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. MATTER TO BE DISREGARDED

This 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 CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

22. TRAVEL EXPENSES (If Applicable)

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

23. PERFORMANCE AND LABOR AND MATERIALS BONDS

CONTRACTOR will provide COUNTY within ten (10) days from inception date of this Contract a Performance and Labor and Materials Bond each in the amount of 100% of the Contract price for each year that this contract is in effect. Said Bonds may be pro-rated for the initial year in the event that this period of time is less than a full twelve (12) month

period.

24. 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.

25. INCORPORATION OF OTHER DOCUMENTS

a. CONTRACTOR shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for Proposals/Bids as well as the Response of CONTRACTOR thereto, all of which are maintained on file within the Shelby County Purchasing Department and incorporated herein by reference.

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

26. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

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

equipment, construction and services.

27. 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.

28. INCORPORATION OF WHEREAS CLAUSES

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

29. 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.

30. ORGANIZATION STATUS AND AUTHORITY

a. CONTRACTOR 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. Shelby County Government, its elected officials, appointees and employees will be named as additional insured. All policies will provide for thirty (30) days written notice to COUNTY of cancellation or material change in coverage provided. 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 for 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. The service provider should indicate in its bid whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:

a) Premises/Operations
b) Products/Completed Operations
c) Personal Injury
d) XCU coverage, where applicable
e) Contractual Liability
f) Independent Contractors
g) Broad Form Property Damage

ii) Business Automobile Liability Insurance - $1,000,000.00 each accident for bodily injury and property damage. Coverage is to be provided on all:

a) Owned/Leased Autos
b) Non-owned Autos
c) Hired Autos

iii) Workers Compensation And Employer's liability Insurance - Workers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability coverage for $500,000.00 per accident.

iv) Builders Risk Insurance or Installation Floater (as applicable) - All risk coverage in the amount of the structure/equipment which is to be built or installed.

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

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

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

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 in the Contract, or to such other person or address as either party may designate in writing and deliver as herein provided.

33. HIPAA (If applicable)

CONTRACTOR warrants to the COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract. CONTRACTOR warrants that it will cooperate with the COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements.

34. LIVING WAGE ORDINANCE

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

It is agreed that the following documents are made a part of and incorporated fully into this construction Contract:

1. Performance Bond
2. Labor and Material Bond
3. Insurance Certificate
4. Bid Specifications (RFP #08-003-59)
5. Contractor's Bid/Proposal (Exhibit "A")
6. General Conditions to Contract (Exhibit "B")
7. List of subcontractors who will be performing work on project with attached required information per Exhibit "C"

NOTE: THE ABOVE DOCUMENTS MUST BE ATTACHED BEFORE EXECUTION OF THIS AGREEMENT BY SHELBY COUNTY.

IN WITNESS WHEREOF, the signatures of the parties hereto, by their duly authorized officers, on the date and year first above written.

NAME OF COMPANY BARNES & BROWER INC.

BY: _____

TITLE: PRESIDENT JEFF BARNES

TN Contractor's Lic. # 52754

BARNES & BROWER, INC. CORPORATE SEAL STATE OF TN

SHELBY COUNTY GOVERNMENT

APPROVED AS TO FORM AND LEGALITY

A C Wharton, Jr., MAYOR

Contract Administrator/
Assistant County Attorney

CORPORATE ACKNOWLEDGEMENT

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared Jeff Barnes, 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 to execute the instrument) of the Barnes & Brower Inc, the within named bargainor, a corporation, and that he as such President, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as President.

WITNESS my hand and official seal at office this 21st day of April, 2008.

Brenda J. Burns
Notary Public

My Commission Expires: 12-07-11

BRENDA J. BURNS STATE OF TENNESSEE NOTARY PUBLIC SHELBY COUNTY

EXHIBIT A

BID FORM

COPY

TO: Mr. Nelson Fowler

AT: Shelby County Government
160 N. Main, Rm 550
Memphis, TN 38103

RE: **RFP-08-003-59, Shelby County Head Start Building Renovation for Approximately 13,500 sq. ft. of interior demolition & remodeling as indicated in the Bid Documents.**

A. The Bidder acknowledges in submitting this bid that:

1. Bidder has received, read, and understands the Bidding Documents, has visited the site and become familiar with local conditions under which work is to be performed, has correlated observations with requirements of Bidding Documents and makes this bid in accordance therewith.
2. The required Bid Security, in the amount of five percent (5%) of the total amount bid, is attached hereto.
3. Failure to complete Bid Form, provide required attachments, or comply otherwise with the Instructions to Bidders, may be cause for rejection of bid.
4. This Bidder has received the following addenda:

   Addendum No. 1 dated 3-28-08

   Addendum No. 2 dated 4-01-08

   Addendum No. _____ dated _____

5. The person who signs this bid on behalf of the Bidder is required to be legally empowered to bind the Bidder to a Contract.

B. This Bidder agrees to:

1. HONOR THIS BID FOR A PERIOD OF SIXTY (60) DAYS FOLLOWING THE DATE OF THE SCHEDULED OPENING OF BIDS.
2. Enter into and execute a contract, if presented on the basis of this bid, and furnish bond(s) and certificate(s) of insurance as required.
3. An Escrow Agreement for the Retainage Account shall be provided if the amount of the Contract is $500,000 or greater.
4. Accomplish the Work in accordance with the Contract Documents.
5. Achieve Substantial Completion of the Work sixty (60) calendar days from and including the date stipulated in the Notice to Proceed. Failure to reach the point of Substantial Completion within the specified time shall result in the Contractor paying the Owner liquidated damages in the amount of Five Hundred Dollars

($500.00) for each calendar day thereafter until the point of Substantial Completion is reached, these damages not exceeding 10% of the contract amount.

