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SHELBY COUNTY GOVERNMENT

ENGINEERING DEPARTMENT

GENERAL CONDITIONS

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ENGINEERING DEPARTMENT
GENERAL REQUIREMENTS AND CONDITIONS

SECTION 1. DEFINITION OF TERMS

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

1.01 County:

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

1.02 Director

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

1.03 Engineer

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

1.04 Project Manager:

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

1.05 Bidder:

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

1.06 Contractor:

The successful bidder to whom the contract is awarded.

1.07 Sub-contractor:

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

1.08 Surety:

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

1.09 Notice of Letting:

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

1.10 Notice to Bidder:

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

1.11 Plans:

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

1.12 Proposal:

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

1.13 Specifications:

The collection of general directions, provisions, requirements and any supplements duly authorized and distributed by the County. This shall include written agreements, bonding requirements, quantities of materials to be furnished, and other documents detailing the methods or manner to be used to perform the work in a satisfactory manner. Please see section 4.01 for additional information.

1.14 Special Provisions:

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

1.15 Proposal Guarantee:

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

1.16 Award:

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

1.17 Contract:

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

1.18 Supplemental Agreement:

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

1.19 The Work:

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

1.20 Word Usage and Gender:

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

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

The word "shall" refers to mandatory requirements.

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

1.21 Latent Defect:

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

SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS

2.01 Contents of Proposal Form:

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

2.02 Interpretation of Estimate of Quantities:

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

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

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

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

2.04 Preparation of the Proposal:

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

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

2.05 Proposal Guaranty:

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

2.06 Delivery of Proposals:

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

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

2.07 Withdrawal of Proposals:

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

2.08 Public Opening of Proposals:

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

2.09 Rejection of Proposals:

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

2.10 Disqualification of Bidders:

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

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

(a) More than one proposal for the same work from an individual, firm, partnership, or corporation under the same or different names.

(b) Evidence of collusion among Bidders. Participants in such collusion shall receive no recognition as Bidders for any future lettings by the County.

(c) Unbalanced proposals in which the prices for items are not in proportion to prices for other items.

(d) Failure to submit a unit price for each item of work listed in the proposal.

(e) Unsatisfactory performance record as shown by past work for the County, judged from the standpoint of workmanship and progress.

(f) Contractor's uncompleted workload which, in the judgment of the County, might hinder or prevent the prompt completion of work covered by these contract documents.

(g) Lack of competency as revealed by financial statement or experience questionnaire, which may be required.

2.11 Competency of Bidders:

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

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

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

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

SECTION 3. AWARD AND EXECUTION OF CONTRACTS

3.01 Consideration of Proposals:

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

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

3.02 Award of Contract:

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

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

3.03 Return of Proposal Guaranty:

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

3.04 Requirement of Contract Bond:

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

3.05 Execution of Contract:

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

3.06 Failure to Execute Contract:

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

3.07 Government Funding Clause:

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

SECTION 4. SCOPE OF THE WORK

4.01 Intent of the Plans and Specifications:

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

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

Unless otherwise specified in the plans, specifications or special provisions, all applicable site, road and bridge work will be performed in accordance with the latest edition of the Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction.

Differing Site Conditions:

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

2. Upon written notification, the Engineer will investigate the conditions, and if he determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the Contractor of his determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

Significant Changes in the Character of Work:

1. The Engineer reserves the right to make at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project.

2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

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

4. The term "significant change" shall be construed to apply only to the following circumstances:
(a) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or
(b) When a major item of work is increased in excess of 125% or decreased below 75% of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of original contract item quantity,or to the amount of work performed in case of a decrease below 75%.

4.02 Special Work:

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

4.03 Alterations, Cancellations, Extensions and Deductions:

The County reserves the right to alter the plans, increase or decrease the improvement, add such incidental work as may be necessary, and increase or decrease the quantities of work to be performed in accordance with such changes, including, in the case of Unit Price contracts, the deduction or cancellation of any one or more of the unit price items. Such changes shall not be considered as a waiver of any conditions of the contract nor to invalidate any of the provisions thereof. If an increase in cost and/or time is necessary, it will be agreed upon prior to beginning any work on the change except when the project will be unduly delayed. In such case, the work will be started on a force account until final agreement is reached and confirmed in writing.

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

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

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

(1) All work that appears in the contract as specific items accompanied by unit prices shall, except as provided in Paragraph (2) below, be paid for at the contract unit prices. No allowance shall be made for delays or decreases of anticipated profits.

(2) All such work not appearing in the contract under specific unit prices shall be designated as extra work and paid for as specified in Section 9, Measurement and Payment. This shall include work which involves a substantial change in the location or in the nature of the design or in the type of construction which materially increases or decreases the cost of the work and which is not included in the prices bid for other items in the contract.

