Issuance Date: April 9, 2024
Non-Mandatory Pre-Bid Meeting Date: April 15, 2024
Questions Deadline: April 29, 2024
Bid Opening Date: May 7, 2024
BMA Approval Date: June 10, 2024

INVITATION TO BID
DUNTREATH DITCH REPAIRS – PHASE 2
COG2024-20

CITY OF GERMANTOWN
PROCUREMENT DEPARTMENT
1930 SOUTH GERMANTOWN ROAD
GERMANTOWN, TENNESSEE 38138

ARCHITECT/ENGINEER

Ensafe
5724 Summer Trees Drive
Memphis, TN 38134

BID PACKAGE CONSISTS OF:

BID PROJECT DIRECTORY

BID SITE PLANS

CITY OF GERMANTOWN BID ENVELOPE

CITY OF
GERMANTOWN
TENNESSEE
1930 South Germantown Road • Germantown, Tennessee 38138-2815
Phone (901) 757-7200 Fax (901) 757-7292 www.germantown-tn.gov

Date: April 9, 2024

The City of Germantown, Tennessee, will accept Bids on: COG2024-20 Duntreath Ditch Repairs – Phase 2

Bid shall be mailed in a **sealed envelope** marked **"COG2024-20 Duntreath Ditch Repairs – Phase 2"** in the lower left-hand corner of the envelope and addressed to Procurement Director, City of Germantown, P. O. Box 38809, Germantown, TN 38183-0809 or, **if using express mail** (Fed Ex, Priority Mail, etc.), address to 1930 S. Germantown Rd., Germantown, TN 38138. Please place in a sealed envelope inside the express mail packaging. *(Bid must be received by the City prior to the time indicated below.)* **Please mark envelope with the name of the Bid.**

BID DATE: Bid shall be opened at 1930 S. Germantown Rd at 2:00 p.m. on May 7, 2024.

Non-Mandatory Pre-bid Meeting will be held on April 15, 2024 at 9:00 am CST, at Economic and Community Development's Klein Conference Room at 1920 S. Germantown Road in Germantown, Tennessee.

All purchases are F.O.B. Germantown, Tennessee.

The City reserves the right to accept or reject any Bid, to accept a Bid containing variations from these specifications if the Bid so merits, and to accept partial Bids. *Bids must be submitted on the Bid document that the City issues* ***and it must be signed.***

The Successful Bidder shall be prohibited from discriminating against any individual due to his race, creed, color, national origin, age or sex.

The City may waive any informalities or minor irregularities. The Board of Mayor and Aldermen is the final authority and shall have the right to reject any single Bid or all Bids submitted.

See attached Specifications, Bid Sheet, Bid Bond and Drug and Alcohol Testing Acknowledgment Statement and Affidavit, along with Company's Testing Policy that must be returned as part of the Bid. Returning the form for disclosure of the Title VI and Title IX information is voluntary.

The Standard Germantown Construction Contract, Payment Bond, Performance Bond and the required Insurance Certifications are included and will be required from the selected Bidder.

Sincerely,

Cathryn Perdue
Cathryn Perdue
Director Procurement & Risk

ACKNOWLEDGEMENT OF RECEIPT OF BID PACKAGE

INVITATION TO BID NUMBER COG2024-20

DUNTREATH DITCH REPAIRS – PHASE 2

Upon receipt of documents, please fax/email this page to:

City of Germantown – Procurement Department
1930 South Germantown Road
Germantown, TN 38138
Phone: 901-757-7260
Fax: 901-757-7258
Email:procurement@germantown-tn.gov

I hereby acknowledge receipt of documents pertaining to the above referenced ITB.

COMPANY NAME:_____

CONTACT PERSON: _____

ADDRESS:_____

CITY:_____STATE:_____ZIP_____

PHONE: (____)_____FAX: (_____)_____

E-MAIL:_____

_____ _____
(Signature) (Date)

PRIME CONTRACTOR NAME & ADDRESS

_____
_____
_____
License Number _____
Date of Expiration _____
Classification _____

SUBCONTRACTORS

ELECTRICAL:

Name _____
Address _____
City & State _____
License Number_____
Expiration Date _____
Classification _____

PLUMBING:

Name _____
Address _____
City & State _____
License Number_ _____
Expiration Date _____
Classification _____

HVAC:

Name _____
Address _____
City & State _____
License Number_____
Expiration Date _____
Classification _____

MASONRY:

Name _____
Address _____
City & State _____
License Number_____
Expiration Date _____
Classification _____

ROOFING:

Name _____
Address _____
City & State _____
License Number_____
Expiration Date _____

ATTENTION: ALL CONTRACTORS

State law (Tennessee Code Annotated, Section 62-6-119) requires that the name, license number, expiration date thereof, and license classification of the contractors applying to bid for the prime contract and for the electrical plumbing, heating, ventilation and air conditioning contracts appear on the outside of the envelope containing the bid except when the bid is in an amount less than $25,000. Effective July 1, 2010, the amendment to Public Chapter 78 now requires the Masonry contractor to also be listed on the bid envelope, unless the portion is less than $100,000 (including materials and labor). Failure to include the aforesaid information on this envelope will result in your bid not being opened and disqualifying your bid from consideration. Effective September 6, 2017, the amendment to Tennessee Board for Licensing Contractors Rule Chapter # 0608-01-24 requires subcontractors to report their license information accurately to general contractors when roofing project exceeds $25,000.

CITY OF GERMANTOWN
Procurement Department
1930 South Germantown Road
Germantown, Tennessee 38138

BID DUE

Date_____
Time_____
Project Name _____

TABLE OF CONTENTS

FOR

COG2024-20 DUNTREATH DITCH REPAIRS – PHASE 2

Advertisement for Bids	A
Special Notice	B
Information for Bidders	C-1 thru C-6
Drug and Alcohol Testing Policy	D-1 thru D-2
Title VI Information	E-1 thru E-2
Bid Form	F-1 thru F-4
Addenda Acknowledgement Form	F(A-1)
Bid Bond	G
Information for Successful Bidder	H-1 thru H-2
Contract and Agreement	I-1 thru I-10
Payment Bond	J-1 thru J-3
Performance Bond	K-1 thru K-3
Germantown Insurance Requirement	L
Affidavit of Contractor	M-1 thru M-2
Release of Waiver	N
Certificate of Payment to Contractor	O-1 thru O-2
Notice of Award	P
Notice to Proceed	Q
Notice of Project Acceptance	R
Change Order Form	S
General Provisions	GP-1 thru GP-21
Special Conditions	SC-1 thru SC-10

TECHNICAL SPECIFICATIONS

01 57 13	Erosion and Sedimentation Control
02 41 00	Demolition
31 11 00	Clearing and Grubbing
31 20 00	Earthwork
31 24 00	Embankments
31 37 00	Rip Rap
32 92 19	Seeding
40 00 03	Flexamat (or approved equal)

CONSTRUCTION DRAWINGS

C-0.0	Cover Sheet
C-1.0	General Notes & Specifications
C-1.1	Phase 2 Plan – Base Bid
C-2.0	Existing Conditions & Demolition Plan
C-3.0	Site & Grading Plan STA 115+11.40 To 115+87.42c-1.1
C-3.1	Site & Grading Plan STA 115+87.42 To 117+26.54
C-3.2	Site & Grading Plan STA 117+26.54 To 118+67.87
C-3.3	Site & Grading Plan STA 118+67.87 To 120.06+05
C-3.4	Site & Grading Plan STA 120+06.05 To 121+41.62
C-3.5	Site & Grading Plan STA 121+41.62 To 122+62
C-4.0	Erosion Control Plan
C-5.0	Details
C-5.1	Details

ADVERTISEMENT FOR BIDS

Separate sealed BIDS will be received by the City of Germantown at the office of the Procurement Director at 1930 South Germantown Road, Germantown, Tennessee until 2:00 p.m., Local Time, on the 7th day of May, 2024, and then at said office publicly opened and read aloud for the construction of:

Project: Duntreath Ditch Repairs – Phase 2

The Project is briefly described as follows: Duntreath Ditch (Lateral E) is a concrete-lined channel constructed throughout the 1970's and 1980's that flows into the Wolf River approximately 2.7 miles in length. This project involves bank stabilization. This is a multi-phased project but this solicitation is for Phase 2 only.

Non-Mandatory Pre-Bid Meeting will be held at 9:00 a.m. CST on April 15, 2024 at the Economic and Community Development's Klein Conference Room located at 1920 S. Germantown Road in Germantown, Tennessee.

Copies of the CONTRACT DOCUMENTS and plans and specifications may be examined and obtained at the following location(s):

City of Germantown - Owner
Procurement Director
1930 South Germantown Road
Germantown, TN 38138

Examined Only at:

Builder's Exchange
642 S. Cooper Street
Memphis, Tennessee 38104

McGraw Hill Construction
Dodge Plan Room
1604 Elm Hill Pike, Suite 200
Nashville, TN 37224
www.dodgeconstruction.com

Each BID must be submitted on forms provided in the BID PACKET DOCUMENTS provided and either accompanied by a BID BOND, properly executed on the form provided, or a Certified check or Cashier's check drawn on a National or Tennessee Bank in the amount of five percent (5%) of the TOTAL BID PRICE and payable to the City of Germantown.

For construction projects, the BIDDER'S license number, its expiration date, and that part of the classification applying to the BID, together with certain information regarding subcontractors, must appear on the envelope containing the BID, otherwise the BID shall not be opened or considered. For additional details on this requirement, see Document C of the attached document headed "Information for Bidders". The successful BIDDER shall be prohibited from discriminating against any individual due to the individual's race, creed, color, national origin, age, or sex.

The City may waive any informalities or irregularities. The Board of Mayor and Aldermen of the City is the final authority and shall have the right to reject any single BID or all BIDS submitted.

Procurement Director
City of Germantown, Tennessee

SPECIAL NOTICE

DOCUMENTS:

All contractors bidding on construction projects for the City of Germantown are required to use the Documents contained herein.

Insurance:

It is recommended that contractors consult with their insurance agent(s) to assure themselves that they can obtain the required insurance coverage set out in the Insurance Documents **(Insurance Requirement Section L)** and that their insurance agent(s) is authorized to execute the required Certificate of Insurance Coverage.

Documents to be Executed:

A BIDDER should only execute the BID and BID BOND, DRUG AND ALCOHOL ACKNOWLEDGMENT STATEMENT AND AFFIDAVIT (**Form D-2**) along with Company's Testing Policy, and ADDENDA ACKNOWLEDGMENT FORM (**Form F (A-1)**), if any, when making a BID. The remaining forms contained in the CONTRACT DOCUMENTS will be required to be executed and complied with only by the successful BIDDER after notice of the award has been issued.

Additional Information

General and/or technical questions relating to this solicitation shall be submitted in writing to the City of Germantown, City Procurement Director, by email at procurement@germantown-tn.gov

INFORMATION FOR BIDDERS

NOTICE - It is necessary for prospective BIDDERS to read the INFORMATION contained below to understand exactly how to submit a BID, what Documents must accompany the BID, what information should be on the outside of the envelope containing the BID, what the BIDDER legally obligates itself for by submitting a BID, and the reason why the City of Germantown (CITY) included the other Documents in this BID PACKET. Failure to carefully read and understand the INFORMATION contained below may either cause the BIDDER'S BID not to be considered or accepted by the CITY or cause the BIDDER to legally obligate itself to more than it realizes. The BID Document and the other Documents contained in this BID PACKET are legal Documents; and if the BIDDER does not understand any of them, the BIDDER should consult with its attorney. Only the Document forms included in this BID PACKET may be used.

1. Each BID must be submitted on the form provided in this BID PACKET and be accompanied by either a BID BOND, properly executed, on the form provided (**Document G**) or a Certified or Cashier's check drawn on a National or Tennessee Bank in the amount of five percent (5%) of the TOTAL BID PRICE and payable to the CITY OF GERMANTOWN. The BID, with the BID BOND or Certified or Cashier's check, must be placed in a sealed envelope and delivered to the office of the City Procurement Director, 1930 South Germantown Road, Germantown, Tennessee 38l38 on or before the time set out in the ADVERTISEMENT FOR BIDS; and then, at said office, the BID and all other BIDS shall be publicly opened and read aloud.

2. A BID shall be invalid if the BIDDER fails to deposit it at the designated location prior to the time and date for receipt of BIDS as indicated in the ADVERTISEMENT FOR BIDS. The CITY will not consider any bid received at the CITY'S designated location for the bid opening after the exact time specified for receipt. The CITY reserves the right to consider BIDS determined by the CITY, in the CITY'S sole discretion, to have been received late due to mishandling by the CITY after receipt of the BID and prior to any award.

3. If necessary, and within no later than three (3) days prior to the date established for receipt of BIDS (except as provided in 4 below), the CITY'S Procurement Department shall e-mail ADDENDA to each person or firm recorded by the Procurement Department as having acquired a BID package.

4. The CITY will not orally interpret the meaning of the plans, specifications or other PRE-BID documents. BIDDERS must submit all questions about the meaning or intent of PRE-BID documents in writing to the CITY'S Procurement Director and his/her designated buyer. The CITY must receive said written questions at least five (5) days prior to the date fixed for the opening of BIDS. The CITY will reply to such questions with written ADDENDA e-mailed to all parties recorded by the CITY'S Procurement Department as having acquired a BID PACKET. The CITY'S Procurement Department shall furnish such written ADDENDA not later than three (3) days prior to the date fixed for the opening of BIDS. Only questions answered by the CITY in written ADDENDA will be binding; all other interpretations shall be of no effect. Failure of any BIDDER to receive any such ADDENDA shall not relieve such BIDDER from any obligation under its BID, as submitted. All ADDENDA so issued shall become part of the CONTRACT DOCUMENTS.