BID FORM continued for the project titled:

RFP-08-003-59, Shelby County Head Start Building Renovation.

BASE BID:

This Bidder agrees to complete the Work of the Base Bid for this project for the lump sum of *(show amount in both words and figures)*:

FIVE HUNDRED NINETY SIX THOUSAND & 19 Dollars and _____/100ths Dollars

$ 596,019

Submitted by:

Authorized Signature: Jeff Barnes Date: 4-3-08

Name and title: (Type or print) Jeff Barnes President

On behalf of: (Name of Bidder) Barnes & Brower Inc

Bidder's address: 3778 Burdan Cove Memphis TN

Tennessee Contractor's License No.: 52754

Expiration Date: 7-31-09 Unlimited Class BC MU

Bidder's Telephone Number: 901-794-3481

SHELBY COUNTY GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

Rev. 5/24/99

constcnd.doc

EXHIBIT B

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE I
CONTRACT DOCUMENTS

1.1 Definitions

1.1.1 The Contract Documents

The Contract Documents consist of the Owner-Contractor Agreement, the conditions of the Contract (General, Supplementary and other conditions), the Drawings, the Specifications, and all Addenda issued prior to and all modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Engineer pursuant to Subparagraph 2.2.8, or (4) a written order for a minor change in the Work issued by the Engineer pursuant to Paragraph 12.3. The Contract Documents include Bidding Documents such as the Advertisement or invitation to Bid, the Instructions to Bidders, sample forms, the Contractor=s Bid or portions of Addenda relating to any of these, and other documents specifically enumerated in the Owner-Contractor Agreement.

1.1.2 The Contract

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Engineer and the Contractor, but the Engineer shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Engineer or any Subcontractor or sub-subcontractor.

1.1.3 The Work

The Work comprises the completed construction required by the contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

Initial _____

1.1.4 The Project

The Project is the total construction of which the Work performed under these Contract Documents may be the whole or a part.

1.2 Execution Correlation and Intent

1.2.1 The Contract Documents shall be signed in not less than four originals by the Owner and Contractor. If either Owner or Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Engineer shall identify such Documents.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not specifically set forth in the Contract Documents will not be required unless it is consistent with work that is specifically set forth in the Contract Documents or is reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words and abbreviations, which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections, and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Sub-contractors or in establishing the extent of Work to be performed by any trade.

1.3 Ownership and Use of Documents

1.3.1 All Drawings, Specifications and copies thereof furnished by the Engineer are the property of the Owner. They are to be used only with respect to this Project and are not to be used on any other project. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Engineer on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Engineer=s common law copyright or other reserved rights. The Engineer will furnish, free of charge, to

Initial _____

the Contractor sufficient sets of Contract Documents to execute the Work not to exceed ten (10). The Contractor may purchase additional sets by paying reproduction costs.

ARTICLE II
ENGINEER

2.1 Definition

2.1.1 The Engineer is the person lawfully licensed to practice Engineerure, or any entity lawfully practicing Engineerure identified as such in the Owner-Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Engineer means the Engineer or his authorized representative.

2.2 Administration of the Contract

2.2.1 The Engineer will provide administration of the Contract as hereinafter described.

2.2.2 The Engineer will be the Owner=s representative during construction and until final payment is due. The Engineer will advise and consult with the Owner. The Owner=s instructions to the Contract shall be forwarded through the Engineer. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument signed by the Owner.

2.2.3 The Engineer will visit the site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations as an Engineer, he will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

2.2.4 The Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor=s failure to carry out the Work in accordance with the Contract Documents. The Engineer will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

Initial _____

2.2.5 The Engineer shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Engineer may perform his functions under the contract documents.

2.2.6 Based on the Engineer=s observations and an evaluation of the Contractor=s Applications for Payment, the Engineer will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts as provided in Paragraph 9.4.

2.2.7 The Engineer will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon so as to cause no delay the Project. Either party to the Contract may make written request to the Engineer for such interpretations.

2.2.8 All interpretations and decisions of the Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

2.2.9 The Engineer=s decision in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents. The Engineer shall rule on all claims and disputes that relate to the interpretation of the Contract Documents.

2.2.10 The Engineer will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work be then fabricated, installed or completed. In the event the Engineer determines that any Work deleted by the Contractor should have been performed by the Contractor under the Contract Documents, he shall issue a final determination that the Contractor shall proceed with the Work as directed by the Engineer, and the Contractor shall proceed with the Work even if he is in disagreement with the decision of the Engineer.

2.2.11 The Engineer will review and approve or take other appropriate action under Contractor=s submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer=s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

Initial _____

2.2.12 The Engineer will prepare Change Orders in accordance with Article 12 and will have the authority to order minor changes in the Work as provided in Subparagraph 12.3.

2.2.13 The Engineer will conduct inspections to determine the dates of Substantial Completion and final completion, will receive and forward to the Owner for the Owner=s review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a Final Certificate for Payment upon compliance with the requirements of Paragraph 9.8.

ARTICLE III
OWNER

3.1 Definition

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner, or his authorized representative.

3.2 Information and Services Required of the Owner

3.2.1 The Owner or Engineer shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

3.2.2 Except as provided in Subparagraph 4.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.2.3 Information or services under the Owner=s control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

3.2.5 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion and Insurance in Article 6, 9 and 11, respectively.

DB