(3) In cases where the total value of the work involved in the changes requires a supplementary agreement and the nature and scope of such work is such to require working methods or equipment at variance with and more costly than those required for the original quantities as shown on the plans and stated in the proposal, the Contractor may ask for an adjustment in unit prices which may be made by a negotiated agreement between the Contractor and the Engineer. No adjustment of prices shall be approved by the County without submittal of a cost/time proposal from the Contractor satisfactory to the Engineer.

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

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

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

4.04 Maintenance of Detours:

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

4.05 Removal and Disposal of Structures and Obstructions:

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

4.06 Final Cleanup and General Surface Restoration:

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

4.07 Closing of Traveled Ways:

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

If and when authorized by the Engineer, the closing of roads, driveways, sidewalks and parking areas required for the construction of the improvement including the placement and maintenance of any barricades or traffic control devices shall be the sole responsibility of the Contractor as noted in Paragraph 4.04

Maintenance of Detours, above, and in Paragraph 7, Barricades and Warning Signs, at no additional compensation.

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

1). County Sheriffs Department
2). County Fire Department
3). Ambulance service(s)
4). County School Superintendent
5). United States Postal Service
6). County Road Department
7). Civil Defense/Emergency Management Agency
8). Shelby County Public Affairs Office
9) Local jurisdiction engineering and law enforcement departments

4.08 Schedule of Prices-Lump Sum Contracts:

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

SECTION 5. CONTROL OF WORK

5.01 Contractor to Supervise the Work:

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

5.02 Authority of the Engineer:

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

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

5.03 Contractor's Representative:

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

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

5.04 Plans and Shop Drawings:

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

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

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

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

5.05 Conformity With Plans:

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

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

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

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

5.07 Cooperation by Contractor:

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

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

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

5.08 Cooperation with Utilities:

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

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

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

5.09 Encroachment on Rights-of-Way and Easements:

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

5.10 Construction Permits:

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

5.11 Authority and Duties of Project Manager:

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

5.12 Authority and Duties of Inspector:

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

5.13 Removal of Defective and Unauthorized Work:

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

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

5.14 Orderly Work Site Conditions:

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

5.15 Final Inspection:

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

SECTION 6. CONTROL OF MATERIALS AND EQUIPMENT

6.01 Quality of Materials:

It is the specific intent of this contract to insure that only materials and/or equipment which conform to the requirements of the plans, specifications, and special provisions be used in all aspects of the construction process. All work shall be performed in such a matter as to produce a completed project that is workmanlike and acceptable in every detail. Copies of all tests shall be furnished to the Engineer.

6.02 Defective Materials or Equipment:

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

6.03 Submittal and Testing Plan:

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

6.04 Sampling, Testing, Cited Specifications:

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

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

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

6.05 Inspection and Testing of Materials:

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

6.06 Stored Materials:

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

6.07 Warranty and Guarantees:

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

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

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

from the date of final acceptance. This guarantee shall be submitted to the Engineer prior to incorporation of the equipment, material or supplies into the project.

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

SECTION 7. LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

7.01 Laws to be Observed:

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

7.02 Workmen's Compensation Insurance:

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

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

7.03 Patented Devices, Material and Processes:

The Contractor shall provide suitable legal agreements with patentees or owners of any device, material, or process covered by letter, patent, or copyright for the use of such device, material or process. The agreement shall guarantee to hold harmless the County from and against all claims for infringement. Any and all costs for registration and certification to use protected devices, materials, or processes shall be included in the appropriate unit prices for the work.

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

7.04 Permits and Licenses:

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

7.05 Sanitary Provisions:

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

7.06 Barricades and Warning Signs:

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

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

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

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

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

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

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

7.07 Use of Fire Hydrants:

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

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

7.08 Protection and Restoration of Property:

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

The Contractor shall be responsible for and shall take all necessary precautions for the protection of corporate or private property, including but not limited to walls and foundations of buildings, vaults, underground structures of public utilities, underground drainage and fences contiguous to the work, of which

the contract does not provide for removal. The Contractor shall protect and carefully preserve all official survey monuments, property marks, section markers, and Geological Survey Monuments, and other similar monuments until the owner or an authorized surveyor or agent has witnessed or otherwise referenced their location or relocation. The Contractor shall take reasonable precautions to avoid disturbing any archaeological and other historic remains encountered during construction. The Contractor shall notify the Engineer of the presence of any such survey or property monuments or archaeological and historic remains, as soon as they are discovered.

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

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

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

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

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

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

7.09 Responsibility for Damage Claims:

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

7.10 Contractors Insurance - Amounts

The Contractor shall carry Commercial General Liability Insurance with limits of not less than $1,000,000 per occurrence, $2,000,000 general aggregate premises/operations; $2,000,000 aggregate products/completed operations; $1,000,000 personal and advertising injury limit; $500,000 fire damage limit

(any one fire), and $5,000 medical expenses limit (any one person). Broad Form Endorsement is to apply. Coverage for explosion, collapse and underground hazards is to be included.

