOSB's they propose to utilize in providing the goods and services included in the Proposal. Contractors may only include a proposed provider of goods or services on **LOSB Form "B,"** if the entity is a legitimate LOSB. Additionally, if such entity will provide services, Contractors may only list LOSB's on **LOSB Form "B"** if the entity will perform a Commercially Useful Function. The Successful Contractor will be required to finalize and submit **LOSB Form "B"** prior to award of a contract. **LOSB Form "B"** will be incorporated into the contract and will become a contractual obligation of the Successful Contractor. **LOSB 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 **LOSB Form "B."**

  LOSB 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 **LOSB Form "C"** certifying that it is performing the work and that it is a Commercially Useful Function.

- **LOSB 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 **LOSB Form "D."** The form is required to be submitted to Shelby County each month. **LOSB Form "D"** must be completed in its entirety with information regarding the types of goods purchased from LOSB's or the types of services rendered by LOSB's and dollars amounts paid for their goods or services.

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

Company Name: _____
Bid No.: _____

I certify that the following efforts where made to achieve LOSB participation: **YES NO**

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

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

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

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

If applicable, please complete the following:

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

Reasons for the "Unavailability"

_____

_____

Submitted by:

_____ _____
Authorized Representative Signature Title

_____
Date

Shelby County
LOSB Program

LOSB FORM B

LOSB UTILIZATION PLAN
(To Be Submitted with the Bid/Proposal)

Company: _____

Bid No.: _____

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

Name	Description of Work	Contract Value	LOSB Number

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

TOTAL CONTRACT VALUE: _____

TOTAL % OF LOSB PARTICIPATION: _____

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

Submitted by:

_____
Authorized Representative Signature

_____
Title

_____
Date

Shelby County
LOSB Program
LOSB FORM C

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

Company Name: _____
Bid No.:_____

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

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

The following are the work items to be performed:

_____

_____

at the following price: $_____.

If applicable, please complete the following:

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

with Shelby County.

I hereby certify that this statement is true and correct:

Business Information: Submitted by: _____

Business: _____ Authorized Representative (Print):

Address: _____ _____

Title: _____

Phone: _____ Authorized Representative's Signature:

_____

Facsimile: _____ Date: _____

Shelby County
LOSB Program

LOSB FORM D

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

Company Name: _____
Name/Contract No.: _____
Payment Request Number: _____

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

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

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

Business Information:

Business: _____

Address: _____

_____

Phone: _____

Facsimile: _____

Submitted by:

Authorized Representative (Print):

_____

Title: _____

Authorized Representative's Signature:

_____

Date: _____

LOCALLY OWNED SMALL BUSINESS PURCHASING PROGRAM RULES AND REGULATIONS:

1. The Administrator of Purchasing in conjunction with the Administrator of EOC shall identify certain goods and services required by the County to be set aside for special purchasing procedures for locally owned small businesses.

2. Only certified locally owned small businesses will be allowed to submit competitive bids on the goods or services identified under paragraph (i) above.

3. The Administrator of Purchasing shall, in conjunction with the Administrator of EOC, annually review the Shelby County Capital Improvement Program to determine those projects with a construction cost of $250,000 or more. Contracts amounting to at least ten (10%) of the construction costs of such project shall be awarded to locally owned small businesses as defined herein, except as set forth in sub-paragraph (vi) of this section, either as part of the conditions of the solicitation for general contractors bidding on these projects, or as separate bids issued by the County for subcontracts that may be assigned to general contractors.

4. After adhering to all other bidding and purchasing requirements of the County, not inconsistent with this part, if no bids are received from locally owned small businesses, then the County may solicit bids for the goods or services from all other sources.

5. On all purchases and/or contracts entered into by the County, the Purchasing Administrator or his or her designee shall have the right to negotiate with any supplier of goods or services to the County for the inclusion of locally owned small business subcontractors and/or suppliers in the contract award.

6. Failure by a supplier or contractor to include locally owned small business 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:

_____

_____

_____

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

_____

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

_____

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

_____

_____

7. **DESCRIPTION OF THE GRATUITY:**

_____

_____

_____

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

_____

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 COMMERCIALLY 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 seven hundred thirty (730) calendar days.

C. Reservation of Rights

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

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, THURSDAY, APRIL 11, 2013.** 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: **RALEIGH MILLINGTON ROAD BRIDGE PROJECT.**

Pre-Bid Meeting:

Bidders are encouraged to attend a voluntary pre-bid meeting to be held on Monday, April 1, 2013 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.shelbycountytn.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

_____, 2013

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: **RALEIGH MILLINGTON ROAD BRIDGE 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 **730** 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

RALEIGH MILLINGTON ROAD BRIDGE PROJECT

	RALEIGH MILLINGTON ROAD BRIDGE – ESTIMATED ROADWAY QUANTITIES				
ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL
105-01	Construction Stakes, Lines & Grades	LS	1		
201-01	Clearing and Grubbing	LS	1		
202-01	Removal of Structures & Obstructions	LS	1		
203-06	Water	M.G.	798		
203-07	Furnishing & Spreading Topsoil	C.Y.	100		
203-10	Embankment (Compacted In Place)	C.Y.	40,433		
209-05	Sediment Removal	C.Y.	2,000		
209-08.02	Temporary Silt Fence (With Backing)	L.F.	15,317		
209-08.03	Temporary Silt Fence (Without Backing)	L.F.	160		
209-08.07	Rock Check Dam PER	EACH	9		
209-08.08	Enhanced Rock Check Dam	EACH	5		
209-09.04	Sediment Filter Bag(15' X 10')	EACH	6		
209-09.40	Curb Inlet Protection (Type1)	EACH	16		
209-09.42	Curb Inlet Protection (Type 3)	EACH	2		
209-40.41	Catch Basin Filter Assembly (Type 1)	EACH	9		
209-40.46	Catch Basin Filter Assembly (Type 6)	EACH	7		
303-01	Mineral Aggregate, Type A Base, Grading D	TON	427		
303-10.01	Mineral Aggregate (Size 57)	TON	145		
307-01.01	Asphalt Concrete Mix (PG64-22) (BPMB-HM) Grading A	TON	102		
307-01.08	Asphalt Concrete Mix (PG64-22) (BPMB-HM) Grading B-M2	TON	120		
307-02.01	Asphalt Concrete Mix (PG70-22) (BPMB-HM) Grading A	TON	2,409		
307-02.02	Asphalt Cement (PG70-22)(BPMB-HM) Grading A-S	TON	61		
307-02.03	Aggregate (BPMB-HM) Grading A-S Mix	TON	1,824		
307-02.08	Asphalt Concrete Mix (PG70-22) (BPMB-HM) Grading B-M2	TON	1,578		
309-01.01	MINERAL AGGREGATE (A-CBC)	TON	3,993		
309-01.02	PORTLAND CEMENT (A-CBC)	TON	154		
402-01	Bituminous Material For Prime Coat (PC)	TON	22		
402-02	Aggregate For Cover Material (PC)	TON	80		
403-01	Bituminous Material For Tack Coat (TC)	TON	18		
411-01.10	ACS MIX(PG64-22) Grading D	TON	130		
411-02.10	ACS MIX(PG70-22) Grading D	TON	925		
411-12.01	Scoring Shoulders (Continuous) 16-in Width)	LM	0.08		
604-01.01	CLASS A Concrete (Roadway)	C.Y.	48		
604-01.02	Steel Bar Reinforcement (Roadway)	LB.	2,409		
606-24.10	Sheet Piles	S.F.	1,000		
606-24.12	Temporary Sheet Piles	S.F.	1,370		
607-02.02	15" Concrete Pipe Culvert (Class III)	L.F.	36		
607-03.02	18" Concrete Pipe Culvert (Class III)	L.F.	1667		
611-12.02	Catch Basins, Type 12, > 4' - 8' Depth	EACH	8		
611-12.03	Catch Basins, Type 12, > 8' - 12' Depth	EACH	1		
611-14.02	Catch Basins, Type 14, > 4' - 8' Depth	EACH	5		
611-14.03	Catch Basins, Type 14, > 8' - 12' Depth	EACH	1		

	RALEIGH MILLINGTON ROAD BRIDGE – ESTIMATED ROADWAY QUANTITIES				
ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL
611-01.02	Manholes, > 4'-8' Depth	EACH	1		
611-01.04	Manholes, > 12'-16' Depth	EACH	1		
611-07.02	Steel Bar Reinforcement (Pipe Endwalls)	LB.	461		
611-07.01	Class A Concrete (Pipe Endwalls)	C.Y.	5		
611-09.01	Adjustment Of Existing Catch Basin	EACH	1		
621-03.09	60" Temporary Drainage Pipe	L.F.	184		
702-03	Concrete Combined Curb & Gutter	C.Y.	310		
703-01	Cement Concrete Ditch Lining	C.Y.	29		
705-01.01	Guardrail at Bridge Ends	L.F.	108		
705-02.02	Single Guardrail (Type 2)	L.F.	2,348		
705-04.05	Guardrail Terminal (Type-In-Line)	EACH	2		
705-04.07	Tan Energy Absorbing Term (NCHRP 350, TL3)	EACH	3		
705-04.50	Portable Barrier Rail Delineator	EACH	170		
705-08.51	Portable Impact Attenuator NCHRP350 TL-3	EACH	4		
707-08.11	High-Visibility Construction Fence	L.F.	3,170		
709-05.05	Machined Rip-Rap (CLASS A-3)	TON	200		
709-05.06	Machined Rip-Rap (CLASS A-1)	TON	484		
709-05.08	Machined Rip-Rap (CLASS B)	TON	706		
709-05.09	Machined Rip-Rap (CLASS C)	TON	3,731		
710-02	Aggregate Underdrains (With Pipe)	L.F.	3,880		
710-05	Lateral Underdrain	L.F.	360		
710-06.11	Lateral Underdrain Endwall (2:1)	EACH	2		
710-06.12	Lateral Underdrain Endwall (3:1)	EACH	12		
710-06.13	Lateral Underdrain Endwall (4:1)	EACH	6		
712-01	Traffic Control	LS	1		
712-02.02	Interconnected Portable Barrier Rail	L.F.	3,604		
712-04.01	Flexible Drums (Channelizing)	EACH	241		
712-04.50	Portable Barrier Rail Delineator	EACH	170		
712-05.01	Warning Lights (Type A)	EACH	87		
712-05.03	Warning Lights (Type C)	EACH	154		
712-06	Signs (Construction)	S.F.	320		
712-08.03	Arrow Board (Type C)	EACH	4		
712-09.01	Removable Pavement Marking Line	L.F.	4.6		
713-02.14	Flexible Delineator (White)	EACH	24		
713-15	Removal Of Signs, Posts And Footings	LS	1		
713-16.20	Signs (Memphis City Limits)	EACH	1		
713-16.21	Signs (Bicycles Symbol)	EACH	2		
713-16.22	Signs (Share The Road)	EACH	2		
713-16.23	Signs (Bike Lane)	EACH	8		
713-16.24	Signs (Ahead - Bike Lane)	EACH	2		
713-16.25	Signs (End - Bike Lane)	EACH	2		
713-16.26	Signs (Speed Limit 45 MPH)	EACH	2		
713-16.27	Signs (Right Lane Ends)	EACH	1		
713-16.28	Signs (Lane Ends)	EACH	1		
716-01.11	Raised Pvmt Markers (Bi-Directional) (1 Color Lens)	EACH	61		
716-01.12	Raised Pvmt Markers (Mono-Directional) (1 Color Lens)	EACH	87		
716-04.03	Plastic Pavement Marking (4" Dotted Line)	L.F.	50		
716-02.04	Plastic Pavement Marking (Channelization Striping)	S.Y.	264		
716-04.04	Plastic Pavement Marking (Transverse Shoulder)	L.F.	2,000		

