

Project Name: _____
Bid Number: _____

CONTRACT FOR SERVICES AND/OR PRODUCTS

THIS CONTRACT FOR SERVICES AND/OR PRODUCTS (herein "Contract") is made and entered into this _____ day of _____ 20__ by and between the CITY OF GERMANTOWN, TENNESSEE, a Tennessee municipal corporation, (herein the "City") and _____ [insert name of Contractor], a _____ [State where Contractor established, but only if an entity, not applicable to sole proprietorships] _____ [type of entity - e.g., corporation, LLC, partnership, sole proprietorship] (herein the "Contractor").

W I T N E S S E T H:

WHEREAS, the City desires to contract with a provider of _____ [EXAMPLES: 1. grass cutting; 2. janitorial; 3. purchase and installation of electronic equipment] [services] [and/or] [products] [provide project name] (herein the "Contract Items"), and

WHEREAS, the Contractor has the requisite experience, abilities and resources to perform and/or furnish the foregoing, and

WHEREAS, the Contractor desires to enter into this Contract as an independent contractor and is ready, willing and able to provide the services and/or furnish the products in accordance with the terms of and subject to the conditions in this Contract.

NOW, THEREFORE, for good and valuable consideration, received or to be received, the sufficiency of which the parties acknowledge, the parties agree as follows:

1.00 SCOPE OF CONTRACT

The Contractor is to furnish the services and/or products as specified in the Invitation to Bid issued by the City under No. COG _____ [FILL IN INVITATION TO BID NUMBER] [Provide project name] (herein the "Invitation to Bid") and any amendments thereto. The Invitation to Bid and any amendments thereto are attached hereto as **Exhibit "A"** and incorporated by reference herein and made a part hereof. Unless otherwise specified herein, the Contractor is to furnish all materials, tools, equipment, manpower, and consumables necessary to complete the Contract Items.

2.00 TERM OF CONTRACT

The period of this Contract shall be for _____ (____) months, beginning on _____, 20__ and ending on _____, 20__. This Contract may be extended by the City for one (1) [OR _____ (____)] additional successive twelve (12) month period[s] or portions thereof, up to a cumulative total of _____ (____) months, by written notice to the Contractor given at least thirty (30) days before the expiration of the term then in existence.

-OR-

[The Contractor shall fully perform the Contract Items not later than ____ (days or months) from issuance by the City of a Notice to Proceed.]

3.00 COMPENSATION

3.01. Amount of Compensation. The Contractor agrees to provide the services, equipment and products as specified in its bid to the City at the cost specified in said bid and amendments, if any, the bid and any amendments thereto being attached hereto as **Exhibit "B"** and incorporated by reference herein and made a part hereof. The amount as specified in **Exhibit "B"** may be increased or decreased by the City under Section 4.00 of this Contract ("Additional Services"), through the issuance of an Addendum. Any prices specified in this Contract or an Addendum thereto will remain in effect for the term of this Contract or any extensions thereof.

3.02. Payment of Compensation. All invoices received by the City are payable within thirty (30) days from receipt, provided they have first been approved by the City department that is the beneficiary of the Contract Items, and such department has accepted the Contract Items. The City reserves the right to partially pay any invoice submitted by the Contractor when requested to do so by the City department that is the beneficiary of the Contract Items. All invoices shall be directed to the Accounts Payable Department, City of Germantown, 1930 South Germantown Road, Germantown, Tennessee 38138. In the event any Contract Items are deemed unacceptable, the City's representative shall notify the Contractor of the deficiencies in writing and the City may withhold payment until the deficiencies are corrected to the satisfaction of the City, such determination to be made in the sole and absolute discretion of the City. All invoices must clearly indicate the Invitation to Bid number.

4.00 ADDITIONAL SERVICES

In the event the City requests that the Contractor perform additional services and/or furnish additional products not covered by this Contract, the Contractor shall perform such additional services after the City and the Contractor enter into an equitable agreement regarding the additional services and/or products.

5.00 NOTICE TO PROCEED

The Contractor shall commence to perform and/or furnish the Contract Items called for under this Contract upon the written Notice to Proceed issued by the City.

