



# Shelby County Tennessee

Mark H. Luttrell, Jr., Mayor

## SEALED BID Shelby County Government Purchasing Department

160 N. Main, Suite 900  
Memphis, TN 38103

*Issued: January 14, 2016*  
*Due: February 11, 2016 at 2:30 P.M. (Central Standard Time)*

### SEALED BID # I000366

#### **“RALEIGH MILLINTON ROAD AT DUNCAN ROAD CLEARING PROJECT”**

#### **PARKS AND GROUNDS MAINTENANCE**

Shelby County Government is soliciting Sealed Bids to provide clearing and grubbing services of an identified 15 acre portion of property located at northeast corner of Raleigh Millington Road and Duncan Road. See Exhibit “A” for detailed location of the property. The Sealed Bid is located on the County’s website at [www.shelbycountyttn.gov](http://www.shelbycountyttn.gov) and click the link “Department” at the top, then P for the Purchasing Department, then click on the link “Bids.”

**A voluntary pre-bid conference will be held at 9:00 A.M., February 1<sup>st</sup>, 2016, 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, Bob Brenner @ [bob.brenner@shelbycountyttn.gov](mailto:bob.brenner@shelbycountyttn.gov)

Bids must be received in the office of the Administrator of Purchasing **no later than 2:30 P.M. on February 11, 2016.** **Bids will be publicly opened at that time and all interested bidders are invited to attend.** Bids should be addressed

**Robert S. (Bob) Brenner  
Shelby County Government  
160 N. Main, Rm. 900  
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 MILLINTON ROAD AT DUNCAN ROAD CLEARING PROJECT”, SEALED BID # I0000366** 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,**

**Robert S. Brenner, Buyer  
Purchasing Department, Shelby County Government**

**Parks & Grounds Maintenance Department  
1079 Mullins Station Road  
Memphis, Tennessee 38134**

**INDEX**

<b><u>SECTION A</u></b>	<b>REQUEST FOR PROPOSAL</b>	
<b>I.</b>	<b>INTRODUCTION .....</b>	<b>5</b>
<b>II.</b>	<b>MINIMUM PROPOSER REQUIREMENTS .....</b>	<b>5</b>
<b>III.</b>	<b>CORRESPONDENCE .....</b>	<b>6</b>
<b>IV.</b>	<b>PROPOSAL SUBMISSION DEADLINE .....</b>	<b>6</b>
<b>V.</b>	<b>PROPOSAL TIMELINE .....</b>	<b>7</b>
<b>VI.</b>	<b>PROPOSAL CONDITIONS .....</b>	<b>7</b>
	<b>A) CONTINGENCIES</b>	
	<b>B) MODIFICATIONS</b>	
	<b>C) PROPOSAL SUBMISSION</b>	
	<b>D) INCURRED COSTS</b>	
	<b>E) FINAL AUTHORITY</b>	
	<b>F) PROPOSAL VALIDITY</b>	
	<b>G) DISCLOSURE OF PROPOSAL CONTENTS</b>	
	<b>H) NON-DISCRIMINATION AND TITLE VI</b>	
	<b>I) LOSB</b>	
	<b>J) DRUG-FREE WORKPLACE AFFIDAVIT</b>	
	<b>L) GRATUITY DISCLOSURE FORM</b>	
	<b>M) FORMS TO BE SUBMITTED</b>	
<b>VII.</b>	<b>GENERAL REQUIREMENTS .....</b>	<b>26</b>
<b>VIII.</b>	<b>AWARD OF CONTRACT .....</b>	<b>26</b>
<b>IX.</b>	<b>NOTICE TO BIDDERS .....</b>	<b>27</b>
<b><u>SECTION B</u></b>	<b>PROPOSAL AND CONTRACT REQUIREMENTS</b>	
<b>I.</b>	<b>PROPOSAL .....</b>	<b>1-3</b>
<b>II.</b>	<b>BID FORM .....</b>	<b>4-5</b>
<b>III.</b>	<b>PROPOSAL RESPONSE SHEET .....</b>	<b>6</b>
<b>IV.</b>	<b>CONTRACT .....</b>	<b>7-19</b>
<b>V.</b>	<b>CONTRACT BOND .....</b>	<b>20-21</b>
<b><u>SECTION C</u></b>	<b>GENERAL CONDITIONS AND REQUIREMENTS</b>	
<b><u>SECTION D</u></b>	<b>PROJECT DRAWINGS</b>	

END OF PAGE

**SECTION A**

**SHELBY COUNTY GOVERNMENT  
PARKS & GROUNDS MAINTENANCE DEPARTMENT**

**SEALED BID I000366**

## I. INTRODUCTION

Shelby County Government (the “County”), is soliciting currently registered Construction Companies to provide clearing and grubbing services at an identified 15 acre parcel that part of a larger property owned by Shelby County Government and located on the west side of Raleigh Millington Road north of the intersection of Raleigh Millington and Duncan Roads. 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 sealed bid.