	RALEIGH MILLINGTON ROAD BRIDGE – ESTIMATED ROADWAY QUANTITIES				
ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL
716-04.11	Plastic Pavement Marking (Bicycle Symbol w/Rider)	EACH	4		
716-04.13	Plastic Pavement Marking (Bike Lane Arrow)	EACH	4		
716-05.01	Painted Pavement Marking (4" Line)	L.M.	4.25		
716-08.20	Removal Of Pavement Marking (Line)	L.M.	3.33		
716-13.06	Spray Thermo Pvmt Mrkng (40 mil) (4In Line)	L.M.	2.3		
716-13.07	Spray Thermo Pvmt Mrkng (40 mil) (6In Line)	L.M.	3.2		
716-13.08	Spray Thermo Pvmt Mrkng (40 mil) (8In Barrier Line)	L.F.	3,270		
717-01	Mobilization	LS	1		
740-07.02	Geogrid Reinforcement (Soil Slopes)	S.Y.	315		
740-10.03	Geotextile (Type III)(Erosion Control)	S.Y.	1,398		
740-11.03	Temporary Sediment Tube 18In (Mulch Sock)	L.F.	2,096		
776-01.10	Fire Hydrant (Per Detail)	EACH	2		
801-01	Seeding (With Mulch)	UNIT	133		
801-01.07	Temporary Seeding (With Mulch)	UNIT	126		
801-03	Water (Seeding & Sodding)	M.G.	22		
802-11.16	Fraxinus Pennsylvanica (Green Ash 2-5ft Cntnr Grwn)	EACH	18		
802-11.33	Quercus Michauxii (SWMP Chstnt Oak 2-5ft Cntnr Grwn)	EACH	35		
802-11.36	Quercus Nuttallii (Nuttall Oak 2-5ft Cntnr Grwn)	EACH	35		
802-11.38	Quercus Phellos (Willow Oak 2-5ft Cntnr Grwn)	EACH	35		
802-11.42	Taxodium Distichum (Bald Cypress 2-5ft Cntnr Grwn)	EACH	18		
802-11.46	Quercus Shumardii (Shumard Oak 2-5 ft Cntnr Grwn)	EACH	35		
802-12.16	Fraxinus Pennsylvanica (Green Ash Seedling B.R.)	EACH	25		
802-12.33	Quercus Michauxii (SWMP Chstnut Oak Seedling B.R.)	EACH	48		
802-12.36	Quercus Nuttallii (Nuttall Oak Seedling B.R.)	EACH	48		
802-12.38	Quercus Phellos (Willow Oak Seedling B.R.)	EACH	48		
802-12.42	Taxodium Distichum (Bald Cypress Seedling B.R.)	EACH	25		
802-12.46	Quercus Shumardii (Shumard Oak Seedling B.R.)	EACH	48		
803-01	Sodding (New Sod)	S.Y.	200		
805-12.02	Erosion Control Blanket (Type II)	S.Y.	118		
920-11	14" Ductile Iron Force Main	L.F.	102		
920-12	14" Ductile Iron Force Main (Directional Bore)	L.F.	187		
920-13	Concrete Encasement	L.F.	20		

	RALEIGH MILLINGTON ROAD BRIDGE – ESTIMATED BRIDGE QUANTITIES				
ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL
202-04.01	Removal of Structures	LS	1		
204-02.01	Dry Excavation (Bridges)	CY	184		
303-01.02	Granular Backfill (Bridges)	TON	70		
604-02.03	Epoxy Coated Reinforcing Steel	LB	577,459		
604-03.01	Class A Concrete (Bridges)	CY	1,040		
604-03.02	Steel Bar Reinforcing (Bridges)	LB	540,772		
604-03.04	Pavement at Bridge Ends	SY	392		
604-03.09	Class D Concrete (Bridge Deck)	CY	2,082		
604-04.01	Applied Texture Finish	SY	4,349		
604-05.31	Bridge Deck Grooving (Mechanical)	SY	7,394		
606-04.01	Test Piles (Steel Piles 14-inch)	LF	205		
606-04.02	Loading Test (Steel Piles 14-inch)	EACH	2		
606-04.03	Steel Piles (Steel Piles 14-inch)	LF	3,700		
606-04.06	Pile Tips (Steel Piles 14-inch)	EACH	42		
606-22.13	Steel Pipe Piles (24-inch)	LF	9,595		
606-22.15	Test Piles (Steel Pipe Piles 24-inch)	LF	160		
606-22.16	Load Testing (Steel Pipe Piles 24-inch)	LF	1		
606-22.17	Dynamic Monitoring (Steel Pipe Piles 24-inch)	EACH	5		
615-01.12	Prestressed Concrete Bulb Tee Beam (6" Web) (BT-72)	LF	8,150		
620-05.01	Concrete Parapet Single Slope (STD-1-1SS MODIFIED)	LF	1,904		
707-99.01	Wrought Iron Fence	LS	1		
710-09.01	6-inch Perforated Pipe with Vertical Drain System	LF	204		
710-09.02	6-inch Underdrain	LF	58		
712-12.47	Bridge Mounted Interconnected Portable Barrier Rail	LF	967		
				TOTAL	

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

RALEIGH MILLINGTON ROAD BRIDGE PROJECT

Name of firm: _____

Firm's Website: _____

Mailing Address:

_____

_____

Phone: _____

Fax: _____

Remit Address:

_____

_____

Phone: _____

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

RALEIGH MILLINGTON ROAD BRIDGE PROJECT

This contract (the "Contract") entered into this _____ day of _____, 2013, 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-000204, Raleigh Millington Road Bridge 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 _____, 2013; 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-000204 Raleigh Millington Road Bridge 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 **730 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. CONFIDENTAL 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 Department
6449 Haley Road
Memphis, Tennessee 38134
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:

_____
Contract Administrator/
Assistant County Attorney

SHELBY COUNTY GOVERNMENT

_____
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 bargainor, 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 _____, 2013.

_____
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 RALEIGH MILLINGTON ROAD BRIDGE 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. 2013.

IN WITNESS WHEREOF, We have duly executed the foregoing obligation this _____ day of _____A.D.2013

FOR SHELBY COUNTY GOVERNMENT:

Corporate Name: _____
President

_____
Mayor of Shelby County, TN

Attest: _____
Secretary

_____
Director of Public Works

SURETY _____(Seal)

BY: _____(Seal)
Attorney in Fact

BY: _____(Seal)
Attorney in Fact

APPROVED AS TO FORM:

_____
County Attorney

State of _____

County of _____

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____who is to me personally known to be the same person who signed the above and foregoing instrument as the Attorney in Fact for _____, appeared before me this day in person and acknowledged that he signed the name of

_____

thereto, as his Principal and his own name as Attorney in Fact, as the free and voluntary act of his said Principal for the uses and purposes therein set forth, and that he executed the said instrument under authority given him by said Principal.

Given under my hand and Notarial Seal the _____ day of _____A.D. 2013.

_____
Notary Public

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SECTION C

SHELBY COUNTY GOVERNMENT

ENGINEERING DEPARTMENT

SPECIAL PROVISIONS

SPECIAL PROVISIONS CONTENTS

Special Provision Regarding	Special Provision No.
Unbalanced Bids	102B
Employing and Contracting with Illegal Immigrants	102I
Road Closure/Construction Traffic	104.04
Pre-Construction Submittal Requirements	105.05
Schedule of Work	105.06
Cooperation with Utilities Relocation and Installation of Public Utility Services	105.07
Damage to Service Lines	105.07A
Control of Work, Construction Stakes, Lines and Grades	105.09
Buy America Requirements	106A
Water Quality and Storm Water Permits	107FP
Contractor Employee Safety and Health Program	107SHP
Complaints	107.15
Concrete Contractor-Mix Design and Testing Structural Concrete	604
Equipment for Concrete Ready-Mix Plants	604.04
Class "D" Concrete for Bridge Deck	604.45
Seeding (with Mulch)	801
Sodding	803
Epoxy Coated Reinforcing Steel	907
Equal Opportunity Employment	1230
Standard Federal Equal Opportunity Employment Construction Contract Specifications (Executive Order 11246)	1231
Requirement of Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)	1232
Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary & Lower Tier Covered Transactions	1275
Non-Discrimination in Employment	1290
Tennessee Department of Transportation Minimum Wage Scales for	
Records Retention, Procurement & Auditing	§18.42
Procurement	§18.36
Construction and Maintenance	Part §635
Dynamic Monitoring of Steel Pipe Piles	

STATE OF TENNESSEE

March 1, 2006

SPECIAL PROVISION

REGARDING

UNBALANCED BIDS

The Department will review all unit prices submitted by the apparently lowest responsible bidder and will decide whether any of the unit prices are excessively above or below a reasonable cost analysis value determined by the Engineer.

In the event any unit prices are determined to be unbalanced and contrary to the interest of the Department, the right is reserved to reject such bid at the discretion of the Department or to award the Contract and limit progress payments on units of work performed on any excessively priced items to costs that are satisfactorily documented by the Contractor plus 20 percent, until 85 percent of the Contract has been completed. Upon completion of 85 percent of the Contract, the Contractor will be reimbursed in accordance with **Subsection 109.06** of the Standard Specifications for the accepted quantities of work performed on the excessively priced items.

STATE OF TENNESSEE

October 1, 2006

REV: February 5, 2007

SPECIAL PROVISION

REGARDING

EMPLOYING AND CONTRACTING WITH ILLEGAL IMMIGRANTS

The State shall endeavor to do business only with those contractors and subcontractors that are in compliance with the Federal Immigration and Nationality Act. This policy shall apply to all State Contractors including subcontractors. This policy statement is issued to establish implementation guidance to procuring state agencies and contractors reflecting the requirements of Governor's Executive Order #41, An Order Regarding Compliance with Federal and State Laws Related to Employing and Contracting with Illegal Immigrants, and the requirements of Public Acts of 2006, Chapter Number 878 of the State of Tennessee (codified at *Tennessee Code Annotated,* Title 12, Chapter 4, Part 1).

1. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the "Attestation form" provided by the Department, semi-annually during the period of this Contract.

2. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract.

3. The Contractor shall maintain records for its employees used in the performance of this Contract. Said records shall include a completed federal Department of Homeland Security Form I-9, *Employment Eligibility Verification*, for each employee and shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

SP102I

4. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.

For the Purposes of this policy, "illegal immigrant" shall be defined as a non-citizen who has entered the United State of America without federal government permission or stayed in this country beyond the period allowed by a federal government-issued visa authorizing the non-citizen to enter the country for specific purposes and a particular time period.

Compliance and non-compliance procedures will be as specified in the Tennessee Department of Finance and Administration's Policy on "Ensuring Compliance with Federal Immigration Laws by State Contractors and Subcontractors".

SHELBY COUNTY, TENNESSEE
SPECIAL PROVISION #104.04
REGARDING
ROAD CLOSURES/CONSTRUCTION TRAFFIC

No less than ten (10) days prior to the closure of the road, the contractor shall notify the Shelby County Engineer completely describing the affected roads and the approximate duration of the construction. The Shelby County Engineer shall notify the following agencies:

(1) Local law enforcement office
(2) Local fire department
(3) Ambulance service
(4) Local school superintendent
(5) United States Postal Service
(6) Shelby County Engineer
(7) Civil Defense
(8) Shelby County Public Affairs Office
(9) City of Memphis, Traffic Engineering

SHELBY COUNTY, TENNESSEE
SPECIAL PROVISION 105.05
PRE-CONSTRUCTION SUBMITTAL REQUIREMENT

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.