BIDDERS shall submit all general and/or technical questions relating to the BID PACKET in writing to the CITY of Germantown Procurement Director, via e-mail. If any questions or responses require revisions to the solicitation as originally published, such revisions will be made by the CITY by written ADDENDA only, as described above. If the BID solicitation includes a separate contact person for technical information, BIDDERS are cautioned that any written or oral representations made by any engineer, CITY representative or other person(s) that appear to change materially, conflict with, or modify any portion of the solicitation shall not be relied upon and shall be of no effect. Only written ADDENDA issued by the CITY shall be effective as an amendment or as clarification of the BID solicitation. BIDDERS should contact the CITY'S Procurement Director at procurement@ germantown-tn.gov for a determination of whether an oral or written representation of any CITY representative or other person requires the CITY to issue an ADDENDUM.

5. A BIDDER may modify or withdraw a BID by an appropriate document executed and delivered to the Procurement Department at any time prior to the opening of BIDS.

6. As applicable, the product(s) specified in the BID PACKET DOCUMENTS shall be the basis for the BID. The BIDDER shall not be allowed to substitute another product without the CITY'S prior written approval. A BIDDER shall submit any request for substitution to the CITY no later than ten (10) days prior to the date fixed for the opening of the BIDS. The requesting BIDDER shall submit three (3) copies of each such request for substitution, which request shall include:

(a) Complete data substantiating the compliance of the proposed substitution with the contract documents;

(b) For products – product identification (including manufacturer's name and address) and manufacturer's literature (including product description, performance and test data and reference standards);

(c) Sample(s);

(d) Name and address of similar projects on which the product was used and date of product's installation;

(e) For manufacturing methods – detailed description of the proposed methods and drawings illustrating the methods;

(f) Itemized comparison of proposed substitution with product or method specified;

(g) Data relating to changes in construction schedule; and

(h) Identification of changes or coordination required.

7. In making a request for substitution, a BIDDER represents that such BIDDER has personally investigated the proposed substituted product or method and that the BIDDER has determined that the proposed substitute product or method is equal or superior in all respects to that specified, that the BIDDER will provide the same guarantee for the substitution as for the product or method specified in the BID PACKET DOCUMENTS, and that the BIDDER will coordinate the installation of accepted substitutions into the WORK, making all changes for the WORK to be complete in all respects.

8. Substitutions will not be considered when: they are indicated or implied on shop drawings or product data submittals without a formal request submitted in accordance with Paragraph 6; or acceptance will require substantial revision of the CONTRACT DOCUMENTS.

9. Any request for substitution received within ten (10) days or less from the date fixed for the opening of BIDS will not be considered.

10. If product substitution is acceptable to the CITY, BIDDERS shall receive notification by Addendum a minimum of three (3) days prior to the BID date. If no approval notification through ADDENDUM is received by the BIDDER, the BIDDER shall submit the original specified product.

11. If this BID is for a construction project, the provisions of Tennessee Code Annotated Sections 62-6-101 et seq., Relating to General Contractors, will be applicable and same are incorporated herein by reference. All invited BIDDERS on a construction project are advised that a BIDDER must provide evidence of a license in the appropriate classification before its BID may be considered. The Official Bid Envelope containing the BID must be plainly marked with the following information:

(A) The BIDDER'S and any electrical, plumbing, heating, masonry, roofing, ventilation, and air conditioning subcontractor's name and address;
(B) The respective Tennessee Contractor's License Numbers of the BIDDER and the aforesaid subcontractors and the expiration dates of each; and
(C) That part of the license classification applying to the BID for all of the foregoing.

Otherwise the BID shall not be opened or considered except that if that BID is in an amount less than $25,000, only the name of the BIDDER for the contract and not the names of any subcontractors need to appear on the outside of the envelope.

12. The CITY has an employee drug and alcohol testing program, and a copy of the relevant portions thereof is enclosed. You must have a testing program for your employees that is at least as stringent as that of the City of Germantown. You must submit a copy or a summary of your drug and alcohol testing policy with your bid or proposal by attaching it to the enclosed Drug and Alcohol Testing Acknowledgement Statement and Affidavit (**Form D-2**). IF BIDDERS DO NOT HAVE A TESTING PROGRAM THAT MEETS THIS REQUIREMENT, AND DO NOT SUBMIT. THIS IS A REQUIREMENT OF TENNESSEE LAW AND CANNOT BE WAIVED BY THE CITY.

13. If Bidders choose to do so, attach a completed voluntary Title VI and Title IX form with the BID (Form E-2).

14. All blank spaces for BID prices must be filled in, in ink or typewritten, and the BID form must be fully completed and executed when submitted. Only the original of the BID is required. The CITY may waive any informalities or defects and may reject any and all BIDS. Any BID may be withdrawn prior to the scheduled BID opening time or authorized postponements thereof. No BIDDER may withdraw his BID within sixty (60) days after the actual time of the BID opening. Should there be any reason why the contract cannot be awarded within the specified time, the time may be extended by mutual agreement between the CITY and the successful BIDDER.

15. All CONTRACT DOCUMENTS are part of the CONTRACT AND AGREEMENT (sometimes referred to as the "C & A"). A BIDDER should only execute the BID, BID BOND, Drug and Alcohol Acknowledgement Statement and Affidavit (**Form D-2**) along with Company's Testing Policy and ADDENDA ACKNOWLEDGEMENT FORM (**Form F(A-1**)) when making a BID. The remaining Document forms in the BID PACKET should not be executed at the time of making a BID, as they are the Document forms which either contain information for the successful BIDDER or are Document forms the successful BIDDER will be required to execute and with which the successful BIDDER must comply. The BIDDER'S attention is directed to these Document forms.

16. The CONTRACT DOCUMENTS contain all the provisions required for the construction of the PROJECT. Information obtained from any officer, agent or employee of the CITY or any other person shall not affect the risks or obligations assumed by the BIDDER or relieve the BIDDER from fulfilling any of the conditions of the C & A or the other CONTRACT DOCUMENTS.

17. BIDDERS must satisfy themselves of the accuracy of the estimated quantities in the BID SCHEDULE and other matters that shall be applicable by examination of the site and a review of the CONTRACT DOCUMENTS, including any addenda. After BIDS have been submitted, a BIDDER shall not be legally entitled to assert that there was a misunderstanding concerning the quantities or conditions of the work to be performed, the quantities, qualities or conditions of the equipment and/or supplies to be furnished or any other terms or conditions of the C & A or the other CONTRACT DOCUMENTS.

18. The CITY will consider only those BIDS that are offered by BIDDERS who can show evidence of satisfactory completion of the work that is comparable in size and type of the WORK that is contemplated in the CONTRACT DOCUMENTS or, in the case of a new business, the ability to perform the work contemplated.

19. The CITY shall determine which is the lowest responsible and best BIDDER for the PROJECT and shall deliver to the successful BIDDER a NOTICE OF AWARD accompanied by the C & A and the Document forms to be executed and returned with the executed C & A. These Document forms include the PAYMENT AND PERFORMANCE BONDS and the CERTIFICATE OF INSURANCE

COVERAGE. The successful BIDDER shall be required to return the C & A and the required attachments, properly executed, to the CITY within fifteen (15) days after receipt of same. Upon approval of same, the CITY shall forward the successful BIDDER a NOTICE TO PROCEED (**Form Q**).

20. Once the CITY determines which party is the successful BIDDER, that BIDDER must, as indicated above, fully comply with the BID and execute and deliver to the CITY the C & A and other

required documents. Upon its failure to timely do so, the CITY shall be authorized to advise the BIDDER that it is in default and that the CITY shall proceed to contract with another to fulfill the contract with which the defaulting BIDDER has failed to comply; and the defaulting BIDDER and the surety on its BID BOND shall be liable for all damages suffered by the CITY due to such default. The obligation of the defaulting BIDDER shall not be limited to the amount of its BID BOND, although the liability of the surety on such BID BOND will be limited to the amount thereof.

21. Any protest concerning the award of this bid shall be addressed to the Procurement Department Director. Protest shall be made in writing to the Procurement Department Director and shall be filed within seven days after the intended award is announced. A protest is considered filed when received by the Procurement Department Director. The written protest shall include the name and address of the protestor, identification of the procurement, a statement of the specific reasons for the protest and supporting exhibits. The submitted information will be reviewed with the City Attorney and City Administrator to render a final decision and a formal response provided within seven days. This decision relative to the protest shall be considered final.

22. The BIDDER shall be responsible for obtaining any and all permits required by the CITY to successfully complete this project.

23. If required, the successful low apparent BIDDER shall furnish the CITY, within forty-eight (48) hours after BIDS are received, the following detailed information for the CITY'S use:

(a) A cost breakdown analysis of all areas of WORK contained in the BID PROPOSAL, including a separation of all labor and material items; and

(b) A list of names of subcontractors, other persons or organizations (including those who are to furnish materials or equipment fabricated to a special design) proposed for such portions of the WORK. The BIDDER will be required to establish, to the satisfaction of the CITY Engineer and the CITY, the reliability of the proposed subcontractors to furnish and perform the WORK described in the sections of the specifications pertaining to such proposed subcontractor's respective trades. Subcontractors and other persons and organizations proposed by the BIDDER and accepted by the CITY and CITY Engineer must be on the WORK for which they were proposed and accepted, and shall not be changed without the written approval of the CITY and the CITY Engineer.

This list shall be submitted at the time the Cost Breakdown Form is presented to CITY, as set forth in this paragraph 23.

24. The CITY may, in its discretion, conduct a PRE-BID conference in the CITY on the date and at the time and place to be selected by the CITY. Any party interested in bidding should so advise the CITY in writing by e-mailing notice of such interest to the CITY'S Procurement Director at procurement@germantown-tn.gov . That party will receive notice of the date, time and place of the PRE-BID conference. BIDDERS are required to attend this conference and to submit written questions in advance of the conference to the Procurement Director. Additional written questions may be submitted at the conference. If the CITY has set a PRE-BID conference, the conference shall be held on the date at the time and place set forth herein below.

NON-MANDATORY PRE-BID CONFERENCE TO BE HELD:

DATE: **April 15, 2024**

TIME: **9:00 A.M. CST**

LOCATION: **Economic and Community Development**

Klein Room – 1920 South Germantown Road

Germantown, TN 38138

CITY OF GERMANTOWN
DRUG AND ALCOHOL TESTING POLICY

All City of Germantown employees are subject to reasonable suspicion drug and alcohol testing. Employees in safety-sensitive positions, including, without limitation, police, fire and those who hold a commercial driver's license, are subject to pre-employment, reasonable suspicion, post-accident and random drug and alcohol testing. All BIDDERS are required to submit an affidavit, in the form attached hereto, that attests that such bidder operates a drug-free workplace program or other drug or alcohol testing program with requirements at least as stringent as that of the program operated by the City of Germantown. BIDDERS are hereby notified pursuant to Public Chapter 693 of the Public Acts of 2002 (codified as T.C.A. Section 50-9-114) that employers shall have seven (7) calendar days from the date that the successful BIDDER and the City of Germantown enter into the Contract & Agreement to file suit in the Shelby County Chancery Court to contest the Contract & Agreement issued to the successful BIDDER on the grounds that it violates said Public Chapter due to the fact that the successful BIDDER did not comply with said Public Chapter. Employers that do not contest the Contract & Agreement within said seven (7) calendar days by filing suit in Shelby County Chancery Court shall waive their rights to challenge the Contract & Agreement for violation of the provisions of Public Chapter 693.

DRUG AND ALCOHOL TESTING ACKNOWLEDGMENT STATEMENT AND AFFIDAVIT

Comes _____, for and on behalf of
(*Printed name of Principal Officer of Company)*
_____, (the "Company") and makes oath that: (i) the Company has received a copy of the relevant portions of the City of Germantown Drug and Alcohol Testing Policy; (ii) the Company understands that it must have a drug and alcohol testing policy at least as stringent as that of the City of Germantown; and (iii) the Company has in effect a drug and alcohol testing policy at least as stringent as that of the City of Germantown.

Attached hereto is a summary of the relevant portions of the Company's drug and alcohol testing program or a complete copy thereof.

_____
Signature

Title: _____

Sworn to and subscribed before me, a Notary Public, this _____ day of _____, 2024.

_____
Notary Public

My Commission Expires:

_____

DRUG AND ALCOHOL ABUSE

GENERAL POLICY

This is to establish the City's policy regarding drug and alcohol use and the unlawful possession of controlled substances on City of Germantown premises. The City of Germantown Medical Benefits Program provides clinical treatment for employees and dependents who are experiencing the following disorders or conditions: Mental and Nervous Disorders Treatment, Alcohol and Drug Dependency. The City also provides an Employee Assistance Program.

SCOPE

All employees of the City of Germantown.

PROVISIONS

A. City employees shall not take or be under the influence of any alcohol or illegal drugs while on duty. Employees may not be under the influence of legally prescribed or over-the-counter medications while on duty if such medications would impair their ability to safely and effectively perform their job.

B. City employees are prohibited from the use, possession, manufacture, distribution and sale of drugs at any time, or of alcohol while on duty or while in or on City property or in City vehicles.

C. All property belonging to the City is subject to inspection at any time without notice. Property includes, but is not limited to, vehicles, desks, containers, files, and storage lockers.

D. City employees who have reason to believe another employee is illegally using drugs or narcotics, shall report the facts and circumstances immediately to the supervisor.

E. All City employees are subject to reasonable suspicion drug and alcohol testing. Employees in safety-sensitive positions, including without limitation, police, fire and those who hold a commercial driver's license, are subject to pre-employment, reasonable suspicion, post-accident and random drug and alcohol testing. Testing procedures and other rules relating to drug and alcohol abuse are described in the City Drug and Alcohol Testing Policy or the respective department drug and alcohol policies.

F. Failure to comply with the intent or provisions of this policy or the applicable drug and alcohol testing policy may be used as grounds for disciplinary action, up to and including termination. (See Policy on Disciplinary Action.

TITLE VI INFORMATION

1. The City of Germantown agrees to comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), and the Department of Transportation Implementing Regulations (49 CFR Part 21) relative to the Contract which is the subject hereof.

2. The Contractor is requested, but is not obligated, to include the attached disclosure sheet, Voluntary Title VI and Title IX Form, with the Contractor's sealed bid.

VOLUNTARY TITLE VI AND TITLE IX FORM

Attach form to sealed bid

For Title VI and Title IX compliance, the Contractor's voluntary disclosure of the following information is requested.