## II. MINIMUM BIDDER REQUIREMENTS

All bidders must:

1. **Prime** and **LOSB** contractors must **apply** and **qualify** for an Equal Opportunity Compliance (EOC) certification number through our EOC Administration **prior to submitting your response**.
2. Firms located within the boundaries of Shelby County are required to have a current Shelby County Business License or be considered exempt from the license requirement by the Shelby County Clerks Office.
3. Meet all other requirements for the performance such as LOSB and performance requirements for Services in accordance with the provisions of this 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 must be provided by the successful contractor. Please see item, “**H**” 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.
11. Provide proof of the minimum insurance requirement, (**MANDATORY**, please review closely).

**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 applications to receive the numbers indicated above at [www.shelbycountyttn.gov](http://www.shelbycountyttn.gov). To obtain a vendor number and an EOC number, please follow the instructions below:*

**Vendor Number (Purchasing Department)**

At the top of the home page, click on the links “Department”, “P” for the Purchasing Department and “Conducting Business with Shelby County”. The “Vendor Registration” link is at the bottom of the drop down box. Please download the application instructions and read thoroughly prior to accessing the application. *(Applications for a vendor number are accepted online only.)*

**Equal Opportunity Compliance (EOC) Number (EOC Administration Office)**

At the top of the home page, click on the links “Department”, “E” for the Equal Opportunity Compliance and “Contract Compliance Program”. The “Contract Compliance Packet” link is in the middle of the page. Please print the packet and mail or fax the completed packet to the EOC office. The mailing address is 160 N. Main Street, Suite 200, Memphis, TN 38103. The fax number is 901-222-1101.

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

### **III. CORRESPONDENCE**

**All correspondence, proposals, and questions concerning the sealed bid are to be submitted to:**

**Robert S. (Bob) Brenner, Buyer  
Shelby County Government  
160 N. Main St. Suite 900  
Memphis, TN 38103  
(901) 222-2250**

Respondents requesting additional information or clarification are to contact Bob Brenner in writing at [bob.brenner@shelbycountyttn.gov](mailto:bob.brenner@shelbycountyttn.gov) or at the address listed above. Questions should reference the section of the sealed bid to which the question pertains and all contact information for the person submitting the questions. ***IN ORDER TO PREVENT AN UNFAIR ADVANTAGE TO ANY RESPONDENT, VERBAL QUESTIONS WILL NOT BE ANSWERED. The deadline for submitting questions will be February 4<sup>th</sup>, 2016 @ 12:00 p.m.***

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

*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.*

#### **IV. PROPOSAL SUBMISSION DEADLINE**

All proposals must be received at the address listed above no later than **2:30 pm, February 11, 2016**. 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.

<b>Request for Proposals Released</b>	<b>January 14, 2016</b>
<b>Pre-Bid Conference</b>	<b>February 1, 2016 @ 9:00 a.m.</b>
<b>Deadline for Questions</b>	<b>February 4, 2016 @ 12:00 p.m.</b>
<b>Proposal Due Date</b>	<b>February 11, 2016 @ 2:30 p.m.</b>
<b>Notification of Award</b>	<b>March 2016</b>

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 SBI 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 SBI.

##### **C. Proposal Submission**

To be considered, all proposals must be submitted in the manner set forth in this SBI. 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 SBI 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. 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.