SHELBY COUNTY, TENNESSEE
SPECIAL PROVISIONS 105.06
SCHEDULE OF WORK

The Contractor shall, in coordination with the Engineer, develop a proposed work schedule showing estimated work times for all major construction tasks. The schedule shall be updated as needed to afford the Engineer a view as to the progress and completion time. This schedule shall be submitted at the pre-construction conference and shall include a list of suppliers.

The Contractor shall follow this schedule unless a change is necessary. The Contractor shall notify the Engineer in advance of any deviation from this schedule. The plan of operations shall show the controlling item of work during each phase and a revised schedule shall be submitted when changed conditions warrant.

Sub-contractor notification: The successful Contractor shall submit to the Engineer at the pre-construction conference a list of any and all sub-contractor(s) that will be performing work under his supervision. The contractor shall also notify the Engineer before any change is made in sub-contractor(s) or suppliers of materials to the project.

Notification of sub-contractor(s) or suppliers shall in no way release the Contractor from any or all responsibility relating to work or liabilities relating to this contract.

SHELBY COUNTY, TENNESSEE
SPECIAL PROVISION #105.07
COOPERATION WITH UTILITIES
RELOCATION AND INSTALLATION OF PUBLIC UTILITY SERVICES

The relocation and installation of public utility services will be performed by MLGW and coordinated through Shelby County Board of Public Utilities where applicable. Prior to construction, the Contractor shall verify with a representative of MLGW the location of all sleeves, inserts, and other hardware necessary for the installation of the water main attachment to all structures.

No additional pay shall be afforded in this contract regarding any inconvenience, delay, or loss of anticipated profits due to the relocation or installation of public utility services; nor will any additional pay be afforded for removal and/or replacement of any completed work that conflicts with utility service relocation or installation.

SHELBY COUNTY, TENNESSEE
SPECIAL PROVISION 105.07A
DAMAGE TO SERVICE LINES

The Contractor shall immediately stop all work to repair any service lines that are damaged during construction. The construction process shall not commence until the damaged lines are satisfactorily repaired and the repair approved by the Engineer or his representative.

The Contractor shall also be responsible for any plumbing damage caused by foreign objects entering a broken water line.

The Contractor shall also be responsible for other damage caused by broken service lines including, but not limited to, damage to equipment due to interrupted service. This does not apply to cable television deemed by the Engineer to have been incorrectly installed.

SHELBY COUNTY, TENNESSEE
SPECIAL PROVISION #105.09
CONTROL OF WORK
CONSTRUCTION STAKES, LINES AND GRADES

In the context of this Special Provision, the word "Engineer" is used to mean The Shelby County Engineer or a duly assigned designee.

The word "Department" is used to mean The Shelby County Engineering Department or its assigned designee. The Contractor shall be required to make all calculations involved and to furnish and place all layout stakes, including those required for the location of public utility service lines (waterlines, sewer lines, gas lines, etc.) utility fixtures and right-of-way, as shown on the plans or as directed by the Engineer.

The Contractor shall be responsible for the placement and preservation of adequate ties to all control points, whether established by the Contractor or found on the project, which are necessary for the accurate re-establishment of all base lines or center lines shown on the plans. The contractor shall also be required to provide ROW or slope stakes, ditch or stream bed grades, or other essential survey staking as directed by the Engineer.

Dimensional details, including elevations, shown on the plans shall be checked by the Contractor to assure accuracy of the required layout. Any errors and apparent discrepancies found in previous surveys, or in either the specifications or the special provisions, shall be called to the Engineer's attention by the Contractor for correction or interpretation prior to proceeding with the work. All stakes, references and batter boards, including original, additional or replacement, which may be required for the construction operations, shall be furnished, set and properly referenced by the Contractor. The Contractor shall be solely and completely responsible for the accuracy of the line and grade of all features of the work.

The County reserves to itself the responsibility for making all measurements and surveys that involve the determination of final pay quantities, including original and final cross-sections for all earthwork.

The Contractor shall furnish to the Engineer copies of all data used in establishing line and grade for all features of work, including, but not limited to, the data used in setting and referencing all stakes and layout marking used by the Contractor.

When requested by the Engineer, the Contractor shall provide safe facilities for convenient access by the Department forces to control points, batter boards and references.

All staking shall be performed by qualified engineering or surveying personnel who are trained, experienced and skilled in construction layout and staking of the type required under the contract and who are acceptable to the Engineer. The personnel shall perform this staking under the direct supervision of a Tennessee licensed professional engineer, of engineering background experienced in the direction of such work and acceptable to the Engineer. A certified listing of all personnel used in the performance of the lines and grades on the project shall be submitted to the Engineer before any staking commences.

The Contractor shall not engage the services of any person or persons who are or have been, during the period of the contract, in the employment of the Shelby County Engineer's Office (except regularly retired employees) without the written consent of the Engineer. In addition, the Contractor shall not engage the services of any firm or any principal officer or employee of a firm that participated in the development of the design of the project to be constructed under this contract.

The Engineer may check the control of work, as established by the Contractor, at any time during the progress of the work. The Contractor will be informed of the results of these checks, but the County, by so doing, in no way relieves the Contractor of responsibility for the accuracy of the layout work. The Contractor shall correct or

replace, as required, any deficient layout and construction work which may be the result of inaccuracies in layout operations or of failure to report inaccuracies in layout operations or failure to report inaccuracies found in work done by the Department or by others. If, as a result of these inaccuracies, the Department is required to make further studies, redesign, or both, all expenses incurred by the Department due to such inaccuracies may be deducted from any monies due the Contractor.

The Contractor shall furnish all necessary personnel, engineering equipment and supplies, materials, transportation, and work incidental to the accurate and satisfactory completion of this work.

Basis of Payment

No separate payment will be made for these services. The costs of these services are to be included in the cost of other items contained within the bid.

STATE OF TENNESSEE

(Rev. 6-19-95)
(Rev. 6-1-04)
(Rev. 06-20-2011)

March 1, 2006

SPECIAL PROVISION

REGARDING

BUY AMERICA REQUIREMENTS

All manufacturing processes for iron and steel products, and coatings applied thereon, used in this project shall occur in the United States except that if the proposal has bid items for furnishing domestic and foreign iron and steel, the bidder will have the option of (1) submitting a bid for furnishing domestic iron and steel, or (2) submitting a bid for furnishing domestic iron and steel and a bid for furnishing foreign iron and steel. If option (2) is chosen the bid will be tabulated on the basis of (a) the total bid price using the bid price for furnishing domestic iron and steel and, (b) the total bid price using the bid price for furnishing foreign iron and steel.

For the total bid based on furnishing foreign iron and steel to be considered for award, the lowest total bid based on furnishing domestic iron and steel must exceed the lowest total bid based on furnishing foreign iron and steel by more than 25 percent. The 25 percent differential applies to the total bid for the entire project, not just the bid prices for the steel or iron products.

Iron and steel products are defined as products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed from iron and steel made in the United States. Iron products are included, however, pig iron and processed, pelletized, and reduced iron ore may be purchased outside the United States.

Manufacturing begins with initial melting and continues through the coating stage. Any process which modifies chemical content, physical size or shape, or the final finish is considered a manufacturing process. Coatings include epoxy, galvanizing, painting or any other surface protection that enhances the value and/or durability of a material.

The contractor shall provide a certification to the Engineer with each shipment of iron and steel products to the project site that the manufacturing processes for the iron and steel products occurred in the United States. No steel shall be placed until the contractor ensures the requirements of this Special Provision are met.

The above requirements do not prevent a minimal use of foreign materials, if the cost of such materials used does not exceed 0.1 percent of the total contract cost or $2,500.00, whichever is greater. If steel not meeting the requirements of this Special Provision is used, the contractor

shall provide a written statement to the Department prior to its use indicating where the steel will be incorporated in the work, the value of the steel, the percentage of the contract amount, and the appropriate invoices shall be submitted as documentation.

The contractor shall be responsible for all cost associated with any steel that is permanently incorporated into the project that does not meet the requirements of this Special Provision without prior written approval from the Department, up to and including removal and replacement.

STATE OF TENNESSEE

Rev. 04-03-2006
Rev. 11-22-2011
Rev. 02-13-2012

March 1, 2006

SPECIAL PROVISION

REGARDING

WATER QUALITY AND STORM WATER PERMITS

Scope

The conditions of this Special Provision apply to all construction on this project pursuant to the following:

1. Section 404 of the Federal Clean Water Act (33 U.S.C. §1344), and all implementing regulations, including without limitation regulations of the U.S. Army Corps of Engineers governing permits for discharges of dredged or fill material into waters of the United States in 33 CFR Part 323; and
2. The Tennessee Water Quality Control Act (T.C.A. §69-3-101, et seq.) and all implementing regulations, including without limitation the Rules of the Tennessee Department of Environment and Conservation governing NPDES permits in Chapter 1200-4-10, and Aquatic Resource Alteration permits in Chapter 1200-4-7; and
3. Section 26a of the TVA Act of 1933 as amended (49 Stat. 1079, 16 U. S. C. sec. 831y1.) and all implementing regulations, including without limitation the regulations of the Tennessee Valley Authority governing construction in the Tennessee River System in 18 C.F.R., Part 1304; and
4. The Tennessee Wildlife Resources Agency Reelfoot Lake Watershed Management permit program (T.C.A. section 70-5-1,), and all implementing regulations, including without limitation regulations authorizing any activity, practice, or project which has or is likely to have the effect of diverting surface or subsurface water from the Lake or have the effect of draining or otherwise removing water from Reelfoot Lake; and
5. Coast Guard Bridge Permit (USCG) (Section 9 of the Rivers and Harbors Appropriation Act of 1899) and all implementing regulations, including but not without limitation for projects which impact streams deemed navigable by the U.S. Coast Guard.

Responsibility

It is understood and agreed that the Contractor assumes all responsibilities of the permittee as indicated in the permit that relates to protection of the "waters of the United States" and/or "waters of the State of Tennessee."

It is also understood and agreed that the Contractor shall be responsible for obtaining any additional permits required by the Contractor's method of construction, including without limitation haul roads, temporary channels or temporary ditches, or off-site waste and/or borrow areas.

It is also understood that the Contractor shall be responsible for implementing the provisions of the Water Quality (including, but not limited to, TDEC ARAP, USACE 404, TVA Section 26a, Coast Guard, TWRA) and Storm Water [including, but not limited to, National Pollution Discharge Elimination System (NPDES), Statewide Stormwater Management Plan (SSWMP)] Permits and requirements that pertain to construction activities.

The Contractor by signing this contract is indicating that the Contractor has reviewed a copy of the permit provisions, including NPDES Permit provisions at http://www.tdot.state.tn.us/construction/permits/npdes.pdf, the site specific SWPPP, the contract plans, Standard Specifications and contract Special Provisions and finds the permit requirements and erosion prevention and sediment control (EPSC) procedures to be reasonable, workable, and binding.

It is also understood that the Contractor shall not be released from the project site responsibilities under the NPDES permit provisions until the Notice of Termination (NOT) is submitted to TDEC by the TDOT Regional Construction Supervisor. The NOT is a certification that the construction project site is permanently stabilized and that all construction related discharges have ceased. This means that the use of EPSC measures to alleviate concerns of surface erosion and transport of sediment to surface water conveyances or to waters of the state is no longer necessary. Furthermore, it means that permanent controls, hard surfaces and/or vegetation, employed at the site are deemed adequate to prevent erosion and sediment transport and no other potential sources of construction-related pollution are on the project.