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

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

The Contractor shall carry Railroad Protective Liability Insurance in the amount of not less than $2,000,000 or as required by the particular Railroad Company involved with each railroad crossing within the boundaries of this contract.

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

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

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

7.11 Personal Liability of Public Officials:

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

7.12 Waiver of Legal Rights:

The County shall not be precluded or estopped by a measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the contract. The County shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate and payment in accordance therewith, from recovering from the Contractor and his sureties such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the contract. Neither the acceptance by the County or any representative of the County, nor any extension of time, nor any possession taken by the County, shall operate as a waiver of any portion of the contract, any power herein reserved, or any right to damages herein provided. A waiver of any breach of the contract shall not be held to be a waiver of any other or subsequent breach.

7.13 Right-of-Way:

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

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

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

7.14 Load Restrictions on Project Under Construction:

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

SECTION 8. PROSECUTION AND PROGRESS

8.01 Subletting or Assignment of Contract:

No less than thirty percent (30%) of the total contract cost of the work shall be performed by the Contractor's own organization, thus limiting the total allowable amount of subletting to no more than seventy percent (70%) of the total contract cost of the work to be performed. All transactions, negotiations, and correspondence of the County shall be with the Contractor. The County will refer all matters regarding payments, changes, scheduling, work progress, etc. of sub-contractors to the Contractor. Sub-contractors shall be recognized only in the capacity of employees or work crews of the Contractor and shall be subject to the same requirements as to character and competence. The Contractor shall not assign, transfer, convey, sell, or otherwise dispose of the whole or any part of the contract to any person, firm, or corporation without the written consent of the County. Subletting any part of the work to be done under the contract shall not, under any circumstances, relieve the Contractor of any liabilities or obligations.

8.02 Progress Schedule:

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

8.03 Prosecution of the Work:

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

8.04 Limitations of Operations:

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

8.06 Completion Dates:

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

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

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

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

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

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

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

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

8.07 Liquidated Damages:

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

Amount of Original Contract Proposal	Amount of Liquidating Damages per Calendar Day
$0 to $25,000	$ 100.00
$25,000 to $50,000	$ 200.00
$50,000 to $100,000	$ 300.00
$100,000 to $200,00	$ 500.00

over $200,000 $1000.00.

8.08 Termination of the Contract:

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

(1) Fails to begin construction in accordance with the terms of the order to begin work.

(2) Fails to furnish proper materials, or to utilize proper construction methods and equipment.

(3) Fails to remove and replace portions of the work which are found to be unsatisfactory.

(4) Discontinues prosecution of the work without the consent of the Engineer, or fails to resume operations at any time the Engineer directs.

(5) Fails to maintain traffic in a safe and efficient manner, or to maintain completed portions of the work effectively.

(6) Fails to maintain a rate of construction progress that, in the opinion of the Engineer, is sufficient to assure completion of the work within the specified time.

(7) Fails, in any degree, to maintain the same financial responsibility on the basis of which the Contractor was prequalified for submitting the proposal for the work and of which award of this contract was made.

(8) Fails or refuses to follow the proper orders of the Engineer.

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

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

In the event of termination, the Contractor shall be paid for work satisfactorily completed through the effective date of termination. All costs and charges incurred by the County, together with the cost of completing the work under contract, shall be deducted from any monies due or which may become due said Contractor. If such expense exceeds the sum which would have been payable under the contract, the Contractor and the Surety shall be liable and shall pay to the County the amount of such excess.

SECTION 9. MEASUREMENT AND PAYMENT

9.01 Payment to Contractor:

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

9.02 Partial Payments:

Payments to the Contractor will be estimated by the Engineer based upon statements consisting of the Inspector's Daily Progress Reports, itemized job delivery or materials tickets, or other documents showing the quantity of work completed or materials supplied. These statements shall be prepared in a format satisfactory to the Engineer. Such estimates shall be approximate only and may not necessarily be based on

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

9.03 Stockpiled Material and Equipment:

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

9.04 Measurement of Quantities:

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

9.05 Scope of Payment:

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

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

9.06 Increased or Decreased Quantities:

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

9.07 Payment for Extra Work-Unit Price Contract:

Extra work will be paid for under the following classifications:

(1) Lump Sum - This classification shall include all qualified extra work on which unit prices are not practical, and on which a fair price can be established agreeable to the Engineer and the Contractor in

accordance with the provisions of Section 4.03, above or on proposals from not less than two sub-contractors qualified and acceptable to do the particular work. The contractor will be allowed reasonable mark-ups for overhead and profit on subcontract work.

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

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

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

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

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

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

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

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

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

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

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

9.08 Payment for Items Omitted When Partially Completed:

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

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

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

9.09 As-Built Drawings:

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

9.10 Acceptance and Final Payment:

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

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

9.11 Latent Defects:

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

9.12 Audit and Inspection of Records:

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

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