1. Number of Contractor's Employees Who Are:

_____Male _____Female

2. Number of Contractor's Employees Who Are:

_____Caucasian _____African-American

_____Other (please specify) _____

_____

_____

_____

BID

Bid of:

_____

(Name of Bidder)

_____

(Address of Bidder)

organized and existing under the laws of the State of _____ and doing business as _____(indicate: "a corporation", "a partnership", "an individual", a "limited liability company" or otherwise, as applicable).

To: City of Germantown - Owner
City Procurement Director
1930 South Germantown Road
Germantown, Tennessee 38l38

In compliance with your ADVERTISEMENT FOR BIDS, BIDDER hereby proposes to furnish all necessary labor, machinery, tools, apparatus, materials, equipment, services, and other necessary supplies in strict accordance with the terms and conditions of the plans, specifications and CONTRACT DOCUMENTS within the number of consecutive calendar days and at the prices set forth below for the construction of:

Project: COG2024-20 Duntreath Ditch Repairs – Phase 2

By submitting this BID, BIDDER certifies that this BID has been arrived at independently without consultation, communication or agreement as to any matter relating to this BID with any other BIDDER or with any other competitor.

BIDDER agrees, upon receipt of the NOTICE OF AWARD accompanied by the CONTRACT AND AGREEMENT (C & A) and all required attachments, to cause same to be properly executed and returned to the CITY OF GERMANTOWN within fifteen (15) days thereafter. BIDDER further agrees, upon receipt of the NOTICE TO PROCEED, (i) to commence work on the PROJECT not later than the last date stated in the Notice to Proceed as to which the BIDDER may commence to proceed, and (ii) to complete the PROJECT within sixty (60) consecutive calendar days after such date; otherwise, to pay the CITY OF GERMANTOWN as liquidated damages the sum of five hundred dollars ($500.00) for each consecutive calendar day thereafter as provided in the GENERAL PROVISIONS; and (iii) to complete all Punch List items within fourteen (14) consecutive calendar days after the date of Substantial Completion, as such date is determined by the CITY, otherwise, the BIDDER agrees that the CITY may use any remaining retainage to complete all Punch List items.

BIDDER acknowledges receipt of addenda(s) No._____.

By submission of this bid, each BIDDER and each person signing on behalf of any BIDDER certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each BIDDER is not on the list created pursuant to § 12-12-106. This list is generated to identify entities ineligible to contract with the State of Tennessee or any political subdivision of the State per the Iran Divestment Act, T.C.A. § 12-12-101 et seq., and the current list may be

found at the Tennessee Department of General Services, Central Procurement Office, website under the Public Information Library webpage.

Concerning the Non-Boycott of Israel Act (T.C.A. § 12-4-1 et seq.), by submission of this bid/quote/proposal, each supplier and each person signing on behalf of any supplier certifies, and in the case of a joint bid/quote/proposal, each party thereto certifies as to its own organization, under penalty of perjury, that to best of its knowledge and belief that each supplier is not boycotting Israel pursuant to § 12-4-1 and will not during the term of any award. Note: Applicable only to contracts of $250,000 or more and to suppliers with 10 or more employees.

BIDDER agrees to perform all work described in the CONTRACT DOCUMENTS for the following unit price or lump sum:

BID FORM

COG2024-20 Duntreath Ditch Repairs – Phase 2

Station Range: 115+11 to 112+45

PHASE 2 – BASE BID

	Item	Description	Unit	Quantity	Unit Price	Total Price
	1	Mobilization	LS	1	$	$
	2	Bonds	LS	1	$	$
	3	Construction Staking, Lines and Grade	LS	1	$	$
	4	Demobilization	LS	1	$	$
	5	Clearing & Grubbing	AC	1	$	$
	6	Remove Existing Concrete Flumes	SF	959	$	$
	7	Remove Existing Rip Rap	SF	922	$	$
E	8	Remove Residential Drainage Pipes	LF	70	$	$
	9	Tree Disposal Offsite (Includes Hauling)	LS	1	$	$
A	10	Flexamat (includes turndown areas)	SF	21178	$	$
A	11	Grouted Class A-1 Rip-Rap	TONS	1020	$	$
	12	Cement Grouting	CY	350	$	$
D	13	Class A Concrete	CY	38	$	$
	14	Gravel Backfill (#67 Stone)	TONS	58	$	$
	15	Embankment (Slope Leveling)	CY	2165	$	$
	16	4" to 6" Corrugated Plastic Pipe (CPP)	LF	108	$	$
	17	4" to 6" PVC Pipe	LF	36	$	$
	18	Tire Wash Area	LS	1	$	$
B	19	Asphalt Road Repair (Cement Treated Base 10" Thk)	SY	10	$	$
C	20	Traffic Controls (per MUTCD)	LS	1	$	$
B	21	Asphalt Road Repair (PG-64 Grade D – 3" Thk)	SY	10	$	$
B	22	Curb and Gutter	LF	20	$	$
B	23	Chain Link Fence	LF	500	$	$
					Total Bid	

Footnotes:

A. Includes the cost of non-woven geotextile fabric
B. Location of repairs to be determined by the City of Germantown
C. Measures needed for unloading equipment in roadway
D. Includes the reinforcement required as shown on the design plans
E. Pipe sizes range from 4" – 6 " and materials are either PVC or CPP

TOTAL BID PRICE, IN WORDS:

_____DOLLARS AND_____CENTS ($_____.___)

Submitted By:

_____
(Name of BIDDER) (Printed)

_____
(Company Name) (Printed)

Signature: _____

Title:_____

Address: _____

_____

_____

Telephone No.: _____

Fax No.: _____

_____
(Date Bid Submitted)

_____ _____
License Number License Type

_____ _____
Date of Expiration of License Monetary Limit

ADDENDA ACKNOWLEDGEMENT FORM

BIDDER acknowledges receipt of the following addenda (as applicable):

Addendum No. 1 _____ Dated _____

Addendum No. 2_____ Dated _____

Addendum No. 3 _____ Dated _____

Addendum No. 4 _____ Dated _____

Addendum No. 5 _____ Dated _____

Addendum No. 6 _____ Dated _____

_____
(Name of Bidder)

By: _____

Title: _____

Use this form for bid bond.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____(BIDDER) and _____(SURETY) are held and firmly bound unto the City of Germantown, Tennessee in the penal sum of five percent (5%) of the total amount of the BID, for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns, firmly by these presents.

The conditions of the above obligation are such that whereas BIDDER has submitted to the CITY OF GERMANTOWN a certain BID, attached hereto and hereby made a part hereof, to execute and enter into a certain CONTRACT AND AGREEMENT (C & A) for_____ (PROJECT) in compliance with the CONTRACT DOCUMENTS.

NOW, THEREFORE,

(a) If the BID shall be rejected, or

(b) If the BID is accepted and the BIDDER enters into a C & A for said project with the CITY OF GERMANTOWN within fifteen (15) days after receipt of the NOTICE OF AWARD accompanied by the C & A and all required attachments, then, this obligation shall be null and void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the SURETY for any and all claims hereunder shall, in no event, exceed the penal sum of this obligation as herein stated but the liability of the BIDDER is not so limited.

The SURETY, for value received, hereby stipulates and agrees that the obligation of said SURETY on this, its BID BOND, shall in no way be impaired or released by any extension of the time within which the CITY OF GERMANTOWN may accept such BID and the SURETY does hereby waive notice of any such extension.

WITNESS THE DUE EXECUTION HEREOF, on the _____ day of _____, 2024.

NAME OF BIDDER

_____

BY:_____
Signature of BIDDER or Authorized Officer
Title: _____

NAME OF SURETY

_____

BY:_____
Authorized Representative
(Attach Power of Attorney)

INFORMATION FOR SUCCESSFUL BIDDER

Those proposing to bid on the construction and completion of this City Project (PROJECT) should note the following:

(1) The City of Germantown (the "City") may award the contract to the lowest responsible and best bidder in accordance with the CONTRACT DOCUMENTS and in accordance with the following provisions:

a. The City may conduct such investigations as it deems necessary to evaluate any bid and to conclude, if warranted, that the BIDDER or, if an entity, its owners and officers, and the BIDDER'S proposed subcontractors, are responsible, qualified, and competent and have the financial ability to do the work in accordance with the contract documents to the City's satisfaction within the prescribed time.

b. The City reserves the right to reject the bid of any BIDDER who does not satisfy such evaluation.

c. The City reserves the right to reject any BID if any of the unit prices contained therein are obviously unbalanced, either above or below the reasonable cost thereof, as analyzed by the City. The purpose of insisting on balanced unit prices is to prevent the City from paying excessive unit prices, even though the bid, as a whole, is the lowest bid.

d. The City reserves the right to: reject any and all bids; waive any and all informalities; and discard all nonconforming and non-responsive or conditional bids.

e. In evaluating bids, the City shall consider the qualifications of the bidders, the degree of compliance with the prescribed requirements, and the alternatives and unit prices (if requested in the bid forms).

f. As a part of the evaluation process, the CONTRACTOR will be required to provide a detailed description of their Safety Program including the name of the CONTRACTOR'S Safety Officer, contract information and location at which they maintain their office. The CONTRACTOR will also be required to provide a list of any citations received for willful violations for failure to abate or for repeated violations by the United States Occupational Safety and Health Administration (OSHA); by the Tennessee Occupational Safety and Health Administration (TOSHA); or by any other governmental body for the last three years. Violations should be noted along with the nature of the violation, date of the violation, and name, address, telephone number and contact person for the agency issuing the citation.

g. If awarded, the contract will be awarded to the lowest bidder whose evaluation by the City indicates to the City that the award will be in the best interest of the Project.

h. The City may reject all bids submitted and call for new bids.

(2) The City will notify the successful BIDDER that it is the successful BIDDER by telephone following approval. City will then e-mail additional information and NOTICE OF AWARD. CONTRACTOR shall then be responsible for picking up contract documents from CITY and returning same to the CITY, properly executed, within fifteen (15) days of receipt. Accompanying the NOTICE OF AWARD will be the CONTRACT AND AGREEMENT (C & A), the PAYMENT AND PERFORMANCE BONDS and information regarding the City's insurance requirement.

(3) The CONTRACTOR is required to sign the C & A as set out therein. The CONTRACTOR is required to sign the PAYMENT AND PERFORMANCE BONDS exactly as set out therein, have an authorized agent of an insurance company authorized to do business in the State of Tennessee sign same and attach his Power of Attorney. Said PAYMENT AND PERFORMANCE BONDS must be attached to the C & A. The CONTRACTOR is required to have an authorized agent of an insurance company or companies authorized to do business in the State of Tennessee sign the CERTIFICATE OF INSURANCE COVERAGE and attach his or their Power(s) of Attorney to it. The CERTIFICATE OF INSURANCE COVERAGE must be attached to the C & A.

(4) The CONTRACTOR shall be notified by the City when said C & A, with the required attachments, has been approved and executed on behalf of the City , and the City shall furnish a copy of same to the CONTRACTOR. The City will thereafter issue a writing to the Contractor notifying the CONTRACTOR to commence work under the C & A (the "Notice to Proceed"). When such occurs, the CONTRACTOR is required to commence work on the PROJECT as specified therein and complete construction of the PROJECT within the number of consecutive calendar days set out in the CONTRACT DOCUMENTS.

(5) If the CONTRACTOR fails to comply with the foregoing, he shall become liable to the City for any damages suffered by the City because of such failure and/or may lose any benefits obtained by receiving the NOTICE OF AWARD.

(6) Further, the CONTRACTOR, by submitting his BID, agrees that he has read and is familiar with all the terms and conditions of the documents making up the CONTRACT DOCUMENTS and will abide by the terms and conditions thereof.

(7) The C & A and the other CONTRACT DOCUMENTS will be interpreted in accordance with and controlled by the laws of the State of Tennessee.

(8) The original of the C & A shall remain on file at the Office of the City Clerk, 1930 South Germantown Road, Germantown, Tennessee 38l38. Drawings and Specifications shall remain on file at the office set out in the CONTRACT DOCUMENTS.

CONTRACT AND AGREEMENT BY AND BETWEEN
THE CITY OF GERMANTOWN, TENNESSEE
AND
_____

This CONTRACT AND AGREEMENT (sometimes "C & A") is entered into this _____ day of _____,2024, by and between the CITY OF GERMANTOWN, TENNESSEE, a municipality organized and existing under the laws of the State of Tennessee ("CITY" OR "OWNER"), and , a_____ [***State Where Contractor Established]*** _____ ***[type of entity, e.g., corporation, LLC, partnership]*** ("CONTRACTOR"). For and in consideration of the agreements, covenants, payments and promises herein, the CITY and CONTRACTOR contract, covenant and agree as follows:

ARTICLE I

One (I) set of complete Contract Documents is on file in the Procurement Department. The parties expressly agree that the following documents are a part of this C & A:

Advertisement for Bids	A
Special Notice	B
Information for Bidders	C-1 thru C-6
Drug & Alcohol Policy	D-1 thru D-3
Title VI Form	E-1 thru E-2
Bid Form	F-1 thru F-4
Addenda Acknowledgment Form	F (A-1)
Bid Bond	G
Information for Successful Bidder	H-1 & H-2
Contract and Agreement	I-1 thru I-10
Payment Bond	J-1 thru J-3
Performance Bond	K-1 thru K-3
Germantown Insurance Requirement	L
Affidavit of Contractor	M-1 thru M-2
Waiver and Release of Lien	N
Certificate of Payment to Contractor	O-1 thru O-2
Notice of Award	P
Notice to Proceed	Q
Notice of Project Acceptance	R
Change Order Form	S
General Provisions	GP-1 thru GP-21
Special Conditions	SC-1 thru SC-10

TECHNICAL SPECIFICATIONS

01 57 13	Erosion and Sedimentation Control
02 41 00	Demolition
31 11 00	Clearing and Grubbing
31 20 00	Earthwork
31 24 00	Embankments
31 37 00	Rip Rap
32 92 19	Seeding
40 00 03	Flexamat (or approved equal)

CONSTRUCTION DRAWINGS

C-0.0	Cover Sheet
C-1.0	General Notes & Specifications
C-1.1	Phase 2 Plan – Base Bid
C-2.0	Existing Conditions & Demolition Plan
C-3.0	Site & Grading Plan STA 115+11.40 To 115+87.42c-1.1
C-3.1	Site & Grading Plan STA 115+87.42 To 117+26.54
C-3.2	Site & Grading Plan STA 117+26.54 To 118+67.87
C-3.3	Site & Grading Plan STA 118+67.87 To 120.06+05
C-3.4	Site & Grading Plan STA 120+06.05 To 121+41.62
C-3.5	Site & Grading Plan STA 121+41.62 To 122+62
C-4.0	Erosion Control Plan
C-5.0	Details
C-5.1	Details

ARTICLE II

CONTRACTOR agrees to furnish and pay for all material, supplies, tools, equipment, labor and other services required to do and perform all the work required to complete the Project as described in the Contract Documents within sixty (60) consecutive calendar days after the day specified in the Notice to Proceed (**FORM Q**) as the last day upon which the Contractor is to proceed, all in strict and complete compliance with the terms and conditions of this C & A and with the other Contract Documents for this Project, all of which shall be deemed a part hereof as fully and completely as if set out and copied verbatim herein. The CITY agrees to pay the CONTRACTOR for said work described in Article II as shown on the attached BID FORM and pursuant to the terms and conditions of this C & A and the other Contract Documents.