It is also understood that the Contractor shall not be released from any warranty provided for EPSC plantings, including sod and trees. If the entire project is complete as outlined in **Subsection 105.15** of the **Standard Specifications,** the Contractor shall be required to supply a performance bond as outlined in **Subsection 802.15** of the **Standard Specifications** to cover any warranty for EPSC plantings.

NPDES Permit Required Action

The Contractor (or their representative) shall accompany the EPSC inspector (TDOT personnel or TDOT hired consultant) on all EPSC inspections of the entire construction project including permitted locations and potentially impacted streams as well as attend all QA/QC Project Assessments.

EPSC Inspections shall be conducted as required in the most current TN Construction General Permit.

EPSC inspections shall be performed on the schedule established in the TN Construction General Permit until the site is permanently stabilized to determine if the permit requirements are being met. Where sites or portion(s) of construction sites have been temporarily stabilized, or runoff is unlikely due to winter conditions (e.g. site covered with snow or ice), such inspection only has to be conducted once per month until thawing or precipitation results in runoff or construction activity resumes. Written notification of the intent to change the inspection frequency and the justification for such request must be submitted to the TDOT Project Supervisor and the TDEC Central Office before proceeding.

An individual representing the Contractor, who holds a current TDEC "*Fundamentals of Erosion Prevention and Sediment Control Level I*" certification shall accompany the EPSC inspector on all required EPSC inspections. The Contractors project supervisor(s) shall also hold a current TDEC "*Fundamentals of Erosion Prevention and Sediment Control Level I*"

certification. Proof of required personnel training for the individual(s) shall be provided to the TDOT Project Supervisor prior to beginning of construction.

The TDOT EPSC inspector shall document all deficiencies on the required TDOT EPSC Inspection Report form (provided in the SWPPP). The Contractor (or their representative) shall sign the TDOT EPSC Inspection Report form and any supporting documentation indicating that he is in agreement with the report, recommendations and repair schedule as stated within the documentation.

Additionally, the Contractor shall make necessary maintenance and repairs relative to deficiencies in these permit conditions or requirements within twenty-four (24) hours after an inspection identifies the maintenance or repair need, and/or when directed to do so by the TDOT Project Supervisor, unless conditions make a particular activity impracticable. Any such conditions that make immediate repairs impracticable shall be documented and provided to the TDOT Project Supervisor, via the inspection report, and be accompanied by an expected repair schedule based on forecasted weather conditions.

The Contractor further agrees that he will execute two (2) copies of the Notice of Intent (NOI) form of the permit (provided by the Department), indicating his acceptance of the stipulations contained therein. The Contractor further agrees, that should he fail to execute said copies and return them to the TDOT Construction Division within ten (10) calendar days after submittal of the contract proposal to him, that the Department may at its discretion cancel the award with the Contractor forfeiting his bid bond.

Further, the Contractor agrees to review the site specific Stormwater Pollution Prevention Plan (SWPPP) that will be made available prior to or at the pre-construction conference, for any additional EPSC requirements. The Contractor shall sign and submit two copies of the SWPPP signature page (provided by the Department within the site specific SWPPP). The Contractor may submit for review and approval changes/revisions to the SWPPP to better prevent erosion and sediment transport at any time after contract execution. Rejection of any submittals does not relieve the contractor of any liability for appropriate Best Management Practices (BMPs).

If at any time during this contract, the requirements for the Water Quality Permits and/or the Storm Water Permits for Construction Related Activities are changed/revised/updated, the Contractor shall be notified in writing by the Department of such requirements. The Contractor shall comply with the new requirements within thirty (30) days of the Department notification.

If at any time the Contractor becomes aware that sedimentation is occurring or has occurred in streams impacted by the specified project, the Contractor shall immediately notify the TDOT Project Supervisor to evaluate the EPSC measures employed. A determination of the cause for sedimentation will be made by the Department. The Contractor shall immediately repair or replace defective EPSC measures, and install, as applicable, additional or other EPSC measures with the goal of eliminating future sedimentation. Once a remediation plan is provided by the Department, the Contractor shall, within twenty-four (24) hours after notification, begin the remediation as required. Based on the cause of sedimentation, the Department will determine if the cost of remediation will be performed at the Contractor's expense.

Failure to Comply

In the event a Notice of Violation (NOV) or Order pursuant to the Tennessee Water Quality Control Act or the Federal Clean Water Act is issued on this project, any and all fines will be the sole responsibility of the Contractor as outlined in **Subsection 107.01** of the **Standard Specifications for Road and Bridge Construction.**

Failure of the Contractor to comply with this Special Provision or take immediate corrective actions required within twenty-four (24) hours (unless documented conditions make a particular maintenance or repair activity impracticable immediately) shall be reason for the TDOT Project Supervisor to suspend all other work on the Project, except erosion prevention and sediment control (EPSC) and traffic control, applying non-refundable deductions of monies from the Contract per calendar day from monies due to the Contractor for any EPSC work on the Project. This deduction can be made for each location, as determined by the TDOT Project Supervisor, for each calendar day that the deficiency is allowed to remain and charged as item description *"Failure to Comply with Permit Deduction"*. A deduction shall be made from monies due the Contractor, not as a penalty, but as liquidated damages, as indicated in **Subsection 108.07** of the **Standard Specifications for Road and Bridge Construction March 1, 2006**, as amended.

If the Contractor does not make necessary corrections/adjustments in a timely manner as required above, the Department will implement the provisions of **Subsection 209.07 and Subsection 109.08** of the **Standard Specifications for Road and Bridge Construction** that provides for the Department making repairs and recovering the costs thereof from the Contractor.

The Department will not participate in any payment or reimbursement for fines and will not authorize time extensions due to delays in project progress for work stoppage, to remedy the violations stated within the NOV, required by the TDOT Project Supervisor as stated in **Subsection 105.01** of the **Standard Specifications for Road and Bridge Construction.**

STATE OF TENNESSEE
February 6, 2010 March 1, 2006

CONTRACTOR EMPLOYEE SAFETY AND HEALTH PROGRAM (EFFECTIVE THE MARCH 19, 2010 LETTING)

At the preconstruction meeting, the Contractor shall submit to the Project Supervisor written certification of an Employee Safety and Health Program (ESHP) developed by a safety professional with a minimum of 30 hours OSHA Construction Training. The certification letter shall include the following:

1. Certification that the ESHP meets or exceeds all Federal, State, and local safety and health standards.
2. Qualifications of safety professional responsible for developing and maintaining the ESHP.
3. Chief Safety Personnel- Management-level personnel responsible for managing and implementing the ESHP for the company. Include the name and 24/7contact information.
4. On-Site Safety Personnel - Supervisory-level personnel responsible for implementing and monitoring the ESHP. Include 24/7 contact information.
5. Traffic Control Coordinator. Include the name and 24/7 contact information.
6. Prime contractor shall insure all sub-contractors have a safety program. The Prime Contractor is responsible for work site safety. The Prime contractor is responsible for conducting all operations so as to protect the workers engaged in duties connected with the work.

The ESHP is a living document and shall be updated as needed. The Contractor shall maintain an original copy at the company's headquarters and shall provide to the Department upon request. Certification of an ESHP will be required before any work can begin.

The ESHP shall at a minimum include the following:

1. **Description.** Describe in detail how the ESHP is implemented and monitored. Provide guidelines for protecting personnel from hazards associated with project operations and activities. Establish the policies and procedures for safety practices that are necessary for the work to be in compliance with the requirements of TOSHA, the MUTCD and other State and Federal regulatory agencies with jurisdiction, rules, regulations, standards, or guidelines in effect at the time the work is in progress.

2. **Certification, Responsibility, and Identification of Personnel.** Identify the safety professional responsible for developing the ESHP and provide that person's qualifications

for developing the ESHP. Qualifications should include but not limited to: education, training, certifications, and experience in developing this type of ESHP.

a. Provide a certification, executed by the safety professional that developed the ESHP, stating that the safety program complies with the rules, regulations, standards, and guidelines in effect at the time the work is in progress, of TOSHA, the MUTCD and other applicable Federal, State, and local regulatory agencies having jurisdiction.

b. Identify the Chief Safety Personnel and designate the On-Site Safety Personnel at supervisory-level responsible for implementing and monitoring the ESHP and having the authority to take prompt corrective measures to eliminate hazards, including the authority to stop work. Include documentation of training provided to the On-Site Safety Personnel.

c. For work that requires a competent person as defined by TOSHA, ensure that the On-Site Safety Personnel is capable of identifying existing and predictable hazards and has the authority to take prompt corrective measures to eliminate the hazards, including the authority to stop work. Include documentation of the qualifications of such competent persons identified, including certifications received.

d. For work that requires flagging, all flaggers will have proof they have completed an approved Flagging Course.

3. **Elements of the Program.** Include information and procedures for the following elements:

a. **Chain of Command.** Include the responsibilities of the management, supervisors, safety personnel, and employees.

b. **Traffic Control Coordinator.** Include the name and 24/7 contact information. Ensure that the traffic control coordinator meets the requirements specified in the MUTCD and holds a Work Zone Safety Supervisor certificate (ATSSA, NHI, UT).

c. **Chief Safety Personnel.** The Chief Safety Personnel shall have a minimum of 10 hours OSHA Construction training and the authority to make immediate decisions concerning safety and health, including the authority to stop work. Include the name and 24/7contact information. Ensure that the Chief Safety Officer meets the requirements specified in TOSHA.

d. **On-site Safety Personnel.** The On-Site Safety Personnel shall have a minimum of 10 hours OSHA Construction training and the authority to make immediate decisions concerning safety and health. Include the name and 24/7contact information. Ensure that the On-Site Safety Personnel meets the requirements specified in TOSHA.

e. **Emergency Procedures.** Provide guidelines for handling emergencies, including emergency action plans for incidents involving a worker's death or serious injury, property damage, fires, explosions, and severe weather. Include the 24/7 emergency

contact information of the Contractor's personnel responsible for handling emergencies.

f. **Local Emergency Telephone Numbers.** Include police, fire, and medical numbers. This item will be in the project specific copy to be kept at each worksite.

g. **Training Topics.** Include regulatory and jobsite safety meetings.

h. **Contractor's Safety Rules.** Include employee safety, housekeeping procedures and personal protective equipment requirements.

i. **Employee Disciplinary Policy as related to safety issues.** Documentation shall be maintained at the contractor's headquarters.

j. **Work-Site Safety Checklists.** Include project safety-planning, emergency plans and procedures, documentation, and protective materials and equipment. Define procedures for routine work site inspections and correcting hazards reported by employees.

k. **Personnel Injuries.** Record all work-site accidents including cause and correction and provide to the department upon request.

l. **Hazard Communication Program.** Provide the following:

1. The location of and instructions for understanding the Manufactures Safety Data Sheet (MSDS). Ensure that the location and instruction are available to anyone within the project Limits.
2. The person responsible for the hazard communication program and the method of informing personnel of the hazardous communication program. Attendance sheets of hazard communication meetings shall be maintained.
3. Provide employees a procedure for reporting and recording safety and health concerns to the On-Site Safety Personnel and the Chief Safety Personnel who have the authority to make immediate corrections.
4. When performing work that generates airborne crystalline silica or lead, include engineering and work practice controls to limit exposure levels to, at, or below the permissible exposure limit according to TOSHA. Ensure that the program includes employee training and respiratory protection measures according to TOSHA and control of the area when the permissible exposure limit is exceeded. Provide a trained and competent person, according to TOSHA, within the Project Limits at all times when performing work that produces airborne crystalline silica or lead.

m. **Additional Requirements.** Provide additional procedures for Project specific topics including but not limited to:

1. Compressed gas cylinders.
2. Confined spaces.

3. Cranes.
4. Electrical.
5. Equipment operators.
6. Fall protection.
7. Hand and power tools.
8. Hearing conservation.
9. Highway safety. See supplement specification 700SS
10. Lead.
11. Lock out/tag out.
12. Materials handling, storage, use, and disposal.
13. Night work.
14. Personal protective equipment.
15. Project entry and exit.
16. Respiratory protection.
17. Sanitation.
18. Signs, signals, and barricades.
19. Subcontractors.
20. Trenching.
21. Flagging.