6.00 CONFLICT OF INTEREST

The Contractor declares that neither the Mayor, nor any Aldermen, nor any other City official or employee holds a direct or indirect interest in this Contract. The Contractor pledges that it will notify the City in writing should any City official become either directly or indirectly interested in this Contract. The Contractor declares that as of the date of this declaration that it has not given or donated or promised to give or donate, either directly or indirectly, to any official or employee of the City, or to pay anyone else for the benefit of any official or employee of the City any sum of money or other thing of value for aid or assistance in obtaining this Contract. The Contractor further pledges that neither it nor any of its owners, officers or employees will give or donate or promise to give or donate, directly or indirectly, to any official or

employee of the City or anyone else for the benefit thereof any sum of money or other thing of value for aid or assistance in obtaining any change order to this Contract.

7.00 COMPLIANCE WITH LAWS

The Contractor agrees to observe and to comply at all times with all applicable Federal, State, and local laws, ordinances, and regulations in any manner affecting the provision of the Contract Items and to comply with all instructions and orders issued by the City regarding the Contract Items.

8.00 TERMINATION

[NOTE: FOR SHORT-TERM CONTRACTS (30 DAYS OR LESS), THIS PROVISION MAY NEED TO BE REVISED] Upon thirty (30) days written notice, with or without cause, the City may terminate this Contract. Following such termination, the City and the Contractor shall agree upon an amount of payment for all Contract Items properly performed or furnished prior to the effective date of termination.

9.00 WARRANTY

The Contractor warrants that the Contract Items, including any equipment and products provided shall: in the case of services (i) conform to all applicable standards of care and practice in effect at the time the service is performed; (ii) be of the highest quality; and (iii) be free from all faults, defects or errors; and in the case of products meet the specifications in the Invitation to Bid. The Contractor warrants that all equipment and products provided shall be furnished to the City in good and working condition. If the Contractor is notified in writing by the City of any faulty Contract Items furnished by the Contractor, the Contractor shall, at the City'S option, either: (i) perform again the relevant Contract Items to correct such fault, defect or error, at no additional cost to the City; or (ii) refund to the City the charge paid by the City which is attributable to such portions of the faulty, defective or erroneous Contract Items, including any costs for re-provision of the relevant Contract Items by other contractors. The Contractor warrants that all products provided by the Contractor shall be merchantable, be fit for the purpose intended and shall meet the specifications of the Invitation to Bid. The Contractor shall be liable for secondary, incidental or consequential damages of any nature resulting from any work performed under this Contract.

10.00 FORCE MAJEURE

The obligations of Contractor hereunder are subject to and shall be excused in the event of riots, wars, and Acts of God.

11.00 INSURANCE

[NOTE TO DRAFTER: All of the foregoing subsections may not be applicable to all contracts. Delete inapplicable subsections.]

11.01. Comprehensive General Liability Insurance. The Contractor, at its own expense, shall keep in force and at all times maintain during the term of this Contract Comprehensive General Liability Insurance issued by a responsible insurance company and in a form acceptable to the City, coverage for Contractor on an occurrence basis against claims for bodily injury, death or property damage with combined single limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury and Property Damage.

11.02. Automobile Liability Insurance. The Contractor, at its own expense, shall keep in force and at all times maintain during the term of this Contract Automobile Liability coverage in the minimum amount of Five-Hundred Thousand Dollars (\$500,000) combined single limits for Bodily Injury and Property Damage.

11.03. Workers' Compensation Coverage. The Contractor, at its own expense, shall keep in force and at all times maintain during the term of this Contract full and complete Workers' Compensation Coverage as required by State of Tennessee law.

11.04. Errors and Omission Insurance. The Contractor, at its own expense, shall keep in force and at all times maintain during the term of this Contract Errors and Omissions Liability coverage in the amount of Five-Hundred Thousand Dollars (\$500,000) for miscellaneous errors and omissions damages when called for in the Invitation to Bid.