**I. LOSB**

**SHELBY COUNTY GOVERNMENT  
LOCALLY OWNED SMALL BUSINESS (LOS B) PROGRAM  
FOR CONSTRUCTION SERVICES**

**RALEIGH MILLINTON ROAD AT DUNCAN ROAD CLEARING PROJECT**

**General**



Shelby County Government is committed to a policy of non-discrimination pursuant to the Equal Protection provisions of the United States Constitution. It is further the policy of Shelby County that its purchasing and contracting practices encourage the use of Locally-Owned Small Businesses (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 10% 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 200  
Memphis, Tennessee 38103  
Phone: 901-222-1100  
Fax: 901-222-1101  
E-mail: Carolyn.Griffin@shelbycountyttn.gov

## **Definitions**

The definitions used in this document are as follows:

1. **"Bidder"** means any person, firm, partnership, association, or joint venture seeking to be awarded a contract or subcontract to provide goods, commodities, or services.
2. **"Certification"** or **"Certified"** means a Business that is certified by Shelby County Government under the LOSB program.
3. **"Commercially useful function"** means being responsible for the management and performance of a distinct element of the total work.
4. **"Contractor"** shall mean any person or business enterprise that submits a bid or proposal to provide labor, goods, or services to Shelby County by contract for profit in the area of construction or construction-related activities; and, any person or firm who supplies or provides labor, goods, or services to Shelby County by contract for profit.
5. **"Efforts to Achieve LOSB Participation"** means that the Contractor will solicit LOSB Participation with respect to the procurement and will consider all sub-bids and quotations received from LOSB's. When a subcontract is not awarded to the LOSB, the Contractor must document the reason(s) the award was not made and substantiate that documentation in writing pursuant to the provisions of this Program.

6. **“Locally Owned Small Business (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 include the names of businesses, contact person(s), addresses, telephone numbers, and, a description of the specifications for the work selected for subcontracting.
4. Contractor must submit proof that it allowed LOSB's the opportunity to review bid specifications, blue prints and all other bid related items at no charge. The Contractor must allow sufficient time for review prior to the bid deadline.
5. Contractor must submit proof that it made Efforts to Achieve LOSB Participation by not rejecting a LOSB as unqualified or unacceptable without sound reasons based on a thorough investigation of their capabilities. Contractor must submit proof of the basis for rejecting any LOSB deemed unqualified or unacceptable by the Contractor. The Contractor will not impose unrealistic conditions of performance on LOSB's seeking subcontracting opportunities.

The Contractor must fully cooperate with Shelby County in its post-contract award LOSB Program audit and compliance efforts.

## **Substitution of LOSB's after Contract Award**

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

## **Noncompliance with LOSB Program**

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

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

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

Ms. Carolyn Griffin  
Office of Equal Opportunity Compliance  
Board of Commissioners of Shelby County  
160 North Main Street, Suite 200  
Memphis, Tennessee 38103  
Phone: 901-222-1100  
Fax: 901-222-1101  
E-mail: Carolyn.Griffin@shelbycountyttn.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 **LOS Form “B”** if the entity will perform a Commercially Useful Function. The Successful Contractor will be required to finalize and submit **LOS Form “B”** prior to award of a contract. **LOS Form “B”** will be incorporated into the contract and will become a contractual obligation of the Successful Contractor. **LOS Form “B”** shall not be changed or altered after award of a contract without approval from Shelby County. The Contractor is required to provide written notice describing the reasons for any proposed change to Shelby County and to obtain approval from Shelby County of any changes to **LOS Form “B.”**

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

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

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

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

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

**Company Name:** \_\_\_\_\_  
**Bid No.:** \_\_\_\_\_

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

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

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

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

*(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:** \_\_\_\_\_

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

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

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

**Business Information:**

**Submitted by:**

**Business:** \_\_\_\_\_

**Authorized Representative (Print):**

**Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Title:** \_\_\_\_\_

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

**Authorized Representative's Signature:**

\_\_\_\_\_

**Facsimile:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## **LOCALLY OWNED SMALL BUSINESS PURCHASING PROGRAM RULES AND REGULATIONS:**

1. The Administrator of Purchasing in conjunction with the Administrator of EOC shall identify certain goods and services required by the County to be set aside for special purchasing procedures for locally owned small businesses.
2. Only certified locally owned small businesses will be allowed to submit competitive bids on the goods or services identified under paragraph (i) above.
3. The Administrator of Purchasing shall, in conjunction with the Administrator of EOC, annually review the Shelby County Capital Improvement Program to determine those projects with a construction cost of \$250,000 or more. Contracts amounting to at least ten (10%) of the construction costs of such project shall be awarded to locally owned small businesses as defined herein, except as set forth in sub-paragraph (vi) of this section, either as part of the conditions of the solicitation for general contractors bidding on these projects, or as separate bids issued by the County for subcontracts that may be assigned to general contractors.
4. After adhering to all other bidding and purchasing requirements of the County, not inconsistent with this part, if no bids are received from locally owned small businesses, then the County may solicit bids for the goods or services from all other sources.
5. On all purchases and/or contracts entered into by the County, the Purchasing Administrator or his or her designee shall have the right to negotiate with any supplier of goods or services to the County for the inclusion of locally owned small business subcontractors and/or suppliers in the contract award.
6. Failure by a supplier or contractor to include locally owned small business 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.