The Contractor is responsible for implementing, monitoring, updating, and revising the ESHP. If an incident occurs that requires hospitalization, or TOSHA Citation to be submitted, notification of the incident shall be sent to the Project Supervisor and forwarded to the Regional Safety Coordinator.

On-call guardrail, sweeping, on-call striping/retracing, litter removal, tree services, mowing, and work performed at Welcome Centers and Rest Stops, will be considered Maintenance Contracts. The Maintenance Contractor, while performing the above listed projects, will have a Safety and Health Program, a Work Zone Traffic Control Supervisor and a Safety Manager. . Certification of an ESHP will be required before any work can begin. The certification letter shall include the following items and names (with 24/7 contact numbers) for:

- Safety and Health Program developed by a safety professional with a minimum of 30 hours OSHA Construction Training. This plan will cover the unique and specific hazards posed by the intended work including a Hazard Communication Program as defined as above.
- Traffic Control and Safety Supervisor to ensure that the traffic control meets the requirements specified in the MUTCD and holds a Work Zone Safety Supervisor certificate (ATSSA, NHI, UT); also have a minimum of 10 hours OSHA Construction training. This employee must have the authority to make immediate decisions concerning safety and health, including the authority to stop work.

SHELBY COUNTY, TENNESSEE
SPECIAL PROVISION 107.15
COMPLAINTS

The Contractor shall ensure that all complaints are resolved promptly. Upon notification by the Engineer or his representative, the Contractor shall respond immediately to correct the problem, regardless of severity.

The Contractor shall inform the Engineer in writing as to when and how the complaint was resolved.

If any complaint is not resolved to the satisfaction of the Engineer within 48 hours of receipt of the complaint by the Contractor, then all other work shall cease upon order of the Engineer or his representative until the complaint is resolved to the satisfaction of the Engineer.

It will be the Engineer's responsibility to handle all communication with private property owners and residents.

The Engineer will have the authority to schedule a conference involving the Contractor, the property owner, and the Engineer for the purpose of clarifying the nature of the complaint.

The Engineer will mediate all disputes and his decision will be final. Under no circumstances shall the Contractor negotiate directly with a property owner.

SHELBY COUNTY, TENNESSEE
SPECIAL PROVISION 604
CONCRETE
CONTRACTOR-MIX DESIGN AND TESTING STRUCTURAL CONCRETE

Revise 604.03-Classification and Proportioning of Concrete to read. Concrete shall be classified as in this contract.

The air content shall be as follows: 5% ± 1%.

The proportioning of the air entrained concrete shall be based on a predetermined minimum cement content, and the water/cement ratio shall not exceed 0.45 in Shelby County Class A 3,500 psi, 0.43 in Shelby County Class A 4,000 psi, 0.42 in Shelby County Class D Bridge Deck Concrete 4,500 psi, and 0.47 in Shelby County Class P. Below this limit, the quantity of water shall be adjusted to meet the slump requirements.

FLY ASH: The use of fly ash in the design of the concrete used in this contract shall not be permitted.

Revise 604.03 Mix design submittal to include: Mix design proportions shall be determined by a independent testing laboratory approved by Shelby County and shall be based on laboratory trial batches meeting the requirements of these Specifications. The submittal of the proposed concrete design shall contain the information required within the 604.03 section and additionally the following information:

Project location, contract number and contractor (letter of submittal)
Designated plant location
Water/cement ration lb/lb
7 day compressive strength (minimum of 3-6x12" cylinders) (Tested in accordance to AASHTO T-22)
28 day compressive strength (minimum of 3-6"x12" cylinders) (Tested in accordance to AASHTO T-22)

The above submitted information shall be certified as correct by a professional Civil Engineer licensed by the State of Tennessee. The concrete design shall produce an average compressive strength to indicate that the specified 28 day compressive strength can be obtained in the field. The Contractor shall bear all of the cost of the work required to establish the design of the concrete as described herein.

If materials from sources other than those shown in the original concrete design approved by Shelby County Engineer are to be used, the Contractor shall submit a new concrete mix design for approval designating the materials and proportions proposed for use and meeting all the design requirements of this section. Concrete produced with the new materials shall not be placed until the new design has been approved.

All concrete which is supplied under this contract shall be supplied from one location as submitted on the concrete mix design. The concrete supplier shall not change plant locations without prior approval and the plant must contain the same sources of materials submitted in the "approved" mix design. If the "new" location is to be permanent a new concrete mix design submittal (which must be approved by Shelby County) will be required prior to any concrete being sent for placement. Concrete may be rejected if it is supplied from a plant without an approved concrete mix design. PLANT TESTS: (in addition to requirements of 604.03)

1. Tests and adjustments of mix proportions for moisture content of both fine and coarse aggregates shall be in accordance with AASHTO T 142 and T 255. Moisture tests for adjustments shall be performed daily, A.M. and P.M., or as required by Shelby County. Test reports shall be submitted to Shelby County.

FIELD TESTING: (in addition to requirements of 604.03)

1. Slump (AASHTO T 119), air tests (AASHTO T 152) and concrete temperature (ASTM C1064) necessary to maintain the slump, air content and concrete temperature of the concrete within the specified limits (to be performed on each day's concrete placement). Engineer may require additional tests as needed for control of mix.
2. Perform tests in accordance with AASHTO T 121, to verify that the yield of the concrete does not vary more than + 2.0%. When the yield varies more than + 2.0%, all batching operations shall cease until the problem has been identified and corrected or the Contractor has submitted a new concrete mix design to Shelby County Engineer for acceptance. Yield tests shall be performed bi-monthly or as required by Shelby County. Reports shall be submitted to Shelby County.
3. Test cylinders (3 minimum) including (1) 7 day (for form removal, when needed, etc.) and (2) 28 day for acceptance, shall be made by the Field Technician supplied by the Contractor. These test cylinders shall be transported to Shelby County's lab for testing along with a cylinder report from the technician.
   This report is to include all information as required, to include (Slump AASHTO-T-49, Air AASHTO-T-152, Temperature ASTM-C-1074) and taken to Shelby County's lab for breaking. The Contractor will be furnished a report (from Shelby County) on the cylinder breaks (7 and 28 days).

The Contractor shall develop, for approval by the Engineer, and maintain written process control procedures (at production site and placement site) for sampling, testing and inspection of the concrete. The Technicians shall keep records of all tests and inspections performed at the plant and placement site, and this documentation, together with a certification by the Contractor that the concrete incorporated in the work meets the requirements of the design, shall be delivered upon request to Shelby County Engineer for inclusion in the project records.

High-early strength concrete may be substituted at the option of the Contractor for Shelby County Class A or Shelby County Class P concrete. The use of Type 1 or Type III cement for high-early strength concrete shall be optional with the Contractor. Concrete having a minimum cement content of 714 pounds per cubic yard will be considered high-early strength concrete when Type I cement is used. If Type 3 cement is used, a minimum cement factor of 620 lbs. per cubic yard will be required. No additional compensation will be made if the Contractor elects to substitute high-early strength concrete for Shelby County Class A or P concrete. The unit price of the class of concrete for which the substitution is made shall be full compensation for the concrete.

All acceptance sampling and testing performed by the Contractor may be observed by Shelby County. All independent assurance sampling and testing will be performed by Shelby County. All sampling and testing for acceptance and independent assurance results shall be in accordance with the Tennessee Department of Transportation of Transportation Standard Specifications, dated March 1, 2006 and revisions to date/and or Special Provisions governing the required testing.

TEMPERATURE: No concrete shall be placed if the temperature is below 35oF. If the concrete is subject to exposure to temperatures below 35oF in the first 5 days (120 hours) after placing, protection shall be provided (Section 604.25).

FORM REMOVAL: Falsework and supports under concrete in structures may be released and removed when representative specimens of the concrete, cured by the methods and in the manner the concrete which the test specimens represent is cured, attain a compressive strength of 3,500 psi on Shelby County Class A and 3750 on Shelby County Class "D" and Shelby County Class "P". In addition to the above requirements, the concrete shall have been placed a minimum of 7 days (not counting days of 24 hours each in which the temperature falls below 40oF) or 21 calendar days, whichever occurs first. At any time after these conditions have been met, the Contractor may proceed with the erection of the superstructure.

BACKFILLING: The walls of a structure may be backfilled after a minimum of 7 days with an attained compressive strength of 3,500 psi.

LOADING AND OPENING TO TRAFFIC: No structure shall be loaded or opened to traffic until 10 days has elapsed from removal of forms or a minimum of 17 days from placement date.

COMPRESSIVE STRENGTH TESTS OF CONCRETE: Shelby County will certify design strength by tests made during the process of work and these tests will be used to determine the specified strength of the concrete for pay purposes. if the tests indicate low strength concrete, the Contractor may, at his option, elect to drill core samples (minimum of 3) from the actual concrete placed. If the Contractor elects to drill core samples from the hardened concrete, the costs of obtaining the cores and repairing the core holes shall be borne by Contractor. Cores shall be drilled as directed by the Engineer at the approximate locations from which the test cylinder of concrete was obtained. Cores shall be taken and reported according to Section Special Provisions 604 Concrete. The average compressive strength of the cores taken to represent the low test cylinders shall be considered to be the 28 day compressive strength of the in-place concrete, provided that the cores are obtained and tested within 45 days after the placing of the concrete. If, however, the Contractor delays obtaining core samples for strength checks, the cores will be accepted as a basis for the 28 day compressive strength determination only when the Contractor submits a correlation curve developed by an approved independent testing laboratory to relate the strength at the actual age to the 28 day compressive strength of the concrete design being used in the construction.

Any downward adjustment in bid price due to low strength concrete will be based on the 28 day compressive strength of the concrete as determined in accordance with Subsection 604.16:

Concrete which does not meet the minimum 28 day compressive strengths and is deemed acceptable by the Shelby County Engineer and allowed to remain in place shall be paid at a reduced price based on 28 day strengths of the concrete as determined in accordance with Section 604 Subsection 604.21 Defective Concrete, and that reduction shall be based on the formula in section 604.32 Basis of Payment.

SPECIAL PROVISION 604.04
EQUIPMENT FOR CONCRETE READY-MIX PLANTS

Ready mix concrete plants shall be equipped with automatic (computerized) loading/recording devices. These devices shall allow auto loading and auto recording of data as to batched time, truck number, date, coarse aggregate weight, fine aggregate weight, percent moisture of each aggregate, water and additives used in batching the concrete.

A dial scale, readable by the plant operator who shall be a Tennessee Certified Public Weigher, shall be in place with weights corresponding to the ticket printed by the auto loading/recording device. These auto loading/recording devices shall have been certified correct at the time of the scale checks and recalibration shall be required at any time deemed necessary by the Engineer or his representative. A copy of this certification shall be included with the mix design at the time of approval. Scale accuracy shall be 0.5% throughout the weighing range.