No payments under this C & A will be made except upon presentation of the monthly estimate form prepared by CONTRACTOR and approved by the CITY, which shall show that the work covered by the periodic Certificate of Payment Form has been done and the payments therefor are due in accordance with this C & A.

The first estimate shall be of the value of the work completed within the first thirty days from the commencement of performance by the CONTRACTOR pursuant to this C & A. Every subsequent monthly estimate shall be for the work done since the CONTRACTOR's commencement of performance of this C & A, less the amount previously paid. If the CONTRACTOR fails to adhere to the program of completion provided for in the Contract Documents, the CITY shall deduct from the next and all subsequent estimates the full calculated accruing amount of the liquidated damages (if any) to the date of said estimate until such time as compliance with the program has been restored.

The monthly estimates shall be submitted on a form acceptable to the CITY signed by the City Engineer, architect

or other professional retained by the CITY relative to the Project, if any. Such estimates shall be subject to the approval of the CITY. If the CITY approves such estimates, the CITY, subject to the foregoing provisions, will pay or cause to be paid to the CONTRACTOR, in the manner provided by law, the amount equal to NINETY-FIVE PERCENT (95%) of the estimated value of the work performed.

The CONTRACTOR shall, as soon as practical after final acceptance of the work under the C & A, make a final estimate of the amount of work done hereunder and the value thereof. Such final estimate shall be checked, approved and signed by the engineer/architect retained by the CITY relative to the Project, if any, and the official representative of the CITY. After such approval, the CITY shall pay, or cause to be paid, the CONTRACTOR, in the manner provided by law, the entire sum so found to be due hereunder after deducting there from all previous payments and such other lawful amounts as the terms of this C & A prescribe. Neither the final payment nor any part of the retained percentage shall become due until the CONTRACTOR shall deliver to the CITY a complete release of all claims or liens arising out of this C & A with an affidavit that all material suppliers and laborers to or on the Project have been paid. The CONTRACTOR may furnish a bond satisfactory to the CITY to indemnify the CITY against any claim or lien if a subcontractor refuses to furnish a release or receipt in full. If any claim or lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to the OWNER all monies that the latter may be compelled to pay in discharging such a lien, including all costs and reasonable attorney's fees incurred by the OWNER in defending against such claim or lien. In no case will final payment be made in less than thirty (30) days after completion of the work and the acceptance of same by the OWNER. Nothing contained herein shall be construed as signifying that a materialman or laborer has a right to a lien on the Project, as such liens are not permitted by Tennessee law. Any party giving notice to the OWNER that such party has not been paid by the CONTRACTOR shall be referred by the OWNER to the CONTRACTOR and the surety on the bonds required to be posted by the CONTRACTOR relative to the Project.

ARTICLE III

CONTRACTOR declares that neither the Mayor, nor any Aldermen, nor any other CITY official holds a direct or indirect interest in this C & A. CONTRACTOR pledges that he will notify the Finance Director of the CITY in writing should any CITY official become either directly or indirectly interested in this C & A. CONTRACTOR declares that as of the date of this declaration he 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 C & A. CONTRACTOR further pledges that neither he nor any other officer or employee of CONTRACTOR 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 C & A.

ARTICLE IV

CONTRACTOR agrees to indemnify and save the CITY, CITY officers, CITY agents, and CITY employees harmless from and against all loss and expense, including court costs and attorneys' fees, by reason of liability imposed on the CITY, CITY officers, CITY agents, or CITY employees, for damage because of bodily injury, death or property damage arising out of or in consequence of the performance of the work under or in any manner related to this C & A, whenever such injury, death or damage is due or claimed to be due to the negligence of the CONTRACTOR, his subcontractors, officers, agents, and/or employees.

In the event the CITY shall have occasion to either defend or assert its rights under this C & A in a court of law or equity, before a board of arbitration or otherwise, and if the CITY shall prevail in any such action, either as defendant or plaintiff (as the case may be), CONTRACTOR shall pay any and all costs of such action, including court costs and reasonable attorneys' fees, incurred by the CITY in asserting or defending its rights under this C & A.

All personal pronouns used in the Contract Documents, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa, as the context may require.

WITNESS the due execution hereof, effective _____,2024 which date is the date of the signature of the Mayor as attested to by the City Clerk/Recorder under seal of office.

_____

[CONTRACTOR NAME]

By: _____

Title: _____

Address: _____

_____

_____

Telephone No.: (_____) _____

Fax No.: (_____) _____

CITY OF GERMANTOWN, TENNESSEE

By: _____
Mike Palazzolo, Mayor

I certify that on the ____day of _____, 2024, the signature of the Mayor was attested to by the City Clerk under seal of office on the original of this CONTRACT AND AGREEMENT.

_____
City Clerk/Recorder

Date: _____

Approved as to form:

_____
City Attorney

Date: _____

EXHIBIT "A"

Invitation to Bid No. COG2024-20

EXHIBIT "B"

CONTRACTOR'S Bid

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that

_____(*Name of Contractor*)

_____(*Address of Contractor*) a

_____ (*State of formation of CONTRACTOR*)

_____ (*Corporation, Partnership, Limited Liability Company, Individual or Joint Venture—indicate which*), hereinafter called CONTRACTOR,

and _____(*Name of Surety*)

_____(*Address of Surety*)

hereinafter called SURETY, are held and firmly bound unto the City of Germantown, Tennessee, 1930 South Germantown Road, Germantown, Tennessee, hereinafter called OWNER, in the penal sum of

_____ Dollars

($_____), in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, and our successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the CONTRACTOR has entered into a certain Contract and Agreement ("Contract") with the OWNER which is made a part hereof by reference for the construction of: COG2024-20 Duntreath Ditch Repairs – Phase 2

NOW, THEREFORE, if the CONTRACTOR shall promptly make payment to all persons, firms, and SUBCONTRACTORS furnishing materials for or performing labor in the prosecution of the work provided for in such Contract, and any extension or modification thereof, including all amounts for materials, lubricants, oil, gasoline, parts and repairs on machinery, equipment, and tools consumed or used in connection with

such work, and all insurance premiums on said work, and for all labor performed in such work, whether by SUBCONTRACTORS or otherwise, then this obligation shall be void; otherwise, same is to remain in full force and effect.

PROVIDED, FURTHER, that said SURETY, for value received, hereby stipulates and agrees that no change, extension of time, modification, alteration, or addition to the terms of the Contract, to the work to be performed thereunder or to the SPECIFICATIONS accompanying the same shall in any way release its obligation under this BOND. Said SURETY hereby waives notice of any such change, extension of time, modification, alteration, or addition to the terms of the work or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim is entitled to be satisfied by the CONTRACTOR and its SURETY.

PROVIDED, FURTHER, that the CONTRACTOR and SURETY agree that any claim under this BOND may only be litigated in a court of competent jurisdiction in Shelby County, Tennessee.

IN WITNESS WHEREOF, this instrument is duly executed, this the _____ day of _____, 2024.

_____
(*CONTRACTOR*)

By: _____

Title: _____

Address: _____
_____
_____

_____
(*SURETY*)

By: _____
(*Attorney-in-Fact*)

Title: _____

Address: _____
_____
_____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that

_____(*Name of Contractor*)

_____(*Address of Contractor*) a

_____ (*State of formation of CONTRACTOR*)

_____ (*Corporation, Partnership, Limited Liability Company, Individual or Joint Venture—indicate which*), hereinafter called CONTRACTOR,

and _____(*Name of Surety*)

_____(*Address of Surety*)

hereinafter called SURETY, are held and firmly bound unto

the City of Germantown, Tennessee, 1930 South Germantown Road, Germantown, Tennessee, hereinafter called OWNER, in the penal sum of_____Dollars ($_____), in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, and our successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that, whereas, the CONTRACTOR has entered into a certain Contract and Agreement ("Contract") with the OWNER, which is made a part hereof by reference, for the construction of: COG2024-20 Duntreath Ditch Repairs – Phase 2 ,

,and if the CONTRACTOR shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise, same is to remain in full force and effect.

PROVIDED, FURTHER, that the said SURETY, for value received hereby, stipulates and agrees that no change, extension of time, modification, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way release its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, modification, alteration, or addition to the terms of the Contract, to the work, or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied and which is entitled to be satisfied by the CONTRACTOR and SURETY.

PROVIDED, FURTHER, that the CONTRACTOR and SURETY agree that any claim under this BOND may only be litigated in a court of competent jurisdiction in Shelby County, Tennessee.

IN WITNESS WHEREOF, this instrument is duly executed this the _____ day of _____, 2024.

_____
(*CONTRACTOR*)

By: _____

Title: _____

Address: _____
_____
_____

_____
(*SURETY*)

By: _____
(*Attorney-in-Fact*)

Title: _____

Address: _____
_____
_____

GERMANTOWN INSURANCE REQUIREMENT
CITY PROJECT CONTRACT

The **CONTRACTOR** shall purchase and maintain the insurance outlined below to provide protection from the **CONTRACTOR'S** negligent acts. The **CONTRACTOR** shall provide this insurance as required by the Contract Documents. The negligence by any subcontractor, by anyone directly or indirectly employed by any of them, shall be considered a negligent act of the **CONTRACTOR.**

- Comprehensive General Liability in the amount of $1,000,000 per occurrence and must include Products/Completed Operations, Explosion/Collapse/Underground Coverage and Contractual Liability. The City of Germantown must be named Additional Insured using a CG 2010 (11/85) endorsement (or equivalent) and this must be noted on the Certificate of Insurance. The Insurance Company agrees to Waive their Right of Subrogation against The City of Germantown and this must be noted on the Certificate of Insurance.

- Auto Liability Insurance in the amount of $1,000,000 Combined Single Limit. The City of Germantown must be named Additional Insured and the Insurance Company agrees to Waive their Right of Subrogation against The City of Germantown and this must be noted on the Certificate of Insurance.

- Statutory Workers Compensation with Employers Liability Limits of 100/500/100 - The Insurance Company agrees to Waive their Right of Subrogation against The City of Germantown and this must be noted on the Certificate of Insurance.

- Umbrella Liability in the amount of $2,000,000 per occurrence – the terms and conditions of the Umbrella must be following form to the primary insurance.

- The Cancellation Clause on the Certificate of Insurance is amended to read: Should any of the described policies on the attached Certificate of Insurance be cancelled, non-renewed or reduced in coverage – the issuing Insurance Company will mail 30 days written notice to: The City of Germantown, Procurement Department, P.O. Box 38809 Germantown, TN 38138-0809, by registered mail, return receipt requested.

- The **CONTRACTOR** shall maintain a Builder's Risk/Installation Floater equal to the contract amount naming The City of Germantown as Loss Payee until final acceptance of the work. The policy must provide "all risk" including the peril of earthquake/earth movement.

- All Certificates should be issued with an Insurance Company (or Companies) maintaining an AM Best Rating of A- or better and a Financial Size of IX or greater. All Insurance Companies shall be authorized to conduct business in The State of Tennessee.

The **CONTRACTOR** shall maintain the above insurance – with the exception of Builders Risk/Installation – through both final acceptance and any Warranty Period defined by the contract documents.

AFFIDAVIT OF CONTRACTOR

STATE OF)
) SS:
COUNTY OF)

_____, being duly sworn according
(*Name of Affiant*)
to law, deposes and says that he is the_____
(*Title*)
of _____, the CONTRACTOR,
(*Name of Contractor*)
in a Contract and Agreement entered into between the Contractor and

the City of Germantown, the Owner,

for the construction of _____

_____(the "Project"),

and that he is authorized to and does make this affidavit on behalf of said CONTRACTOR in order to induce the OWNER to make payment to the CONTRACTOR, in accordance with the provisions of the said Contract and Agreement.

Affiant further says that all persons who have furnished materials and/or labor in connection with the construction of the Project have been paid in full; that the names of all materialmen and subcontractors that furnished any material and/or services in connection with such construction and the kind or kinds of material and/or services so furnished are as listed hereinafter; and that the CONTRACTOR has delivered to the OWNER waivers and releases of liens executed by all such materialmen and subcontractors.

_____
(*Signature of Affiant*)

Sworn to and subscribed
before me this _____ day
of _____, 2024.

_____
Notary Public

My Commission Expires:

_____

NAME	KIND OF MATERIAL AND/OR SERVICE

WAIVER AND RELEASE OF LIEN

WHEREAS, the undersigned, _____,
(*Name of manufacturer, material man, or subcontractor*)

has furnished to _____ labor and/or material for
(*Name of Contractor*)

use in the construction of _____(the "Project")

belonging to the City of Germantown _____,

NOW THEREFORE, the undersigned, _____, for and in consideration of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby waive and release any and all liens, or right to claim a lien, on the above described Project and premises or right to claim under any bond furnished by the CONTRACTOR relative to the Project and/or under any law, common or statutory, on account of labor or materials, or both, heretofore or hereafter furnished by the undersigned to or for the account of

said _____ for said Project.
(*Name of Contractor*)

Given under my (our) hand(s) and seal this ____ day of _____, 2024.