**J. 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:

**K. 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.*



**L. 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 DOCUMENTING ALL LOSB'S TO BE UTILIZED, THE PERCENTAGE OF UTILIZATION AND THE INTENDED SCOPE OF THE WORK.**

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

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

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

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

**SECTION B IN ITS ENTIRETY**

**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 Sixty (60) 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 900, SHELBY COUNTY ADMINISTRATION BUILDING, 160 NORTH MAIN, MEMPHIS, TENNESSEE 38103, at **2:30 pm, February 11, 2016**. 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 MILLINTON ROAD AT DUNCAN ROAD CLEARING PROJECT”**.

(b) The work shall include the clearing and grubbing of an identified 15 acre portion of property located at northeast corner of Raleigh Millington Road and Duncan Road, said property as shown on the attached Exhibit “A”. (Map of premises)

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

Bidders are encouraged to attend a voluntary pre-bid meeting to be held on February 1<sup>st</sup>, 2015 at 9:00 am, at the Shelby County Road, Bridges, and Engineering Department Office, Conference Room at 6449 Haley Road, Memphis, Tennessee 38134.

### **Instruction to Bidders:**

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

**EOC Requirements:**

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

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

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

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

**Rejection of Bids:**

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

**BY ORDER OF:      CLIFTON DAVIS**

**PURCHASING ADMINISTRATOR  
SHELBY COUNTY GOVERNMENT**

\_\_\_\_\_, 2016

**SECTION B**

**SHELBY COUNTY GOVERNMENT  
PARKS AND GROUNDS MAINTENANCE DEPARTMENT**

**PROPOSAL**

**(RETURN THIS SECTION IN ITS ENTIRETY WITH YOUR BID)**

# 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 AT DUNCAN ROAD CLEARING 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, site plan and notes, 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. Performance and Labor and Material 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 Performance and Labor and Material Bond satisfactory to 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 60 calendar days, unless additional time shall be granted by the Engineer
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 with a local office in Shelby County, Tennessee 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 \_\_\_\_\_.

Contact Name \_\_\_\_\_

Telephone number \_\_\_\_\_

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 AND DUNCAN ROAD CLEARING PROJECT

#### PROJECT ESTIMATED QUANTITIES

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL
1	Mobilization	LS	1		
2	Removal of Trees, Stumps and roots	Acre	14		
3	Disposal (burning) of Debris	LS	1		
4	Erosion Control	LS	1		
5	Seeding	Acre	14		
				<b>TOTAL</b>	

**NOTE:** The area to be cleared is shown on the attached Site Plan, dated 01 April, 2014. Before the contractor starts, the area to be cleared will be staked and approved by Shelby County.

The following are included in the price of the bid:

1. All required permitting.
2. Removal of trees, stumps and roots
3. Pit excavation.
4. Aeration.
5. Debris transport to pit.
6. Environmental compliance.
7. Proper ash disposal.
8. Pit closure and site cleanup.

**9. Restabilizing of the site.**

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 AND DUNCAN ROAD CLEARING 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 AND DUCAN ROAD CLEARING PROJECT**

This contract (the "Contract") entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, 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 I000366, Debris Clearing and CONTRACTOR responded to said Sealed Bid by the required deadline of February 11; 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 \_\_\_\_\_; 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 I000366 Raleigh Millington Road and Duncan Road Clearing 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 120 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 \$\_\_\_\_\_ 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 CONTRACTOR 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. Tony Kizer, Public Works Policy and Procedure Officer. 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

This Contract does not include reimbursement for travel expenses..

23. NON-LIABILITY FOR CONTRACTOR 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.

24. 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.

25. 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.

26. 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.

27. INCORPORATION OF WHEREAS CLAUSES

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

28. 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.