All auto loading/recording shall conform to the mix design weights with tolerances being as follows:

Concrete or other cementitious materials - + 1% of the required weight or + 0.3% of the scale capacity, whichever is greater.

Aggregate - + 2% of the required weight or + 0.3% of the scale capacity, whichever is greater.

Water - + 1% of the required weight or + 0.3% of the scale capacity, whichever is greater.

Admixtures - + 3% of the required weight or + 3% of the scale capacity, or + the minimum dosage rate for one sack of cement, whichever is greater.

Copies of these tickets shall accompany each load of concrete to the project and shall have affixed the stamp and initials of the certified public weigher who is responsible to supervise loading of the concrete. All responsibility for quality control of this material shall be borne by the Contractor.

SHELBY COUNTY, TENNESSEE
SPECIAL PROVISIONS #604.45
SHELBY COUNTY CLASS "D" CONCRETE, 4,500 P.S.I.
6.6 SACK CEMENT (620 LBS. MINIMUM)
BRIDGE DECK

Unless otherwise specified, all aggregates used in this contract shall comply completely to Section 903 of the Tennessee Department of Transportation Standard Specifications dated March 1, 2006 and revisions to date. Fine aggregates shall conform to Section 903.01 Tennessee Department of Transportation Standard Specifications dated March 1, 2006 and revisions to date. Coarse aggregate shall conform to Section 903.03 Tennessee Department of Transportation Standard Specifications dated March 1, 2006 and revisions to date and shall be Size No. #57 limestone. If deemed necessary by Shelby County, certified test reports on aggregates shall be required from independent test labs prior to approval of the mix design and at any other time deemed necessary by Shelby County due to apparent defective concrete. All costs shall be assumed by the Contractor.

The use of fly ash in the design of the concrete used in this contract shall not be permitted.

No concrete shall be placed if the temperature is below 35°F. If the concrete is subject to exposure to temperatures below 35°F in the first five (5) days (120 hours) after placing, protection shall be provided (Section 604.25).

When specified in the contract, all Shelby County Class "D" 4500 p.s.i. concrete used in this contract shall attain a compressive strength at 28 days of 4,500 p.s.i. and the maximum water cement ratio shall not exceed 0.42 lb/lb. If, at 28 days, 4,500 p.s.i. is not attained, the concrete shall be replaced by the Contractor or cored in accordance to AASHTO DESIGNATION T-24-86 by an accredited independent laboratory supervised by the County Engineer or his representative. If coring is chosen, there shall be a minimum of three cores. All costs shall be incidental to the price of the item being constructed.

concrete proves defective after coring, the Engineer reserves the right to require the Contractor to replace all defective concrete, at the Contractor's expense. If the defective concrete is allowed to remain in place, payment will be made at reduced price as per Section 604.21. See Section 604, Standard Specifications for Road and Bridge Construction, State of Tennessee, latest edition.

SHELBY COUNTY, TENNESSEE
SPECIAL PROVISION 801
SEEDING (WITH MULCH)

LIMITATIONS: Seeding on this project shall be applied to the areas shown on the plans.
All disturbed areas within the construction R.O.W. shall be seeded, unless plans require sod. Any areas outside the construction ROW which are disturbed by the Contractor shall be seeded as described in Section 801. Seeding shall be accomplished by the Contractor and shall be at no cost to Shelby County.

Shelby County will pay only for seeding within the construction ROW or Temporary Construction Easements shown on plans. Any additional seeding (above plan quantities) to be used on this project shall not be paid for without prior approval of the Shelby County Engineer.

TOP SOIL: Topsoil shall be stripped in both cuts and fill sections (within the Right-of-Way) and stockpiled. Stockpiled topsoil shall be sufficient to provide cover for two to three inches over all areas to be seeded. If the topsoil quantity is not of a sufficient amount to completely cover the seeded areas, the Contractor shall provide required topsoil at no cost to Shelby County.

Reseeding shall be authorized and paid for only when all requirements have been met and through no fault of the contractors, growth has not been established or it has been damaged. This reseeding as authorized by the Engineer will be paid for under item 801-07 seeding and shall be full compensation for establishment of seed growth, repair of seed bed, fertilizer and any and all labor related expenses to be incurred in the reseeding operations. Any area not deemed to have been properly cared for by the contractor shall be re-seeded by the contractor at the contractor's expense. Any seeding operations (temporary, reseeding or for erosion control) shall be governed by the specifications contained herein.

PAYMENT: Seeding shall be paid for in units per TDOT "Standard Specifications" Section 801.10 Basis of Payment. Work shall consist of but not be limited to, all necessary labor, seed, top soil, preparation of the seed bed, fertilizer, agricultural. limestone, watering and mulching required to complete the seeding on the areas shown on the plans. Partial payment shall be made in the amount of not more than 60 percent. Full payment shall be made only after the seeded areas have established growth in amounts to prevent erosion. Seeding and/or reseeding shall be measured and paid for only within the construction limits.

Add the following items to the list of pay items in Subsection 801.01:

1. 801-01.02 Crown Vetch Mixture (with mulch) paid per unit
2. 801-01.07 Temporary Seeding (with mulch) paid per unit

All temporary seeding shall be approved by the Engineer prior to installation and is meant for erosion control only. Temporary seeding shall include but not be limited to all necessary labor, seed, fertilizer, agricultural limestone, watering mulching and binder to complete seeding on the approved areas.

3. 801.07 Seed (Supplemental Application) paid per unit price

SHELBY COUNTY, TENNESSEE
SPECIAL PROVISION
SODDING

PAYMENT: Sodding shall be paid for on a unit price basis. Said unit price shall include, but not be limited to, all necessary labor, sod, soil preparation, watering, fertilizer, lime and ammonium nitrate. Partial payment will be made in the amount of not more than 60 percent. Full payment will be made only after the sodded areas have established growth to the satisfaction of the Engineer.

SHELBY COUNTY, TENNESSEE
SPECIAL PROVISION #907
EPOXY COATED REINFORCING STEEL

Epoxy coated reinforcing steel shall be in accordance with ASTM D-3963 except as follows:

The first sentence of Section 4.2.1 shall be changed to read:

For acceptance purposes, at least 90% of all recorded film thickness measurements shall be 7 to 12 mils after cure.

Section 8.2 shall be changed to read:

Holidays - A 67.5 holiday detector shall be used in accordance with the manufacturer's instructions. The detector must be in-line d-c detector of the roller sponge type capable of marking holidays as they are detected.

Section 11.1 shall be changed to read:

Repair shall be required within each fabricated area of the reinforcing bar when bond loss and damage exist. Sheared ends and damaged areas requiring repair shall be cleaned by blast cleaning or by mechanical wire brush to a "near white" condition prior to repair. All repairs and coating of sheared ends shall be made with a roller type applicator.

A representative 8 oz. sample of the coating material from each batch shall be packaged in an air tight container, identified by batch number and furnished to the Engineer. In addition, for repair of damage incurred during shipment or installation, the fabricator initially shall furnish to the project a repair kit containing a touch-up roller and 16 ozs. of touch-up coating material with each shipment of epoxy coated reinforcing steel, with additional supplies being furnished as needed.

Metal chairs and supports shall be coated with plastic, epoxy of other approved material which is chemically and electrically inert in concrete. Tie wires shall be plastic coated and approved by the Engineer prior to use with epoxy coated reinforcing steel

JOB SITE OPERATIONS

Caution shall be taken in handling coated rebar so as not to damage the epoxy coating. Handling equipment shall have protected contact areas. Bundles of coated bars shall be lifted at multiple pickup points to minimize bar-to-bar abrasion from sag in the bundles. Coated bars or bundles of coated bars shall not be dropped or dragged and should be stored on protective cribbing. When reinforcing bars are used as carrier bars, the bars shall be epoxy coated. Coated bars are spliced in essentially the same way as uncoated bars. Tension lap splice lengths will probably be longer than those for uncoated bars. Cutting (saw cut only) of uncoated or coated bars shall be done only if permitted by the Engineer.

When vibrator(s) are used in item(s) with epoxy coated steel, a protective coating (ruper or plastic) shall be on the probe of the concrete vibrator

to prevent accidental damage to the coating.

If epoxy coated steel is cut or damaged, patching material shall be applied to the cut ends or damaged area. The maximum amount of total coated damage shall be limited to 2% of the total surface area per linear foot of the coated bar.

The patching or touch-up material for repairing damaged coating shall conform to the requirements in the coated bar specifications; the repair work shall be done in strict accordance with the patching material manufacturer's instructions.

Payment will be made under:

ITEM NO.	PAY ITEM	PAY UNIT
[illegible]-02.03	Epoxy Coated Reinforcing Steel	Pound

STATE OF TENNESSEE

March 1, 2006

SPECIAL PROVISION

REGARDING

EQUAL EMPLOYMENT OPPORTUNITY

Reference:
Federal-Aid Highway Program Manual
Transmittal 147, June 26, 1975
Replaces FHWA Order Interim 7-2(1)

Specific Equal Employment Opportunity Responsibilities

GENERAL

a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form FHWA-1273 or PR-1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b) The contractor will work with the Tennessee Department of Transportation and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c) The contractor and all his/her subcontractors holding subcontracts not including material suppliers, exceeding $10,000, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors an subcontractors). The contractor will include these requirements in every subcontract exceeding $10,000 with such modification of language as is necessary to make them binding on the subcontractor.

Equal Employment Opportunity Policy

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their age, race, color, religion, sex, national origin or disability and to promote the full realization of equal employment opportunity through a positive continuing program:

> It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

Equal Employment Opportunity Officer

The contractor will designate and make known to the Tennessee Department of Transportation contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

Dissemination of Policy

(a) All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

(b) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

(1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

Recruitment

(a) When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

(b) The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

(c) In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended).

(d) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

Personnel Actions

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to age, race, color, religion, sex, national origin or disability. The following procedures shall be followed:

(a) The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

(c) The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

Training and Promotion

(a) The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

(b) Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Special Provision Regarding Training Program Requirements is provided under this contract, this subparagraph will be superseded as indicated therein.

(c) The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

(d) The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

Unions

If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

(a) The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

(b) The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their age, race, color, religion, sex, national origin or disability .

(c) The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the Tennessee Department of Transportation and shall set forth what efforts have been made to obtain such information.

(d) In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to age, race, color, religion, sex, national origin or disability, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees). In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the Tennessee Department of Transportation.

Subcontracting

(a) The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from the Tennessee Department of Transportation.

(b) The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

Records and Reports

(a) The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(1) The number of minority and non-minority group members and women employed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women. (Applicable only to contractors who rely in whole or in part on unions as a source for their work force).

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

(b) All such records must be retained for a period of 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the of the Tennessee Department of Transportation and the Federal Highway Administration.

(c) Each contractor and subcontractor shall submit to the Tennessee Department of Transportation an annual report for every July during which work is performed indicating the number of minority, women and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391 and is to be received by the Department not later than the 20th of the month following the reporting period.

(d) The contractor and/or sub-contractor will be required to complete other reports as instructed by the Engineer.

(e) Current estimates may be withheld by the Project Engineer when reports are not received within the above specified time limits.

STATE OF TENNESSEE

March 1, 2006

SPECIAL PROVISION

REGARDING

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY

CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1) As used in these specifications:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941

   d. "Minority" includes:

      I. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      II. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese Culture or origin, regardless of race);

      III. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      IV. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining indentifiable tribal affiliations through membership and participation or community identification).