Manufacturer, Material man or Subcontractor Name:

By: _____

STATE _____
COUNTY _____

I, _____, a Notary Public, in and for said State and County, hereby certify that _____ who is _____
(*Name of Individual*) (Title
_____ of _____
(*Title or Office*) (*Name of material man or subcontractor or furnisher*)
and whose name is signed to the foregoing, and who is known to me, acknowledged before me on this day that he, with full authority, executed the foregoing instrument voluntarily for and as the act of said
_____.
(*Name of material man or subcontractor or furnisher*)

Given under my hand and seal this _____ day of _____, 2024.

_____
Notary Public

My Commission Expires:

_____

CITY OF GERMANTOWN
PROFESSIONAL SERVICE/CONSTRUCTION APPLICATION CERTIFICATION PAYMENT FORM

DATE:	TYPE OF CONTRACT	CERTIFIED BY:*	PAYMENT TO:
PROJECT #:	☐ ARCHITECT		
APPLICATION #:	☐ ENGINEER		
PROJECT NAME:	☐ CONSTRUCTION		
	☐ OTHER		
CONTRACT DATE:			
PERIOD TO:			INVOICE:
ACCOUNT NO.			INVOICE DATE:

APPLICATION FOR PAYMENT

1	ORIGINAL CONTRACT AMOUNT	
2	NET CHANGE BY CHANGE ORDERS	
3	CONTRACT SUM TO DATE (LINE 1+ LINE 2)	
4	TOTAL COMPLETED TO DATE	
5	RETAINAGE: (If Applicable)	
A.	_____ % of Completed Work (Line 4 X Line 5)	
6	TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 total)	
7	LESS SUM OF PREVIOUS PAYMENTS	
8	ADDITIONAL FEES DUE	
9	OUT-OF-POCKET EXPENSES	
10	CURRENT PAYMENT DUE	
11	BALANCE TO FINISH, including retainage	

CERTIFICATION OF PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the undersigned certifies that to the best of their knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents,and the Company is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED _____

Signature: _____ Date: _____

Dept. Project Coordinator Approval:	Dept. Director Approval:

(Attach explanation if "Amount Certified" differs from the "Current Payment Due")

SIGNATURE & NOTARIZATION OF FIRM REQUESTING PAYMENT

(Required for Construction Projects only)

The undersigned certifies that to the best of their knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents for this project, that all amounts have been paid by the Contractor to any subcontractors and / or suppliers for which previous Application for Payments were issued and payments received from the City of Germantown, and that current payment shown herein is now due.

COMPANY NAME: _____

Signature: _____ Date: _____

State of: _____ County of: _____

Subscribed and sworn to before me this _____ day of _____

Notary Public: _____

My Commission expires: _____

* If CONSTRUCTION Project: "Certification of Payment" section must be completed by architect/engineering firm.

* If ARCHITECT/ENGINEERING/OTHER Contract: "Certification of Payment" section must be completed by Dept. Project Coordinator.

**** Dept. Coordinator & Dept. Director must approve ALL payment applications.***

MONTHLY CONSTRUCTION ESTIMATE

PROJECT_____JOB NO._____ESTIMATE NO._____

ITEM NO.	DESCRIPTION	VALUE OF ITEM AS REFLECTED IN BID	NO. OF UNITS	UNIT PRICE	AMENDED CONTRACT PRICE	QUANTITY THIS ESTIMATE	INSTALLED TO DATE	AMOUNT EARNED TO DATE	MATERIALS: STORED	MATERIALS: COMPLETED	BALANCE OR OVERRUN (-)	RETAINAGE

CITY OF
GERMANTOWN
TENNESSEE
1930 South Germantown Road • Germantown, Tennessee 38138-2815
Phone (901) 757-7200 Fax (901) 757-7292 www.germantown-tn.gov

NOTICE OF AWARD

Date:

TO:
CONTRACT:

Dear :

This is to inform you that by action of the Board of Mayor and Aldermen during their meeting on _____, 2024, your firm was awarded the contract for _____ _____in the amount of_____.

Enclosed you will find one (1) copy of the Contract and Agreement with Purchase Order. The Performance and Payment Bonds forms are included for you to execute as set forth on Pages "H-1 and H-2" of INFORMATION FOR SUCCESSFUL BIDDER, of the SPECIFICATION BOOKLET. Further, you should have your insurance agent execute the insurance certificate exactly as it is found in the Germantown Insurance Requirements.

Also, enclosed are the Code of Ethical Conduct and Germantown Forward 2030 Strategic Plan for the City for your review. The Organizational Profile for Corporate Sustainability Form is also included and should be returned with above documents.

Additionally, as set forth on Page "SC-2" of SPECIAL CONDITIONS, of the SPECIFICATION BOOKLET, you are required to present at the Pre-Construction Conference:

1. A general sequence of operations (schedule of work), including major work items along with anticipated completion dates and present
2. A list of all sub-contractors to be used in the execution of the work under this project at the Pre-Construction Conference.
3. ADDITIONAL INFORMATION AS REQUESTED BY PROJECT MANAGER

Failure to present these documents as required at the Pre-Construction Meeting will result in the Notice to Proceed being withheld until all required information has been received.

You have fifteen (15) days to return the above required documents, properly executed, to the City of Germantown.

Congratulations on being the successful bidder for this project.

Sincerely,

Cathryn Perdue
Director Procurement & Risk

Enclosure

P

CITY OF
GERMANTOWN
TENNESSEE
1930 South Germantown Road • Germantown, Tennessee 38138-2815
Phone (901) 757-7200 Fax (901) 757-7292 www.germantown-tn.gov

NOTICE TO PROCEED

To: _____ Date: _____
(*Contractor*)
_____
_____
_____ Project: _____
_____
_____

Relative to the above referenced project, this is your official Notice to Proceed within _____ ( ) consecutive calendar days of the date hereof and to complete the work within the time specified in the Contract and Agreement entered into by you and the City.

CITY OF GERMANTOWN

By: _____

Title: _____

ACCEPTANCE OF NOTICE TO PROCEED

Receipt of the above NOTICE TO PROCEED

is hereby acknowledged by _____
(*Typed or Printed Name of Contractor*)

this the _____ day of _____2024.

By: _____

Title: _____

Substantial Completion Date: _____

NOTE: The Contractor must promptly sign and return to the City of Germantown a copy of this Notice to Proceed.

NOTICE OF PROJECT ACCEPTANCE

City of Germantown
Procurement Department
1930 South Germantown Road
Germantown, Tennessee 38138

Date: _____
Contract Number: _____
Project Name: _____
Contractor: _____

This is to advise you that all items set forth on the Punch List for the project referenced above have been completed to our satisfaction, and the project is accepted by the City of Germantown on _____.

CITY OF GERMANTOWN

By: _____
Name: _____
Title: _____

R

F0090

CITY OF GERMANTOWN
CONTRACT CHANGE ORDER FORM

PROJECT NAME		**DATE**	
CONTRACTOR		**CONTRACT #**	
PROJECT MANAGER		**CONTRACT DATE**	
AWARDED CONTRACT AMOUNT & PO NO.	$ PO NO.	**CHANGE ORDER #**	

THE CONTRACT IS AMENDED AS FOLLOWS:

ITEM #	DESCRIPTION OF CHANGES/JUSTIFICATIONS	DECREASE IN CONTRACT AMOUNT	INCREASE IN CONTRACT AMOUNT
	TOTALS	$ 0.00	$ 0.00
	TOTAL CHANGE ORDER AMOUNT	$ 0.00	

ORIGINAL CONTRACT AMOUNT	$ 0.00
NET CHANGES BY PREVIOUSLY AUTHORIZED CHANGE ORDERS	$
CONTRACT SUM PRIOR TO THIS CHANGE ORDER	$ 0.00
CONTRACT SUM WILL BE INCREASED/DECREASED BY THIS CHANGE ORDER IN THE AMOUNT OF	$ 0.00
NEW CONTRACT SUM INCLUDING THIS CHANGE ORDER	**$** 0.00

ORIGINAL CONTRACT COMPLETION DATE	
CONTRACT COMPLETION CHANGE +/- (# OF DAYS)	
CONTRACT COMPLETION DATE ADJUSTMENT TO	

Project Manager Name **Signature** **Date** **Architect/Engineer Name** **Signature** (*if applicable*) **Date**

Effective upon execution by the City Administrator and the Mayor, the above referenced Contract is amended by the terms and conditions of this Change Order, including the cost and time contained herein, which constitute a full accord and complete satisfaction for all costs and time of performance related to the work described or referenced herein, including but not limited to, all delay and impact costs for the entire Project resulting from this Change Order. Except as amended herein, all provisions of the Contract remain in full force and effect and are hereby ratified and affirmed by the parties to the Contract.

Agreed by:

Contractor

By: (Signature)

(Typed Name)

Date

Approved by:

City Administrator

By: (Signature)

Date

Approved by:

Mayor

By: (Signature)

Date

Attest: City Clerk

(Typed Name)

BMA Under $10,000

☐

Memo Notification only **Date**

BMA Over $10,000 w/o Prior Approval

☐

Date

BMA Over $10,000 w/ Prior Approval

☐

Date

FINAL COPY SENT TO PROCUREMENT: ☐ Yes _____ **Date**

S

GENERAL PROVISIONS

TABLE OF CONTENTS

1. DEFINITIONS
2. ENGINEER'S DECISION
3. INSPECTOR'S RESPONSIBILITY
4. CONTRACTOR'S RESPONSIBILITY
5. SITE OF THE WORK
6. CONTRACTOR'S SUPERVISION
7. CARE OF THE WORK
8. SCHEDULE OF WORK
9. WORKMANSHIP, TOOLS AND CONSTRUCTION EQUIPMENT
10. CODES, ORDINANCES, REGULATIONS, LAWS, PERMITS, LICENSES AND FEES
11. DRAWINGS AND SPECIFICATIONS
12. STANDARD PUBLICATIONS
13. STANDARD EQUIPMENT AND EQUIPMENT INSTALLATION
14. STANDARDS FOR MATERIALS
15. SAMPLES
16. MATERIALS, SERVICES AND FACILITIES
17. INSPECTION AND TESTING OF MATERIALS
18. PATENTS
19. ACCURACY OF DATA AND INTERFERENCES
20. LINES, GRADES, STAKES, AND TEMPLATES
21. LAND ACQUISITIONS AND RIGHTS OF WAY
22. CONTRACT SECURITY
23. WAGE RATES
24. SUBCONTRACTING
25. PAYMENTS BY CONTRACTORS
26. TIME FOR COMPLETION
27. CHANGE OF CONTRACT TIME
28. LIQUIDATED DAMAGES
29. NOTICES AND SERVICE THEREOF
30. RIGHTS OF OWNER TO TERMINATE CONTRACT
31. ASSIGNMENT OF CONTRACT
32. CLAIMS FOR EXTRA COST
33. CHANGES IN WORK
34. SANITARY FACILITIES
35. CUTTING AND PATCHING
36. REMOVAL OF DEBRIS
37. USE OF COMPLETED WORK
38. STARTING, TESTING, AND ADJUSTING
39. TAXES
40. GUARANTEE
41. SAFETY AND HEALTH REGULATIONS
42. ARCHITECTURAL PROVISIONS
43. MODIFICATIONS TO GENERAL PROVISIONS

GENERAL PROVISIONS

1. DEFINITIONS:

A. The word "OWNER" means the City of Germantown.

B. The word "ENGINEER" means the City Engineer, Consultant Engineer or Architect of Germantown.

C. The word "INSPECTOR" means a City of Germantown inspector.

D. The word "CONTRACTOR" means the successful BIDDER and/or assigned representative to whom the contract is awarded.

E. The words "install", "furnish", "provide", or words of like import mean the CONTRACTOR shall install, furnish, or provide, and similarly, the words "approved", "authorized", "required", "satisfactory", "acceptable", or words of like import mean approved by, authorized by, required by, satisfactory to, or acceptable to the ENGINEER, unless otherwise expressly stated.

F. The words "indicated", "shown", "detailed", or "scheduled" mean indicated, shown, detailed, or scheduled on the contract drawings, unless otherwise expressly stated.

G. The word "work" means the labor, materials, equipment, supplies, and services to be furnished under the contract, and the performing of all duties and obligations required by the contract documents.

H. The word "submit" means the CONTRACTOR shall submit to the ENGINEER for approval, unless otherwise expressly stated.

I. The word "Provide" means the CONTRACTOR shall furnish and install, complete and ready for use, unless otherwise expressly stated.

J. The word "selected" means selected by the ENGINEER, unless otherwise expressly stated.

K. The term "substantial completion" means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the OWNER can occupy or utilize the Work for its intended use.

2. ENGINEER'S DECISION:

The ENGINEER shall in all cases determine the amount, quality, acceptability, and fitness of the several kinds of finished work and materials which are to be paid for hereunder, and shall decide all questions which may arise as to fulfillment of this contract on the part of the CONTRACTOR, and the ENGINEER'S interpretation of the contract and the ENGINEER'S determination and decision thereto shall be final and conclusive. Such determinations and decisions, in case any question arises, shall be a condition precedent to the CONTRACTOR'S right to receive any money hereunder.

The ENGINEER shall have the right to correct all clerical, mathematical, or minor errors or omissions in the specifications when such corrections are necessary for the proper coordination of the contract documents.

3. INSPECTOR'S RESPONSIBILITY:

The INSPECTOR will visit the job periodically to see that the terms of the plans and specifications are being performed in general accordance with the Contract Documents. Should the INSPECTOR be needed by the CONTRACTOR or his representative, these individuals may call the CITY OF GERMANTOWN DEPARTMENT OF COMMUNITY DEVELOPMENT to arrange a time that the INSPECTOR will confer with the CONTRACTOR about any aspect of the job, but the INSPECTOR will not give instructions to the CONTRACTOR. The CONTRACTOR will be responsible for compliance with the plans and specifications and all requirements of the Contract. The INSPECTOR may advise the CONTRACTOR or his representative that changes in the work should be accomplished. The INSPECTOR, acting through the authority of the Engineer, can reject work which clearly does not meet the requirements of the City.