29. CONFIDENTIAL INFORMATION

a. CONTRACTOR acknowledges that, in dealing with individuals in the provision of the Services for COUNTY, any information gathered for the provision of the Services is confidential information. CONTRACTOR agrees to hold all confidential information in strict confidence, and except as expressly set forth herein, will not disclose such confidential information to any third party(s), including but not limited to any corporation, company, group, partnership, agency or individual. CONTRACTOR shall:

- i) use the confidential information only in connection with the provision of the Services;
- ii) disclose the confidential information only to its officers, directors, and employees who need to know the confidential information to accomplish the preparation of the audits and/or auditing process; and
- iii) safeguard the confidential information with the same or greater degree of care to avoid unauthorized disclosure as the CONTRACTOR uses to protect its own confidential information.

b. In the event that the CONTRACTOR or anyone to whom it transmits confidential information becomes legally compelled to disclose any of the confidential information, the CONTRACTOR will provide the COUNTY with prompt written notice before such confidential information is disclosed so that the COUNTY can seek a protective order or other appropriate remedy. Unauthorized disclosure of confidential information by the CONTRACTOR shall result in immediate termination of the Contract.

30. 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.

31. 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. 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:
  - i) 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. Shelby County Government, its elected officials, appointees and employees will be named as additional insured The insurance shall include coverage for the following:
    - a. Premises/Operations
    - b. XCU coverage, where applicable
    - c. Products/Completed Operations
    - d. Contractual Liability
    - e. Independent Contractors
    - f. Broad Form Property Damage
    - g. Personal Injury
    - h. Pollution Liability
  - ii) 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. Policy will be endorsed to include Waiver of Subrogation in favor of Shelby County Government.
  - iii) Business Automobile Liability Insurance - \$1,000,000.00 each accident for property damage and bodily injury. Coverage is to be provided on all owned/leased autos, non-owned autos and hired autos. Shelby County Government, its elected officials, appointees and employees will be named as additional insured
- c. CONTRACTOR shall provide COUNTY with Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal certificates on each anniversary date. The certificate holder is to read:

Shelby County Government  
Purchasing Department  
160 N. Main, Suite 900  
Memphis, TN 38103

- d. All policies will provide for 30 days written notice to COUNTY of cancellation of coverage provided. Ten (10) days' notice applicable to non-payment of premium. If the insurer is not required by the policy terms and conditions to provide written notice of cancellation to COUNTY, the CONTRACTOR shall provide immediate notice to COUNTY and provide evidence of replacement coverage with no lapse.
- e. All insurance policies maintained by the CONTRACTOR shall provide that insurance as applying to Shelby County, et al as additional insureds shall be primary and non-contributing irrespective of such insurance or self-insurance as Shelby County may maintain in its own name and on its own behalf.
- f. If the CONTRACTOR maintains higher limits than the minimums shown above, COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY as additional insureds.

32. 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  
Public Works Division  
160 North Main, Suite 1100  
Memphis, Tennessee 38103  
Attn.: Mr. Tony Kizer.

*and*

Shelby County Government  
Contract Administration  
160 N. Main St., Suite 900  
Memphis, Tennessee 38103

VENDOR:



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

**APPROVED AS TO FORM  
AND LEGALITY:**

**SHELBY COUNTY GOVERNMENT**

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

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

**VENDOR**

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

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

**CORPORATE ACKNOWLEDGMENT**

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

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

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the \_\_\_\_\_, the within named bargain or, 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 \_\_\_\_\_, 2016.

\_\_\_\_\_  
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 DEBRIS BURNING 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., 2016.

IN WITNESS WHEREOF, We have  
duly executed the foregoing  
obligation this \_\_\_\_\_ day  
of \_\_\_\_\_ A.D. 2016

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

FOR SHELBY COUNTY GOVERNMENT:

\_\_\_\_\_

President

Mayor of Shelby County, TN

Attest: \_\_\_\_\_  
Secretary Director of Public Works

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

BY: \_\_\_\_\_ (Seal) APPROVED AS TO FORM:  
Attorney in Fact

BY: \_\_\_\_\_ (Seal) \_\_\_\_\_  
Attorney in Fact County Attorney

State of \_\_\_\_\_

County of \_\_\_\_\_

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

Given under my hand and Notarial Seal the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 2016.

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

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