2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation arid which is set forth in the solicitations from which this contract resulted.

3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals (including goals and time tables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a though p of these specifications. The goal set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specification, Executive Order 11246, or the regulations promulgated pursuant thereto.

6) In order for the nonworking training hours of apprentices and the trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

   (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organization's responses.

(c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources complied under 7b above.

(f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screenings procedures, and tests to be used in the selection process.

(j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

(k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

(l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriation training, etc., such opportunities.

(m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

(n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor

association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women, generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of age, race, color, religion, sex, national origin or disability.

11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12) The Contractor shall carry out such sanctions and penalties for violations of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records

SP1231

shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

STATE OF TENNESSEE

March 1, 2006

SPECIAL PROVISION

REGARDING

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION

TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work are as follows:

County	Goals for Female Participation in each Trade
All Counties	6.9

County	Goals for Minority Participation for each Trade
Lincoln	11.2
Hamilton, Marion, Sequatchie	12.5
Bledsoe, Bradley, Grundy, McMinn, Meigs, Monroe, Polk, Rhea	8.6
Carter, Hawkins, Sullivan, Unicoi, Washington	2.6
Greene, Hancock, Johnson	3.2
Anderson, Blount, Knox, Union	6.6
Campbell, Claiborne, Cocke, Cumberland, Fentress, Grainger, Hamblen, Jefferson, Loudon, Morgan, Roane, Scott, Sevier	4.5

County	Goals for Minority Participation for each Trade
Montgomery	18.2
Davidson, Cheatham, Dickson, Robertson, Sumner, Williamson, Wilson, Rutherford	15.8
Bedford, Cannon, Clay, Coffee, Dekalb, Franklin, Giles, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Macon, Marshall, Maury, Moore, Overton, Perry, Pickett, Putnam, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, White	12.0
Shelby, Tipton	32.3
Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy, Madison, Obion, Weakley	26.5

These goals are applicable to all the Contractor's construction work whether or not it is Federal or federally assisted.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in CFR Part 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform through- out the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from Project to Project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Office of Federal Contract Compliance Programs at the following address within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation:

Associate Regional Director
Office of Federal Contract Compliance Program
1371 Peachtree Street, N.E., Room 111
Atlanta, GA 30367

The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

STATE OF TENNESSEE

March 1, 2006

CERTIFICATION REGARDING

DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

PRIMARY AND LOWER TIER COVERED TRANSACTIONS

The prospective Primary and/or Lower Tier participant certifies, by signing and submitting this proposal, to the best of its knowledge and belief, that it and its principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency.

Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and

Have not within a three- year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective Primary and/or Lower Tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

(Exceptions to the above are to be submitted on a separate sheet with the bid proposal)

For any exception noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

STATE OF TENNESSEE

March 1, 2006

SPECIAL PROVISION

REGARDING

NON-DISCRIMINATION IN EMPLOYMENT

Bidders are cautioned as follows:

By signing this bid, the bidder will be deemed to have signed and agreed that all persons, firms or corporations supplying goods, material, equipment or service of any kind to the State of Tennessee will not discriminate against any employee or applicant for employment on the basis of handicap, race, religion, national origin or sex and further, that while under contract with the State will show proof upon request that all employment practices including, but not limited to, promotion, rates of pay, transfers, recruitment, recruitment advertising, terminations, layoffs and training and apprenticeship programs are not discriminatory in nature. Each contractor shall be required to post in conspicuous places, available to all employees and applicants for employment, notices of non-discrimination.

Federal Highway Administration
Department of Transportation
Required Contract Provisions

PART 635-CONSTRUCTION AND MAINTENANCE

§ 635.108 Health and safety.
Contracts for projects shall include provisions designed:

(a) To insure full compliance with all applicable Federal, State, and local laws governing safety, health and sanitation; and

(b) To require that the contractor shall provide all safeguards, safety devices, and protective equipment and shall take any other actions reasonably necessary to protect the life and health of persons working at the site of the project and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

§635.109 Standardized changed condition clauses.

(a) Except as provided in paragraph (b) of this section, the following changed conditions contract clauses shall be made part of, and incorporated in, each highway construction project approved under 23 U.S.C. 106:

(1) Differing site conditions.

(i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

(ii) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the STD's at their option.)

(2) Suspensions of work ordered by the engineer.

(i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/ or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(3) Significant changes in the character of work.

(i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term "significant change" shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

(b) The provisions of this section shall be governed by the following:

(1) Where State statute does not permit one or more of the contract clauses included in paragraph (2) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where the State transportation department has developed and implemented one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses, as developed by the State transportation department may be included in Federal-aid highway contracts in lieu of the

corresponding clause or clauses in paragraph (a) of this section. The State's action must be pursuant to a specific State statute requiring differing contract conditions clauses. Such State developed clause or clauses, however, must be in conformance with 23 U.S.C., 23 CFR and other applicable Federal statutes and regulations as appropriate and shall be subject to the Division Administrator's approval as part of the PS&E.

(c) In the case of a design-build project, STDs are strongly encouraged to use "suspensions of work ordered by the engineer" clauses, and may consider "differing site condition" clauses and "significant changes in the character of work" clauses which are appropriate for the risk and responsibilities that are shared with the design-builder.

§635.112 Advertising for bids and proposals.

f) The STD shall include a noncollusion provision substantially as follows in the bidding documents:

Each bidder shall file a statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the executed statement as part of the bidding documents will make the bid nonresponsive and not eligible for award consideration.

§635.116 Subcontracting and contractor responsibilities.

(a) Contracts for projects shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items. Specialty items may be performed by subcontract and the amount of any such specialty items so performed may be deducted from the total original contract before computing the amount of work required to be performed by the contractor's own organization. The contract amount upon which the above requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

(b) The STD shall not permit any of the contract work to be performed under a subcontract, unless such arrangement has been authorized by the STD in writing. Prior to authorizing a subcontract, the STD shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. The Division Administrator may permit the STD to satisfy the subcontract assurance requirements by concurrence in a STD process which requires the contractor to certify that each subcontract arrangement will be in the form of a written agreement containing all the requirements and pertinent provisions of the prime contract. Prior to the Division Administrator's concurrence, the STD must demonstrate that it has an acceptable plan for monitoring such certifications.

(c) To assure that all work (including subcontract work) is performed in accordance with the contract requirements, the contractor shall be required to furnish:

(1) A competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work), and;

(2) Such other of its own organizational resources (supervision, management, and engineering services) as the STD contracting officer determines are necessary to assure the performance of the contract.

(d) In the case of a design-build project, the following requirements apply:

(1) The provisions of paragraph (a) of this section are not applicable to design-build contracts;

(2) At their discretion, the STDs may establish a minimum percentage of work that must be done by the design-builder. For the purpose of this section, the term design-builder may include any firms that are equity participants in the design-builder, their sister and parent companies, and their wholly owned subsidiaries;

(3) No procedure, requirement or preference shall be imposed which prescribes minimum subcontracting requirements or goals (other than those necessary to meet the Disadvantaged Business Enterprise program requirements of 49 CFR part 26).

§ 635.117 Labor and employment.

(a) No construction work shall be performed by convict labor at the work site or within the limits of any Federal-aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the STD unless it is labor performed by convicts who are on parole, supervised release, or probation.

(b) No procedures or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project.

(c) The selection of labor to be employed by the contractor on any Federal-aid project shall be by the contractor without regard to race, color, religion, sex, national origin, age, or handicap and in accordance with 23 CFR part 230, 41 CFR part 60 and Exec. Order No. 11246 (Sept. 24, 1965), 3 CFR 339 (1964-1965), as amended.

(d) Pursuant to 23 U.S.C. 140(d), it is permissible for STD's to implement procedures or requirements which will extend preferential employment to Indians living on or near a reservation on eligible projects as defined in paragraph (e) of this section. Indian preference shall be applied without regard to tribal affiliation or place of enrollment. In no instance should a contractor be compelled to layoff or terminate a permanent core-crew employee to meet a preference goal.

(e) Projects eligible for Indian employment preference consideration are projects located on roads within or providing access to an Indian reservation or other Indian lands as defined under the term "Indian Reservation Roads" in 23 U.S.C. 101 and regulations issued there under. The terminus of a road "providing access to" is that point at which it intersects with a road functionally classified as a collector or higher classification (outside the reservation boundary) in both urban and rural areas. In the case of an Interstate highway, the terminus is the first interchange outside the reservation.

(f) The advertisement or call for bids on any contract for the construction of a project located on the Federal-aid system either shall include the minimum wage rates determined by the Secretary of Labor to be prevailing on the same type of work on similar construction in the immediate locality or shall provide that such rates are set out in the bidding documents and shall further specify that such rates are a part of the contract covering the project.

§ 635.125 Termination of contract

(a) All contracts exceeding $10,000 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(b) The STD prior to termination of a Federal-aid contract shall consult with and receive the concurrence of the Division Administrator. The extent of Federal-aid participation in contract termination costs, including final settlement, will depend upon the merits of the individual case. However, under no circumstances shall Federal funds participate in anticipated profit on work not performed.

(c) Except as provided for in paragraph (e) of this section, normal Federal-aid plans, specifications, and estimates, advertising, and award procedures are to be followed when a STD awards the contract for completion of a terminated Federal-aid contract.

(d) When a STD awards the contract for completion of a Federal-aid contract previously terminated for default, the construction amount eligible for Federal participation on the project should not exceed whichever amount is the lesser, either:

(1) The amount representing the payments made under the original contract plus payments made under the new contract; or

(2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

(e) If the surety awards a contract for completion of a defaulted Federal-aid contract or completes it by some other acceptable means, the FHWA will consider the terms of the original contract to be in effect and that the work will be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action will therefore be needed in connection with any defaulted Federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

§635.127 Agreement provisions regarding overruns in contract time.

(a) Each State transportation department (STD) shall establish specific liquidated damages rates applicable to projects in that State. The rates may be project-specific or may be in the form of a table or schedule developed for a range of project costs and/or project types. These rates shall, as a minimum, be established to cover the estimated average daily construction engineering (CE) costs associated with the type of work encountered on the project. The amounts shall be assessed by means of deductions, for each calendar day or workday overrun in contract time, from payments otherwise due to the contractor for performance in accordance with the contract terms.

(b) The rates established shall be subject to FHWA approval either on a project-by-project basis, in the case of project-specific rates, or on a periodic basis after initial approval where a rate table or schedule is used. In the latter case, the STD shall periodically review its cost data to ascertain if the rate table/schedule closely approximates, at a minimum, the actual average daily CE costs associated with the type and size of the projects in the State. Where rate schedules or other means are already included in the STD specifications or standard special provisions, verification by the STD that the amounts are adequate shall be submitted to the FHWA for review and approval. After initial approval by the FHWA of the rates, the STD shall review the rates at least every 2 years and provide updated rates, when necessary, for FHWA approval. If updated rates are not warranted, justification of this fact is to be sent to the FHWA for review and acceptance.

(c) The STD may, with FHWA concurrence, include additional amounts as liquidated damages in each contract to cover other anticipated costs of project related delays or inconveniences to the STD or the public. Costs resulting from winter shutdowns, retaining detours for an extended time, additional demurrage, or similar costs as well as road user delay costs may be included.

(d) In addition to the liquidated damages provisions, the STD may also include incentive/disincentive for early completion provisions in the contract. The incentive/disincentive amounts shall be shown separately from the liquidated damages amounts.