4. CONTRACTOR'S RESPONSIBILITY:

A. From commencement until completion and final acceptance by the OWNER, the work under this Contract shall be under the charge and control of the CONTRACTOR. During such period of control by the CONTRACTOR, all risks in connection with the construction of the work and the materials to be used therein shall be borne by the CONTRACTOR.

B. The CONTRACTOR shall be fully responsible for the safety and protection of all persons and of all work and material connected with his contract until the project is finally accepted by the OWNER. The CONTRACTOR shall use proper precautions to fully protect all persons, his own work and that of others, and the property of the OWNER and others from injury and damage, and at his own expense he shall be liable for injury to all persons and shall make good all damage and injury to property belonging to the OWNER and others caused by himself and his employees through negligence, carelessness, or any other cause.

C. The OWNER and ENGINEER shall not be responsible for the methods and means employed by the CONTRACTOR in the performance of the CONTRACTOR'S work. The ENGINEER shall have no responsibility for the safety of the workmen and others who may be injured during the course of the CONTRACTOR'S work.

D. The CONTRACTOR must have a designated representative available on short notice who is capable of making decisions and giving directions at any time there is work ongoing.

5. SITE OF THE WORK:

A. Each CONTRACTOR submitting a bid or a proposal on this project and each Subcontractor estimating and furnishing a bid under any division and/or section of this Contract to the CONTRACTOR shall visit the site of the work and examine its present condition to inform himself as to the nature and scope of all work to be done and all difficulties that may be involved therein.

B. The submission of a bid or a proposal by the CONTRACTOR to the OWNER or a bid furnished by a Subcontractor to the CONTRACTOR shall be accepted as evidence that the examination referred to in 5A above has been made and that all difficulties encountered have been provided for in his proposal or bid. Later foreseeable claims for extra compensation for labor, materials, and equipment will therefore not be recognized by the OWNER.

6. CONTRACTOR'S SUPERVISION:

A. The CONTRACTOR, or his duly authorized agent with authority to control the work, shall be present at the site whenever the work is in progress. The CONTRACTOR'S authorized agent shall meet with the approval of the ENGINEER.

B. The OWNER reserves the right to require the removal from the Project of the Superintendent or any other employee of the CONTRACTOR if, in the ENGINEER'S judgment, such removal is necessary to protect the OWNER'S interest.

7. CARE OF THE WORK:

A. The CONTRACTOR shall indemnify and save harmless the OWNER, the ENGINEER, their agents, and their employees from all claims, suits, or proceedings of any nature whatsoever which may be brought against the OWNER, the ENGINEER, their agents, or their employees on account of any injuries to persons or property received from the CONTRACTOR or his agents or servants. See also Paragraph 24 B hereinafter.

B. The CONTRACTOR shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance of the project. The CONTRACTOR shall provide adequate barricades and warning signs to properly protect his work and to safeguard the life and property of others. Barricades, open trenches, etc. shall be properly illuminated with flares and/or blinking lights at night. All Traffic Control/warning devices used shall conform with Section VI of the Manual of Uniform Traffic Control Devices.

8. SCHEDULE OF WORK:

A. Before beginning work, the CONTRACTOR shall submit a construction schedule to the ENGINEER for approval. In general, the CONTRACTOR'S work shall be so scheduled as to interfere as little as possible with the operations of the OWNER and other contractors. All work shall be performed after 7:00 a.m. and before 6:00 p.m., local time, Monday through Saturday unless a specific requirement for overtime work is included elsewhere in the Contract Document, or is specifically granted by the ENGINEER. No work shall be performed on a Sunday without the express permission of the ENGINEER.

C. The OWNER will use the CONTRACTOR'S work schedule to prepare notification to individual property owners of the general date(s) that they may expect work to be performed in areas adjoining their property. It will be the CONTRACTOR'S responsibility to keep the City advised of any significant

changes in the work schedule in a timely manner so that the affected private property owners may be kept informed.

9. WORKMANSHIP, TOOLS AND CONSTRUCTION EQUIPMENT:

A. All work shall be performed in a finished and workmanlike manner, and in accordance with the best recognized trade practices.

B. The CONTRACTOR shall provide and maintain in good operating condition all tools and construction equipment necessary for the satisfactory performance of the work. Inadequate, unsuitable, defective, worn out, or otherwise unsatisfactory tools and construction equipment shall be removed from the site and replaced with satisfactory tools and construction equipment or the proper repairs shall be made or the unsatisfactory conditions shall be remedied.

10. CODES, ORDINANCES, REGULATIONS, LAWS, PERMITS, LICENSES AND FEES:

A. The CONTRACTOR shall comply with all City, County, State and Federal codes, ordinances, regulations and laws applicable to the work to be done and applicable to the use of public streets, alleys and highways. Such codes, ordinances, regulations and laws shall be considered as minimum requirements, and everything shown or specified in the Contract Documents in excess of these minimum requirements shall be installed in excess thereof, as shown or specified. No instructions given in the Contract Documents shall be construed as an authorization to violate any code, ordinance, regulation or law.

B. Before beginning work, the CONTRACTOR shall obtain and pay for all licenses and permits required to perform work covered by this contract, shall obtain and pay for all necessary inspections by all applicable authorities, and shall include their cost in the bid price. Whereas certain parts of the work may require the approval of public or other authorities, all work shall be subject to the ENGINEER'S decision before proceeding with the portion of the work involved.

11. DRAWINGS AND SPECIFICATIONS:

A. The drawings accompanying these specifications, and forming a part thereof, are listed elsewhere and, together with the specifications, they cover the work to be performed under the Contract. The CONTRACTOR and each Subcontractor employed on this work shall carefully examine all contract drawings and read all specifications. They will be bound by all things therein affecting their special work no matter under what heading they may appear.

B. The drawings and specifications are intended to cover a complete project ready for use, and all items necessary for a complete and workable job shall be furnished and installed. All minor items not specifically covered by the drawings and specifications but required in the construction of the project shall be furnished and installed as though shown or specified. This is not intended to cover major items of equipment or labor not shown or specified, but it is intended and will be interpreted to cover all miscellaneous labor, parts, devices, accessories, controls, and appurtenances which are: required

by all applicable codes, ordinances, laws, and regulations; required to complete and place the project in satisfactory operation; and required for a first class job that is complete in every respect.

C. The drawings and specifications are mutually explanatory and supplementary, and all features covered in one and not in the other shall have the same force and effect as though covered in both. In the event of any conflicts between the drawings and specifications, the ENGINEER'S decision shall govern. Should any error, discrepancy, or variance be discovered in the drawings or specifications by the Contractor or his Subcontractor, the CONTRACTOR shall immediately notify the ENGINEER before beginning the work and submit the question to the ENGINEER for his interpretation and decision. The ENGINEER will be governed by the overall meaning of the documents.

D. The CONTRACTOR shall keep at least one copy of all drawings and specifications on the project site in good condition and available to the ENGINEER and to his representatives at all times.

E. No deviations from the drawings and specifications shall be made without the ENGINEER'S prior written approval.

F. The GENERAL PROVISIONS and the SPECIAL CONDITIONS shall apply to every division and/or section of the STANDARD SPECIFICATIONS, as fully as if quoted verbatim therein.

12. STANDARD PUBLICATIONS:

Wherever in these documents reference is made to standard specifications, standards, codes, or other standard publications, such as "ASTM" (American Society for Testing and Materials), "AASHTO" (American Association of State Highway and Transportation Officials), "ANSI" (American National Standards Institute), "AWWA" (American Waterworks Association), "ACI" (American Concrete Institute), "AISC" (American Institute of Steel Construction), "AWS" (American Welding Society), Federal Specifications, "NEC" (National Electrical Code), or others, in all cases the latest published editions of such referenced standard publications in effect at the time of receipt of bids shall apply.

13. STANDARD EQUIPMENT AND EQUIPMENT INSTALLATION:

Except where special equipment is required, it is the general intent of the STANDARD SPECIFICATIONS that manufacturers' standard equipment shall be furnished. Minor variations from the Technical Specifications to accommodate manufacturers' standard equipment will be permissible, provided that the proposed equipment complies substantially with the STANDARD Specifications and that it will accomplish the required results, all to the ENGINEER'S satisfaction.

14. STANDARDS FOR MATERIALS:

A. All materials shall be new, unless used or salvaged materials are authorized by the ENGINEER.

B. The use of manufacturers' names and catalog numbers in these specifications or on the drawings indicates the type, size, rating, capacity, design, quality, or kind of materials required, and a closed

specification is not intended, and similar and equal products of any reputable manufacturer which will satisfactorily perform the required functions will be acceptable, unless otherwise indicated by the words NO SUBSTITUTES, or unless otherwise specifically stated. The ENGINEER reserves the right to reject all materials which he deems not equal to those specified, or which he decides will not satisfactorily perform the required functions.

C. As promptly as possible after award of contract, and prior to the purchase of materials, the CONTRACTOR shall submit to the ENGINEER for approval a complete list of all proposed materials. The CONTRACTOR shall include with such list complete catalog data and descriptive literature of all materials.

15. SAMPLES:

The CONTRACTOR shall furnish to the ENGINEER for approval all samples as specified or requested. Unless otherwise specified, the CONTRACTOR shall submit duplicate samples of adequate size showing quality, type color range, finish, texture, or other specified features. The work shall be in accordance with approved samples.

16. MATERIALS, SERVICES AND FACILITIES:

Except as otherwise specifically stated in the Contract Documents, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete and deliver the work within the specified time.

17. INSPECTION AND TESTING OF MATERIALS:

Where specifically provided for in the specifications, the inspection and testing of materials and finished articles to be incorporated in the work at the site shall be made by bureaus, laboratories, or agencies approved by the ENGINEER. The cost of such inspection and testing shall be paid by the CONTRACTOR. The CONTRACTOR shall furnish evidence satisfactory to the ENGINEER that the materials and finished articles have passed the required tests prior to the incorporation of such materials and finished articles in the work. The CONTRACTOR shall promptly segregate and remove rejected materials and rejected finished articles from the site of the work.

18. PATENTS:

The CONTRACTOR shall hold and save harmless the OWNER and its officers, agents, servants, and employees from liability of any nature or kind, including cost and expenses for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the OWNER, unless otherwise specifically stipulated in the Contract Documents.

19. ACCURACY OF DATA AND INTERFERENCES:

A. Before beginning any work, the CONTRACTOR shall examine carefully the site of the work and all contract drawings, and shall verify all dimensions, elevations, and all existing conditions.

B. All work shall be installed to conform as nearly as possible with the dimensions, elevations, locations, and arrangements indicated, with only such minor adjustments as necessary to coordinate the work of the various trades and specification divisions and/or sections: coordinate the work of this contract with that of other contracts; accommodate the actual equipment furnished; avoid all interferences between the various parts of the work; and accommodate existing conditions which may differ from those indicated. Any and all parts of the work installed under this contract which interfere with other parts of the work or other contracts or which deviate from the drawings and specifications without the ENGINEER'S prior approval shall be altered by the CONTRACTOR, at his own expense, to clear such interferences or to comply with the drawings and specifications. All interferences or discrepancies which may be discovered or anticipated shall be reported promptly to the ENGINEER for decision before proceeding with the work. The ENGINEER shall have the privilege of authorizing minor changes without additional cost, provided that such changes are made prior to the commencement of work on the item involved.

20. LINES, GRADES, STAKES, AND TEMPLATES:

A. At his own expense, the CONTRACTOR shall furnish all stakes, templates, patterns, platforms, and labor which may be required in setting and cutting or laying out each part of the work.

B. Upon CONTRACTOR'S request, the ENGINEER will furnish locations and bench marks reasonably necessary for the execution of the work. The CONTRACTOR shall furnish all lines and grades and will be held responsible for the proper execution of the work to such lines and grades. Lines and grade stakes which are destroyed shall be replaced by the CONTRACTOR at his own expense.

21. LAND ACQUISITIONS AND RIGHTS OF WAY:

The properties on which the items included in the contract are to be located will be provided by the OWNER without cost to the CONTRACTOR, and all rights-of-way and easements across private or public property required for the installation of the work will be obtained by the OWNER. The OWNER will make every effort to obtain easements and rights-of-way in sufficient time to allow work to progress in an orderly and expeditious manner. Failure on the OWNER'S part to obtain rights-of-way and easements in sufficient time to cause no interference with the progress of the work will be considered as just cause for allowing extensions of time to the CONTRACTOR in accordance with the time lost because of the lack of rights-of-way and easements.

22. CONTRACT SECURITY:

A. The CONTRACTOR shall furnish Performance and Payment Bonds as security for the faithful performance and payment of all his obligations under the contract documents. These bonds shall be in amounts as shown in the Instructions to Bidders and in the form and with sureties acceptable to the OWNER.

B. The OWNER shall have the right to waive the surety bond requirements, in which case the CONTRACTOR shall reduce his bid price in the amount of the CONTRACTOR'S cost for such security.

23. WAGE RATES:

The CONTRACTOR shall pay at least the minimum wage rates established by law. Such wage rates are minimum rates only, and the OWNER will not consider any claims for additional compensation made by their CONTRACTOR because of payment by the CONTRACTOR of any wage rates in excess of minimum rates, nor will the OWNER consider any claim for additional compensation made by the CONTRACTOR because of wage increases established by law during the life of the contract.

24. SUBCONTRACTING:

A. The CONTRACTOR shall not award any subcontract to any Subcontractor without the ENGINEER'S prior approval. Only those Subcontractors of proven ability whose reputation is known to the ENGINEER for executing first-class work will be approved. The ENGINEER'S approval will not be given until the CONTRACTOR submits to the ENGINEER an itemized written statement designating the name of each Subcontractor and the amount of each subcontract. This statement shall also designate the items of the contract which the CONTRACTOR proposes to execute directly with his own organization. The amount of these items, combined with the amounts of the various subcontract proposals, shall correspond to the contract price for the entire project. The contract will not be signed until all subcontractors have been approved.