11.05. Certificates of Insurance. The Contractor shall provide the City with Certificates of Insurance on all the policies of insurance and renewals thereof in forms acceptable to the City. Said Comprehensive General Liability policy shall provide that the City be an additional insured. The City shall be notified in writing of any reduction, cancellation or substantial change of said policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the City and licensed and authorized to do business under the laws of the State of Tennessee.

12.00 CLAIMS, LIABILITY AND INDEMNITY

The Contractor shall assume all risk in connection with the performance of this Contract, and shall be liable for any damages to persons or property resulting from the negligent or willful acts, errors, or omissions of the Contractor, its agents, servants, and/or employees in connection with the prosecution and completion of the Contract Items covered by this Contract. The Contractor agrees that it will indemnify and hold the City and its employees harmless from all claims of any type and for any expenses and costs including attorney's fees and court costs which may be incurred by the City arising from the negligent or willful acts, errors, or omissions of the Contractor, its agents, servants and/or employees in the performance of this Contract, and the Contractor will carry sufficient general liability insurance to provide the above indemnification. The indemnities set forth herein shall survive the expiration or termination of this Contract.

13.00 ATTORNEY'S FEES

If any legal action or other proceeding is brought for the enforcement of this Contract or because of any alleged dispute, breach, default, or misrepresentation in connection with any provisions of the Contract and the City is successful therein, the City shall be entitled to recover from the Contractor reasonable attorney's fees, court costs and all expenses even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which the City may be entitled.

14.00 EQUAL EMPLOYMENT OPPORTUNITY

14.01. Non-discrimination. In carrying out the Contract Items under this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin or sex. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national

origin or sex. Such action shall include, but not be limited to, the following: employing; upgrading; demoting; transferring; recruiting or paying recruitment compensation; and selecting for training, including apprenticeships.

14.02. Posting and Advertising. The Contractor agrees to post in conspicuous spaces available to employees and applicants for employment a notice setting forth the provisions of the non-discrimination clause contained in Paragraph 14.01 hereinabove. The Contractor shall, in all solicitations or advertisements for employees placed by, or on behalf of, the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, national origin or sex. The Contractor shall incorporate the foregoing requirements of this Paragraph 14.02 in all subcontracts, if any, for services or products covered by this Contract.

15.00 TRANSFER, ASSIGNMENT OR SUBLETTING

This Contract shall not be transferred or assigned or sublet without prior written consent of the City.

16.00 SAFETY MEASURES

The Contractor shall take all necessary precautions for the safety of the City's and Contractor's employees and the general public and shall erect and properly maintain at all times all necessary vehicular and facility safeguards for the protection of workmen and the public. If necessary, the Contractor shall post signs warning against hazards in and around the site where the Contractor is furnishing Contract Items.

17.00 FAMILIARITY WITH THE CONTRACT ITEMS

The Contractor, by executing this Contract, acknowledges full understanding of the extent and character of the Contract Items required and the conditions surrounding the provision thereof. The City will not be responsible for any alleged misunderstanding of the Contract Items to be furnished or completed, or any misunderstanding of conditions surrounding the performance thereof. It is understood that the execution of this Contract by the Contractor serves as the Contractor's stated commitment to fulfill all the conditions referred to in this Contract.

18.00 ENTIRE AGREEMENT

This Contract and all exhibits hereto constitute the entire agreement and understanding between the parties relating to the subject matter herein and shall not be modified, altered, changed or amended unless in writing and signed on behalf of the parties. Each and every modification and amendment of this Contract must be in writing and signed by all of the parties hereto. Each and every waiver of any covenant, representation, warranty, or other provision of this Contract must be in writing and signed by each party whose interest is adversely affected by such waiver. No waiver granted in any one instance shall be construed as a continuing waiver applicable in any other instance.

19.00 PERMITS, LICENSES AND CERTIFICATES

The Contractor is to procure all permits, licenses, and certificates, or any such approvals of plans or specifications as may be required by federal, state and local laws, ordinances, rules, and regulations, for the proper execution and completion of the Contract Items under this Contract.

20.00 FIRE, THEFT, LOSS

The Contractor is responsible for all damage or loss by fire, theft or otherwise to materials, tools, equipment, and consumables left on City property by the Contractor.