(e) Where there has been an overrun in contract time, the following principles shall apply in determining the cost of a project that is eligible for Federal-aid reimbursement:

(1) A proportional share, as used in this section, is the ratio of the final contract construction costs eligible for Federal participation to the final total contract construction costs of the project.

(2) Where CE costs are claimed as a participating item based upon actual expenses incurred or where CE costs are not claimed as a participating item, and where the liquidated damages rates cover only CE expenses, the total CE costs for the project shall be reduced by the assessed liquidated damages amounts prior to figuring any Federal pro rata share payable. If the amount of liquidated damages assessed is more than the actual CE totals for the project, a proportional share of the excess shall be deducted from the federally participating contract construction cost before determining the final Federal share.

(3) Where the STD is being reimbursed for CE costs on the basis of an approved percentage of the participating construction cost, the total contract construction amount that would be eligible for Federal participation shall be reduced by a proportional share of the total liquidated damages amounts assessed on the project.

(4) Where liquidated damages include extra anticipated non-CE costs due to contractor caused delays, the amount assessed shall be used to pay for the actual non-CE expenses incurred by the STD, and, if a Federal participating item(s) is involved, to reduce the Federal share payable for that item(s). If the amount assessed is more than the actual expenses incurred by the STD, a proportional share of the excess shall be deducted from the federally participating contract construction cost of the project before the Federal share is figured.

(f) When provisions for incentive/disincentive for early completion are used in the contract, a proportion of the increased project costs due to any incentive payments to the contractor shall be added to the federally participating contract construction cost before calculating the Federal share. When the disincentive provision is applicable, a proportion of the amount assessed the contractor shall be deducted from the federally participating contract construction cost before the Federal share calculation. Proportions are to be calculated in the same manner as set forth in paragraph (e)(1) of this section.

§18.42 Retention and access requirements for records.

a. *Applicability.*
   1. This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:
      i. Required to be maintained by the terms of this part, program regulations or the grant agreement, or
      ii. Otherwise reasonably considered as pertinent to program regulations or the grant agreement.
   2. This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see §18.36(i)(10).

b. *Length of retention period.*
   1. Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.
   2. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.
   3. To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

c. *Starting date of retention period --*
   1. *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.
   2. *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.
   3. *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.
   4. *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
      i. *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
      ii. *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan; or computation and its supporting records starts from theend of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

d. *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

e. *Access to records --*
   1. *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees

and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

2. *Expiration of right of access.* The right of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

I. *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§18.36 Procurement.

I. *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (I) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)
2. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)
3. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)
4. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)
5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)
6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)
7. Notice of awarding agency requirements and regulations pertaining to reporting.
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
9. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
10. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
11. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
12. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)
13. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

SPECIAL PROVISION
REGARDING
DYNAMIC MONITORING OF STEEL PIPE PILES

General. This special provision governs dynamic monitoring of steel pipe piles during driving with a pile dynamic analyzer (PDA) in accordance with the Plans and as directed by the Engineer. The PDA test method is described in ASTM D4945, "Standard Test Method for High-Strain Dynamic Testing of Deep Foundations". Install piles in accordance with Section 606 of the Standard Specifications and this Special Provision. Analyze PDA data with the Case Pile Wave Analysis Program (CAPWAP).

Submit the proposed pile driving methods and equipment to the Engineer in accordance with the Standard Specifications. Approval of the proposed pile driving methods and equipment by the Engineer is required before driving piles with a PDA. Notify the Engineer a minimum of fourteen (14) calendar days before the scheduled date of driving piles to be monitored. Complete PDA testing on the number of piles as shown in the Plans and as directed by the Engineer.

A PDA Consultant approved by the Engineer must perform the PDA testing, CAPWAP analyses, and provide PDA reports. PDA Consultant shall have demonstrated experience in PDA testing and CAPWAP analyses of driven piles and satisfactory written evidence of such experience shall be submitted to the Engineer for approval.

Preparation for PDA Testing. Provide piles for PDA testing that are a minimum of 5 ft longer than the estimated pile lengths shown on the Plans. Supply 110 V, 60 Hz, 30 Amp of AC electrical power to operate the PDA equipment. Direct current welders or non-constant power sources are unacceptable.

If necessary, provide a suitable shelter to protect the PDA equipment and operator from conditions of sun, water, wind and temperature. Place the shelter within reach of the PDA cables and in clear view of piles being driven.

Drill holes for PDA instruments in pile as directed by PDA Consultant. The PDA Consultant will furnish the PDA measuring instruments and materials for installing the instruments. Attach the PDA instruments as directed by the PDA Consultant after the pile is placed in the leads and the template.

The Contractor is responsible in terms of both actual expense and time delays for any damage to the PDA instruments and supporting equipment due to the Contractor's fault or negligence.

PDA Testing. Use only the approved pile driving methods and equipment to drive piles with the PDA instruments attached. Drive the pile as directed by the PDA Consultant in order to measure the wave speed of the pile.

Drive the pile to the required minimum bearing capacity or minimum tip elevation, whichever is lower, as shown on the Plans or as directed by the PDA Consultant. During pile driving, the PDA will be used to evaluate, including but not limited to, the following: hammer performance, bearing capacity, distribution of soil resistance, pile driving stresses, energy transfer, pile integrity and soil variables including quake and damping. The PDA Consultant or Engineer may require modified pile installation procedures during driving.

Piles to be monitored with a PDA during driving shall be driven with PDA instrumentation attached to the pile and shall have a PDA monitored 1-day and 14-day restrike performed after the initial pile driving. The Engineer may modify the waiting periods that are required before the restrikes are

performed. When a static load test is to be performed, the 14-day restrike should be eliminated and a PDA monitored restrike done within 24 hours of completion of the static load test. When deemed necessary by the Engineer, permanent production piles in addition to those shown in the Plans to be monitored during driving may have PDA monitored restrikes performed to confirm or supplement design requirements.

Use the same pile driving methods, equipment, and compressed pile cushion from the initial drive to restrike the pile unless the cushion is unacceptable due to deterioration. Restrikes shall be performed with a warm hammer operating at normal efficiency. A warm hammer is defined as a hammer that has applied a minimum of twenty (20) blows to another pile or a dummy block immediately before being used in a restrike. The restrike shall consist of striking the pile for fifty (50) blows or until the pile penetrates an additional three (3) inches, whichever occurs first. In the event the pile movement is less than one (1) inch after fifteen (15) blows during the restrike, the restrike may be terminated.

CAPWAP Analysis and PDA Report. The PDA Consultant must perform analysis of the PDA raw data with the Case Pile Wave Analysis Program (CAPWAP). CAPWAP analysis is required for at least a hammer blow near the end of initial drive and for each restrike. Additional CAPWAP analysis may be required as determined by the PDA Consultant or Engineer.

Submit two (2) copies of each PDA report to the Engineer within seven (7) calendar days after the PDA testing is completed. Prepare and sign/seal reports by a Professional Engineer from the PDA Consultant registered in the state of Tennessee. Report for steel pipe test pile that is static load tested shall include calibration of dynamic tests with the PDA to results of the static load test and development of driving criteria for production pipe piles.

Include the following in PDA reports:

(a) Title Sheet

- (i) Project description
- (ii) Pile location
- (iii) Personnel
- (iv) Report date

(b) Introduction

(c) Site and Subsurface Conditions (including water table elevation)

(d) Pile Details (including driving dates and times)

- (i) Pile type and length
- (ii) Pile design load (minimum required driving resistance)
- (iii) Steel pile yield strength
- (iv) Pile splice type and locations
- (v) Installation methods including use of predrilling, jetting, template, etc.

(e) Driving Details

- (i) Hammer make, model and type
- (ii) Pile cushion type and thickness
- (iii) Pile helmet weight
- (iv) Hammer efficiency and operation data including fuel settings, bounce chamber pressure, blows per minute, equipment volume and pressure
- (v) Driving resistance (ram stroke, blows per foot and set for last ten (10) hammer blows)
- (vi) Ground or mud line elevation and template reference elevation at the time of driving

(vii) Final pile tip elevation
(viii) Restrike information

(f) PDA Field Work Details

(g)CAPWAP Analysis Results

(i) Table showing percent skin and tip, skin and toe damping, skin and toe quake and match quality

(h)Summary/Conclusions

(i) Attachments

(i) Pile driving equipment data form
(ii) Field pile driving inspection data
(iii) Accelerometer and strain gauge serial numbers, calibration, and locations
(iv) PDA hardware model and CAPWAP software version information
(v) Copy of all PDA data and CAPWAP output files

Measurement and Payment. Dynamic monitoring will be measured and paid in units of each, measured as one per pile. The contract unit price for Dynamic Monitoring will be full compensation for performing PDA testing during initial drive and restrikes, performing CAPWAP analyses on data collected during initial drive and restrikes, and providing PDA reports. This price shall also include full compensation for completing the 1-day and 14-day pile restrikes after initial driving.

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 matter 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.

Amount of Original Contract Proposal	Amount of Liquidating Damages per Calendar Day
$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.

adjusted price, 7
adjustment of prices, 7
anticipated profits, 3, 7
Award, 2, 5
bid bond, 3, 4
Bidder, 1, 2, 3, 4, 5, 6
bonding forms, 3
certificates of insurance, 13
changed work, 7
closing of roads, 8
Competency, 5
Conformity, 9
Consideration, 5
Construction Permits, 11
contract, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23
Contract Bond, 5
Contractor, 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23
copyright, 13, 14, 16
Damage Claims, 15
defective, 9, 11, 12, 13
defective work, 9, 11
detour signs, 7
disputes, 3, 9, 11
Disqualification of Bidders, 4
easements, 10
Engineer, 1, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23
estimated quantities, 3
Execution of Contract, 6
final authority, 9, 10
final inspection, 11, 21
Final payment, 3
Fire Hydrants, 14
force account, 7, 22
General Liability Insurance, 16
guarantee, 13, 23
incidental work, 6
increase or decrease, 3, 6, 7, 21
Inspector, 11, 20
Load Restrictions, 17
Lump Sum contracts, 7
Lump Sum Contracts, 8
management representative, 9
Manual on Uniform Traffic Control Devices, 7, 14
material costs, 7
materials, 2, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23
net increase or a net decrease, 7
Notice to Proceed, 7, 11
overhead, 7, 22
patent, 13, 16
Payment for Extra Work, 7, 21
permits, 10, 11, 14
plans, 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 21, 23
profit, 7, 22
Project Manager, 1, 11
property, 8, 15, 16, 21, 23
proposal, 1, 2, 3, 4, 5, 6, 7, 9, 10, 18, 19, 21, 22
Proposal Guaranty, 4, 5
Proposals, 4, 5
proposed work, 2, 3, 6
quantities of materials, 2, 3
Rejection, 4
Restoration of Property, 15
Right-of-Way, 17
rights-of-way, 10, 17
Salvageable material, 8
Schedule of Prices, 8
special provisions, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13
specifications, 2, 3, 6, 9, 10, 11, 12, 13, 14, 21, 23
Stored Materials, 12
submittals, 12
supplemental agreement, 7, 23
Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction., 6
Testing of Materials, 12
Unbalanced proposals, 4
unit price, 3, 4, 5, 6, 8, 21, 22, 23
unit price contracts, 3
Unit Price contracts, 6, 7
unit prices, 3, 5, 7, 10, 12, 14, 21
Unit prices, 4
Unsatisfactory performance, 4
Utilities, 10
Warranty and Guarantees, 13
Withdrawal, 4
Workmen's Compensation, 13, 16
written supplemental agreement, 7