B. The CONTRACTOR shall be as fully responsible to the OWNER for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

C. The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind Subcontractors to the CONTRACTOR by the terms of the General Provisions and other Contract Documents insofar as applicable to the work of Subcontractors, and give the CONTRACTOR the same power to terminate any subcontract that the OWNER may exercise over the CONTRACTOR under any provisions of the Contract Documents.

D. Nothing contained in this contract shall create any contractual relation between any Subcontractor and the OWNER. The contractual relationship shall exist between the OWNER and the CONTRACTOR only. It is the CONTRACTOR'S duty, in his own interest, to enter into sub contractual agreements in strict accordance with all provisions of the Contract Documents. The failure of the CONTRACTOR to make the proper agreements with his Subcontractors and suppliers shall in no way relieve the CONTRACTOR of his responsibilities and obligations to the OWNER.

E. The Standard Specifications are grouped under the various divisions and/or sections for convenience of reference only. Each trade involved is not necessarily represented by a separate specification division and/or section, but rather, such divisions and/or sections are arbitrary and the CONTRACTOR will be permitted to allot portions of the work to Subcontractors at his own discretion, subject to the requirements of this Article 24 of the General Provisions, regardless of grouping of the

specifications. It shall be the sole responsibility of the CONTRACTOR to settle definitely with each Subcontractor the portion of the work which each Subcontractor will be required to do. Neither the OWNER nor the ENGINEER will assume any responsibility whatsoever for any claims or disclaims by any of the Subcontractors or trades concerning the responsibility for performing any particular portion of the work, or jurisdiction over any particular type of work.

F. The CONTRACTOR and all Subcontractors for the various branches of work employed on the project shall cooperate fully with each other to facilitate the progress of the work, and to avoid all interferences between the various parts of the work.

G. Whenever his work is in progress, each Subcontractor shall have present at the job site a Job Superintendent, foreman, or other duly authorized agent with authority to control the Subcontractor's work. This duly authorized agent shall meet with the approval of the ENGINEER. The ENGINEER reserves the right to remove from the project the Subcontractor's agent or any other employee of the Subcontractor, if, in the ENGINEER'S judgment, such removal is necessary to protect the OWNER'S interest.

25. PAYMENTS BY CONTRACTORS:

The CONTRACTOR shall pay:

(I) for all transportation and utility services not later than the twentieth (20^{th}) day of the calendar month following that in which such services are rendered;

(2) for all materials, tools, and other expendable equipment to the extent of ninety-five percent (95%) of cost thereof not later than the twentieth (20^{th}) day of the calendar month following that in which such materials, tools, and equipment are delivered to the project site; and

(3) to each of his Subcontractors, not later than the fifth (5^{th}) day following each payment to the CONTRACTOR, the respective amounts allowed the CONTRACTOR on account of the work performed by his Subcontractor, to the extent of each Subcontractor's interest therein.

26. TIME FOR COMPLETION FOR WEATHER DELAYS:

A. WET CONDITIONS: The required time of completion is given in calendar days in the BID. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for completion of the work described in the Contract Documents is a reasonable time for completion of the same, taking into consideration the average climatic range and usual lost time due to normal seasonal weather in this locality.

Time for completion in the Contract Documents includes the average number of days that are lost due to wet conditions. The table below shows the average number of days lost in each month due to wet conditions on outdoors civil projects, as heretofore determined by the Memphis and Shelby County Airport Authority and the Associated General Contractors Association, and it will be used to calculate additional time that will be allowed for time lost due to wet conditions.

For the purpose of consistency, the parties hereby agree that they will use the information contained in the table below as a guide, regardless of any differences in the weather at the site of the Project and the Memphis International Airport. The information in the table below was developed by the Associated General Contractors Association and the Memphis and Shelby County Airport Authority to determine a standard for wet conditions that stop outside work. The table below is not simply a summary of days that it rained, rather, the table shows the average number of days lost in each month due to wet conditions on outdoor civil projects as heretofore determined by the aforesaid parties in relation to one or more outdoor civil projects. This table will be used to calculate additional time that will be allowed for time lost due to wet conditions. The OWNER and the CONTRACTOR agree that it is an acceptable standard and agree to abide by it.

MONTH	AVERAGE DAYS LOST TO NORMAL WET CONDITIONS*
January ……	11.55
February ……..	14.40
March ……..	7.45
April ……	8.40
May …….	7.50
June …….	7.25
July ……..	5.95
August …….	4.85
September ……	5.90
October ……	6.50
November ……	14.85
December ……..	14.50

*Determined by the Memphis and Shelby County Airport Authority in conjunction with the Associated General Contractors Association based on ten (10) consecutive years of Shelby County weather data. The total contract time includes these days that are expected to be lost each month.

Because the Contract Documents prohibit work on Sunday, and because the average number of days of wet weather in the above chart are based on all days of the month and Sundays might or might not be one of such days, to maintain a fair standard for purposes of calculating wet weather days, it will be assumed that an additional two (2.0) wet weather days occurred during each month.

B. ICE, STANDING SNOW AND FROZEN GROUND: In addition to the work being delayed due to wet conditions (see A. above), it is recognized that the work may also be delayed due to certain conditions relating to ice, snow and frozen ground. Loss of working time may also be claimed and allowed for such conditions in accordance with the provisions of this paragraph. The average number of days lost per month in this locality due to ice, standing snow and frozen ground conditions shall be considered to be zero. Lost days due to ice, standing snow and frozen ground conditions may be claimed, however, if it is caused by one or more of the following conditions which prevent outside construction activity or access to the site within a 24-hour period:

1. Ice which does not melt on a substantial portion of the project by 10 a.m.;

2. Temperatures which do not rise above 32 degrees Fahrenheit by 10 a.m.; or
3. Standing snow in excess of one inch (1.00").

C. FURTHER PROVISIONS REGARDING TIME FOR COMPLETION:

(a) A weather delay day may be counted only if worse than average weather prevents work on the project for fifty percent (50%) or more of the CONTRACTOR'S scheduled work day.

(b) The CONTRACTOR must submit a Daily Job Site Work Log showing which and to what extent construction activities have been affected by weather on a monthly basis.

(c) The CONTRACTOR must submit actual weather data to support a claim for the time extension obtained from the nearest NOAA weather station or other independently verified source approved by the Owner at the beginning of the project.

(d) The CONTRACTOR must maintain a rain gauge, thermometer and clock at the job site and keep daily records of precipitation, temperature and the time of each occurrence throughout the project.

(e) The CONTRACTOR must organize the claim documentation to facilitate its evaluation on the basis of calendar month periods and submit it monthly to the Owner.

(f) If an extension of the contract time is appropriate, it shall be affected in accordance with the provisions of Paragraph 27.

(g) No extra cost will be incurred by the OWNER for any extra time increase to the contract.

EXAMPLE: The following example is given for further clarification of how extra time for wet conditions and/or ice, standing snow or frozen ground is to be calculated. If wet conditions were to occur for a total of sixteen (16) days during the month of January, then the extra contract time allowed would be 16 days minus 11.55 days (from table in 26.A.), or 4.45 days, which may be rounded up to the nearest whole day, or 5.0 days, plus 2.0 additional wet weather days for a total of 7.0 days. Also, if during that same month there was standing snow or any combination of conditions as in B. above for three (3) days, then the Contractor would be allowed an extra 3.0 days in addition to the 7.0 days for wet conditions. The Contractor would get a total of 10.0 extra days. No extra cost will be incurred by the Owner for any extra time increase to the Contract.

27. CHANGE OF CONTRACT TIME

The contract time may only be changed by a change order or by a written amendment. Any claim for an adjustment in the contract time shall be based on written notice submitted by the CONTRACTOR within thirty (30) days after the event which caused the delay. The OWNER will render a decision on such a claim within thirty (30) days, and if the OWNER does not render a

decision, a decision denying the claim shall be deemed to have been issued thirty-one (31) days after the claim was received. No extra cost will be incurred by the OWNER for any extra time increase to the Contract.

28. LIQUIDATED DAMAGES:

A. It is hereby understood and mutually agreed, by and between the CONTRACTOR and the OWNER, that the date of beginning and the time for completion as specified in the Contract for the work to be done hereunder are ESSENTIAL CONDITIONS of this contract and that TIME IS OF THE ESSENCE with respect to this contract; it is further mutually understood and agreed that the work embraced in this Contract shall be commenced not later than a date to be specified in the "Notice to Proceed".

B. The CONTRACTOR agrees that said work shall be processed regularly, diligently and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual conditions prevailing in this locality. If the CONTRACTOR shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the OWNER, then the CONTRACTOR does hereby agree, as a part consideration for the awarding of this contract, to pay the OWNER the amount stated in the BID per day, not as a penalty, but as liquidated damages, for such breach of contract, for each and every calendar day that the CONTRACTOR shall be in default after the time stipulated in the contract for completing the work.

C. The aforesaid amount is fixed and agreed upon by and between the CONTRACTOR and the OWNER because both parties recognize that the OWNER and its citizens will suffer actual damages if the CONTRACTOR fails to complete the work within the time specified herein but such damages are indeterminable and difficult to measure at the time of contracting. In making their agreement regarding liquidated damages, the parties have considered, among other things: (a) that this is a public project, i.e. a project being built by the OWNER for the benefit of and use by its citizens and the public generally, and that any delay in its scheduled completion will cause damages to those persons anticipated to use the project, which will be difficult to measure; and (b) that the OWNER'S staff will be required to monitor the CONTRACTOR throughout the pendency of construction, and the longer that construction takes, the longer the owner will be required to devote the services of its personnel and, in some instances employ the services of its consultants, all at additional expense to the OWNER. The CONTRACTOR recognizes the foregoing, and agrees that the amount of liquidated damages fixed and agreed upon herein is a reasonable estimate made at the inception of the Contract and agrees that such is not a penalty.

D. It is further agreed that time is of the essence of each and every portion of this contract and of the SPECIFICATIONS wherein a definite and certain length of time is fixed for the performance of any act whatsoever. Where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence for this Contract. The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the OWNER determines that the CONTRACTOR is without fault and the CONTRACTOR's reason(s) for the time

extension are acceptable to the OWNER. The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay of completion of the work is due:

(a) to unforeseeable cause beyond the control and without the fault or negligence of the CONTRACTOR; or

(b) to any delays of SUBCONTRACTORS or suppliers occasioned by any of the causes specified in subsection (a) immediately above.

Provided, however, that the CONTRACTOR shall, within ten (10) days from the beginning of such delay, notify the OWNER in writing of the causes of the delay. The OWNER shall then ascertain the facts and extent of the delay and notify the CONTRACTOR within a reasonable time of its decision in the matter.

29. NOTICES AND SERVICE THEREOF:

A. All notices, demands, requests, instructions, approvals and claims shall be in writing.

B. Each notice to or demand upon the CONTRACTOR shall be sufficiently given if delivered at the office of the CONTRACTOR shown by him in the BID (or at such other office as the CONTRACTOR may from time to time designate to the OWNER in writing), or sent via facsimile transmission to CONTRACTOR'S fax number, in each case addressed to such office.

C. Unless otherwise specified in writing to the CONTRACTOR, all papers required to be delivered to the OWNER shall be delivered to the ENGINEER, and each notice to or demand upon the OWNER shall be sufficiently given if delivered to the ENGINEER'S office or sent via facsimile transmission to the OWNER'S fax number In each case such shall be addressed to the ENGINEER or to such other representative of the OWNER or to such other address as the OWNER may subsequently specify in writing to the CONTRACTOR for such purposes.

D. Each such notice or demand shall be deemed to have been given or made as of the time of actual delivery if delivered, or, in the case of facsimile transmissions, at the time when same are properly transmitted by telecommunication device.

30. RIGHTS OF THE OWNER TO TERMINATE CONTRACT:

If the CONTRACTOR should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed for the CONTRACTOR or any of his property, or if he should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if he should refuse or fail to make prompt payment to persons supplying labor or material for the work under the Contract, or persistently disregard instructions or fail to observe or perform any provisions of the OWNER'S instructions, or fail to observe or perform any provisions of the Contract Documents, or otherwise be guilty of a violation of any provision of the Contract Documents, then the OWNER may, by at least five (5) days prior written notice to the CONTRACTOR, without prejudice to any other rights or remedies of the OWNER under the circumstances, terminate the CONTRACTOR'S right to proceed with the work. In such event, the

Surety shall take over the work and prosecute it to completion, by contract or otherwise, and the Surety shall be liable for all costs in excess of the contract price. In such case, the Surety may take possession of, and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor. The foregoing provisions are in addition to, and not a limitation of, the rights of the OWNER under all other provisions of the Contract Documents.

31. ASSIGNMENT OF CONTRACT:

The CONTRACTOR shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without the OWNER'S written consent. In case the CONTRACTOR assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the CONTRACTOR shall be subject to prior liens or claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in this Contract.

32. CLAIMS FOR EXTRA COST:

If the CONTRACTOR claims that any instructions by drawings or otherwise involve extra cost or an extension of time, he shall so notify the OWNER in writing within ten (10) days after the receipt of such instructions, and in all cases before proceeding to execute the work. Thereafter, the procedure shall be the same as that described in Article 33, CHANGES IN WORK. No such claim shall be valid unless it is made in accordance with the terms of Article 33.