21.00 CONTRACTING AUTHORITY

The persons executing this Contract on behalf of the City and the Contractor hereby personally represent and warrant to all other parties that they have been duly authorized to execute and deliver this Contract.

22.00 GOVERNING LAW

This Contract is being executed and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles or conflicts of law) of such state, and of the United States of America shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof. Any litigation brought with respect to this Contract shall be brought in a court of competent jurisdiction in Shelby County, Tennessee and the Contractor hereby consents to the jurisdiction of such courts.

23.00 OPPORTUNITY FOR REVIEW

Each party has received and had the opportunity to review this Contract, and each party has had the opportunity, whether exercised or not, to have each respective party's attorneys review this Contract; and, accordingly, the normal rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Contract.

24.00 SECTION HEADINGS

The section headings contained in this Contract are for convenience of reference purposes only and are not intended to qualify the meaning of any section and shall not affect the interpretation of this Contract.

25.00 NOTICES

All notices, demands, and requests required or permitted by this Contract shall be in writing and shall be sent by facsimile transmission, air or other courier, or hand delivery as follows:

- (i) To: City of Germantown
1930 South Germantown Road
Germantown, TN 38138
Facsimile: (901) 757-7258

- (ii) To: [Insert Name of Contractor]

Facsimile: () _____

Any notice, demand, or request sent by facsimile transmission shall be deemed given for all purposes under this Contract when properly transmitted by telecommunication device. Any notice, demand, or request which is hand delivered or sent by air or other courier shall be deemed given for all purposes under this Contract when received.

Any party to this Contract may change such party's address and/or telecopier number for the purpose of notices, demands and requests required or permitted under this Contract by providing written notice of such change of address to all of the parties, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

26.00 SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provision shall be fully severable and this Contract shall be construed and enforced as if such unlawful, invalid, or unenforceable provision were not contained herein by its severance herefrom. In addition, in lieu of such unlawful, invalid or unenforceable provision, there shall be added automatically as a part hereof a provision as similar in terms to such unlawful, invalid, or unenforceable provisions as may be possible and may be lawful, valid or enforceable. Furthermore, if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

27.00 NO CONSENT TO BREACH

No consent or waiver, express or implied, by any party to this Contract to or of any breach or default by the other party to this Contract in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default of the same or any other obligations hereunder. Failure on the part of any party to this Contract to complain of any act or failure to act of any other party to this Contract, or to declare such party in default, irrespective of how long such failure continues, shall not constitute a waiver by the non-defaulting party of its rights hereunder.

28.00 FACSIMILE; PDF SIGNATURES

Execution and delivery of this Agreement and all agreements entered into in connection with the transaction set forth herein (the "Collateral Agreements") by delivery of a facsimile or portable document format ("PDF") copy bearing the facsimile or PDF signature of any party hereto shall constitute a valid and binding execution and delivery of this Agreement and Collateral Agreements by such party. Such facsimile and PDF copies shall constitute enforceable original documents.

29.00 OTHER INSTRUMENTS

The parties shall execute and deliver all other appropriate supplemental agreements and other instruments and take any other action necessary to make this Contract fully and legally effective, binding and enforceable as between the parties and as against third parties.

30.00 AGREEMENT CONTROLLING

To the extent that any provision hereof is inconsistent with a provision contained in the Proposal, the provision contained herein shall govern.

[Signatures to follow on next page]

SAMPLE

WITNESS THE DUE EXECUTION HEREOF.

CITY OF GERMANTOWN, TENNESSEE

By: _____
Mike Palazzolo, Mayor

ATTEST:

By: _____
City Clerk/Recorder

APPROVED AS TO FORM:

City Attorney

[INSERT NAME OF CONTRACTOR]

By: _____

Its: _____

Contractor's Mailing Address:

Contractor's Telephone Number:
(_____) _____

Contractor's Facsimile Number:
(_____) _____

SAMPLE

EXHIBIT "A"

Invitation to Bid No. COG _____

SAMPLE

EXHIBIT "B"

Contractor's Bid

SAMPLE