33. CHANGES IN WORK:

A. At any time, by a written order and without notice to the sureties, the OWNER may make changes in the drawings and specifications of this Contract and within the general scope thereof. In making any change, the charge or credit for the change will be determined by the OWNER by one of the following methods prior to the issuance of the order for the changed work:

(l) Method l: The order shall fix the total lump sum value of the change, and shall establish the amount which shall be added to or deducted from the contract price. On all changes involving extras which will be added to the contract price, the price of the extras shall include the CONTRACTOR'S overhead and profit, which shall be as described in Method (4) below. On all changes which involve a new credit to the OWNER, no allowance for overhead and profit shall be figured, except as otherwise noted in Method (2) below;

(2) Method 2: If the change involves construction items for which unit bid prices are shown in the BID, the amount to be added to or deducted from the contract price shall be determined by multiplying the unit quantities of the items to be added or omitted by the corresponding unit bid prices for the items involved, without further allowance for CONTRACTOR'S overhead and profit;

(3) Method 3: If the work is performed on a unit price basis and the change involves adding construction items for which no unit prices are shown in the BID, the unit prices for the items involved shall be estimated by Method (l) above or Method (4) below, based upon cost data of similar bid items. The amount to be added to the contract price shall be determined by multiplying the unit quantities of the item to be added by this estimated unit price;

(4) Method 4: Upon the OWNER'S order, the CONTRACTOR shall proceed with the work and keep and present to the OWNER, in such form as the OWNER may authorize, a correct account of the total cost of the change, together with all vouchers therefor. The total cost shall be determined as follows:

a. Compute the net cost of the change, which shall include: direct labor and items incidental to labor, such as public liability insurance, workmen's compensation insurance, and social security; materials and sales taxes on materials; the actual use of power tools and equipment; power; and pro-rata charges for foremen.

b. Except as otherwise specified in Paragraph B below, compute an allowance for overhead and profit. This allowance shall not exceed the following percentages of the net cost of the change as determined in Paragraph (4)a above: for all work performed, an allowance of 10% overhead and 10% profit shall be allowed; and an additional allowance of a 5% handling charge may be allowed for work performed by a sub-contractor. In no case shall the 10% overhead and 10% profit be applied to any work which has previously had these allowances added, nor shall the 5% handling charge be applied to any work which is not Subcontracted. The 5% handling charge may be applied to the net cost of the change plus its allowable overhead and profit. Among the items which may be considered as overhead are: bond or bonds; supervision; superintendents; timekeepers; clerks; watchmen; small tools; incidental job burdens; general office expenses; and insurance other than that noted in Paragraph (4)a above.

c. The sum of the amounts computed in accordance with Paragraphs (4)a and (4)b above shall constitute the total cost of the Change Order, except as otherwise specified in Paragraph B below.

B. Where a cash allowance is included in the BID for authorized Contract Amendments or other purposes, the CONTRACTOR shall include in his total bid price all overhead, profit, and handling charges on the stated amount of the allowance. On all changes in the work which are to be paid for by this allowance, the CONTRACTOR shall not add to the net cost of the change any additional overhead and profit or any handling charges. However, if any part of such work is subcontracted, each Subcontractor and Sub-subcontractor may allow himself not more than 10% overhead and 10% profit, as described in Paragraph (4)b above, but shall not include any handling charges.

C. Where required by the OWNER, the CONTRACTOR shall furnish to the OWNER an itemized breakdown of the quantities and prices used in computing the value of each change that may be authorized.

D. In figuring changes, instructions for measurement of quantities as set forth in the specifications shall be followed.

E. During the progress of the work, should the CONTRACTOR encounter, or the ENGINEER or OWNER discover, subsurface or latent conditions at the site differing materially from those shown on the drawings or indicated in the specifications, or unknown conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the drawings and specifications, the ENGINEER'S attention shall be called immediately to such conditions before they are disturbed. The ENGINEER will thereupon promptly investigate the conditions. If he finds that they do materially differ, with the written approval of the OWNER, the Contract will be modified to provide for the increase or decrease of cost and difference in time resulting from such conditions.

34. SANITARY FACILITIES:

Where satisfactory sanitary facilities are not available to the job, the CONTRACTOR shall construct and maintain, at his expense, temporary toilet facilities complying with all local health department requirements and satisfactory to the ENGINEER, and shall remove them after completion of the project.

35. CUTTING AND PATCHING:

A. Generally, cutting of new construction shall be avoided wherever possible by the proper coordination between the various trades, and by the placing of proper sleeves, inserts, bolts, and other items in the construction as the work progresses.

B. However, where subsequent cutting of new construction or cutting of existing construction is required, it shall be done in a neat, careful, and approved manner, without unnecessary or extensive damage to the construction involved, and only to such an extent that is reasonably necessary for the installation of the work.

C. All patching, repairing, and altering shall be done only by mechanics skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

D. All existing construction which is disturbed or damaged in any way by the CONTRACTOR'S operations shall be restored at least to the conditions which existed before work was begun, unless otherwise indicated.

36. REMOVAL OF DEBRIS:

During the progress of the work, the CONTRACTOR shall remove and properly dispose of the resultant dirt and debris and keep the premises reasonably clear thereof. Upon completion of the work he shall: remove all construction equipment and unused materials provided for the work; put all the buildings, structures, and premises in a neat and clean condition; and do all cleaning and washing required by the specifications.

37. USE OF COMPLETED WORK:

A. The ENGINEER may accept a section or sections of a project before the entire project is completed. Such section(s) shall be of reasonable size, as determined by the ENGINEER, and shall be completed in full accordance with the Plans, Specifications and all other applicable provisions of the Contract. The acceptance of a section or sections of a project shall in no way void or alter any of the terms of the Contract.

B. Upon written request to the CONTRACTOR, the OWNER may elect to place any one or more of the approved completed portions of the work in operation, in which event the OWNER shall assume complete and sole responsibility for those portions of the work covered in the written request; provided, however, that nothing contained herein shall relieve the CONTRACTOR of any liability with respect to defective workmanship and materials as provided for under Article 40, GUARANTEE, below.

38. STARTING, TESTING, AND ADJUSTING:

Upon substantial completion of all work under this contract and after the ENGINEER'S preliminary inspection thereof, the CONTRACTOR shall maintain one or more qualified competent workers on the job as required: to put the project in operation; to conduct all specified tests; to make all necessary corrections and adjustments to obtain specified, indicated, and satisfactory operation; and if a trial run is specified in SPECIAL CONDITIONS or the TECHNICAL SPECIFICATIONS, to cooperate with, assist, and instruct the OWNER'S representatives during the required trial run. Failure of the CONTRACTOR to comply with this requirement of the contract shall be considered just cause for delaying final approval and acceptance of the work, delaying the commencement of the guarantee period, and withholding any and all funds which may then be due the CONTRACTOR.

39. TAXES:

The CONTRACTOR shall pay all applicable Federal, State and Local taxes and shall include the total amount of the taxes in the bid price.

40. GUARANTEE

A. All labor and material furnished by the CONTRACTOR covered by the drawings and specifications and official modifications thereof shall be guaranteed by the CONTRACTOR for a period of one (1) year from the date of final acceptance of the completed project by the OWNER. All necessary repairs required during this period due to defective workmanship or material shall be made promptly by the CONTRACTOR without cost to the OWNER at times convenient to the OWNER. An additional one (1) year guarantee period from the date of acceptance of the repaired item by the OWNER shall apply to any such repaired item.

B. The ENGINEER shall have the sole right to establish the beginning of the guarantee period for all portions of the project, and if so stated in the SPECIAL CONDITIONS or the STANDARD SPECIFICATIONS, the guarantee period shall not begin until a trial run has been completed with satisfactory operation, to be determined in the sole discretion of the OWNER, for the period of time

stated in the SPECIAL CONDITIONS or the STANDARD SPECIFICATIONS. It shall be the CONTRACTOR'S duty to make all final adjustments, perform all miscellaneous clean-up work, and conduct all specified performance tests. Final acceptance will not be given until the completion of all final adjustments, clean-up work, and tests.

C. Where certain portions of the project are placed in use before the entire project is completed, the guarantee period for the equipment or items placed in use shall begin prior to the acceptance date of the entire project.

41. SAFETY AND HEALTH REGULATIONS

A. The CONTRACTOR shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54).

B. Authorized representatives of the Department of Labor shall be permitted free access to the project for inspections.

42. ARCHITECTURAL PROVISIONS:

The following provisions shall be applicable in the event that a licensed architect is involved with the Project:

A. The drawings, specifications and other documents prepared by the ARCHITECT are instruments of the ARCHITECT'S service through which the Work to be executed by the CONTRACTOR is described. The CONTRACTOR may retain one contract record set. Neither the CONTRACTOR nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the drawings, specifications and other documents prepared by the ARCHITECT, and unless otherwise indicated the ARCHITECT shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of the drawings, except the Contractor's record set, shall be returned or suitably accounted for to the ARCHITECT, on request, upon completion of the work. The drawings, specifications and other documents prepared by the ARCHITECT, and copies thereof furnished to the CONTRACTOR are for use solely with respect to this Project. They are not to be used by the CONTRACTOR or any Subcontractor, Sub-subcontractor or for additions to this Project outside the scope of the Work without the specific written consent of the OWNER and ARCHITECT. The CONTRACTOR, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the drawings, specifications and other documents prepared by the ARCHITECT appropriate to and for use in the execution of Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the drawings, specifications and other documents prepared by the ARCHITECT. Submittal or distribution to meet official requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the ARCHITECT'S copyright or other reserved rights. PROVIDED, HOWEVER, notwithstanding any provision in this Section 42.A to the contrary, it is understood and agreed that the OWNER shall be the owner of all drawings, specifications and

other documents prepared by the ARCHITECT for this Project and that the OWNER may make any use of same as is lawful.

B. The ARCHITECT will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the CONTRACTOR'S responsibility. The ARCHITECT will not be responsible for the CONTRACTOR'S failure to carry out the Work in accordance with the Contract Documents. The ARCHITECT will not have control over or charge of and will not be responsible for acts or omissions of the CONTRACTOR, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

C. The ARCHITECT will have authority to reject Work, which does not conform to the Contract Documents. Whenever the ARCHITECT considers it necessary or advisable for implementation of the intent of the Contract Documents, the ARCHITECT will have authority to require additional inspection or testing of the Work whether or not such Work is fabricated, installed or completed. However, neither this authority of the ARCHITECT nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the ARCHITECT to the CONTRACTOR, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

D. The ARCHITECT will review and approve or take other appropriate action under the CONTRACTOR'S submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The ARCHITECT'S action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the OWNER, CONTRACTOR or separate contractors, while allowing sufficient time in the ARCHITECT'S professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the CONTRACTOR as required by the Contract Documents. The ARCHITECT'S review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the ARCHITECT, of any construction means, methods, techniques, sequences or procedures. The ARCHITECT'S approval of a specific item shall not indicate approval of an assembly of which the item is a component.

E. The ARCHITECT will interpret and decide matters concerning performance under the requirements of the Contract Documents on written request of either the OWNER or CONTRACTOR. The ARCHITECT'S response to such requests will be made with reasonable promptness and within any time limits agreed upon.

F. Interpretations and decisions of the ARCHITECT will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the ARCHITECT will endeavor to secure faithful performance by both OWNER and CONTRACTOR, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

43. MODIFICATIONS TO GENERAL PROVISIONS

Modifications to these GENERAL PROVISIONS, if any, shall be as specified in SPECIAL CONDITIONS.

[END OF GENERAL PROVISIONS]

SPECIAL CONDITIONS

TABLE OF CONTENTS

1. SCOPE OF THE CONTRACT
2. WORK ITEMS AND MATERIAL NOT LISTED IN THE BID
3. AWARD OF CONTRACT
4. PRE-CONSTRUCTION CONFERENCE
5. LINES, GRADES, STAKES, AND TEMPLATES
6. WATER AND ELECTRICITY FOR CONSTRUCTION
7. LABORATORY TESTING
8. EXISTING UTILITIES, STRUCTURES AND OTHER PROPERTY
9. EXISTING UTILITY RELOCATIONS AND/OR ADJUSTMENTS
10. ACCESS TO PROPERTIES DURING CONSTRUCTION
11. VEHICULAR TRAFFIC AND PEDESTRIAN WARNINGS
12. EROSION AND SILTATION
13. AIR QUALITY PROTECTION
14. CHANGES IN WORK
15. CLEAN UP
16. WEATHER CONDITIONS
17. SUBSTANTIAL COMPLETION
18. PARTIAL OCCUPANCY OR USE
19. FINAL INSPECTION AND FINAL PAYMENT

I. SCOPE OF THE CONTRACT:

A. The work required under a City of Germantown contract includes furnishing and paying for all necessary materials, labor, tools, equipment and other items, and constructing improvements, complete in every detail, ready for the City's beneficial use, as specified herein, and/or indicated on the contract drawings. Typical projects shall consist generally of, but not limited to, the following items:

1. Demolition of Existing Structures
2. Concrete Curbs & Gutters
3. Concrete Sidewalks and Driveways
4. Aggregate Cement Base
5. Asphalt Leveling Courses
6. Asphaltic Concrete Binder and Surface Courses
7. Storm Drainage Inlets, Manholes and Pipe
8. Adjustment to Appurtenances to City Owned Utilities (Water Distribution and Sewer Collection)
9. Traffic Control Marking & Signing
10. Install vehicle detector loops, conduit, pull boxes and connect to controller.
11. Other Related Work.

B. See paragraphs 1 and 10 of the General Provisions.

2. WORK ITEMS AND MATERIAL NOT LISTED IN THE BID:

Cost for work and/or material and/or services not specifically listed in the BID but needed for a complete product as set forth in the Plans and Specifications shall be incidental to the work items listed in the BID, unless otherwise shown on the drawings or specified herein.

3. AWARD OF CONTRACT:

A. See Information for Bidders and Information for Successful Bidder.

B. Instances of conflict between unit price and amount shown in the BID shall be by the unit price. The amount to be considered in the bid will be the product of the quantity shown multiplied by the unit price shown by the bidder.

4. PRE-CONSTRUCTION CONFERENCE:

A. After the Contract is awarded, and incident to the issuance of the Notice to Proceed, the ENGINEER will conduct a pre-construction conference.

B. The CONTRACTOR shall be prepared during the conference to:

1. Present a general sequence of operations, including major work items along with anticipated completion dates.

2. Present a list of all sub-contractors to be used in the execution of the work under this project.

3. Discuss any of the submittals and/or respond to any questions the OWNER may have regarding the submittals.

4. Advise the OWNER of all anticipated construction problems and difficulties with the OWNER'S operations, and present plans to avoid unnecessary interference therewith.

5. Discuss conflicts between the proposed work and any existing utilities with the representatives of the affected utilities. Determine the relocation plans, if required, of the utilities and develop a schedule that will coordinate the relocation plans of the utility with the work.

6. Obtain the interpretation, clarification, and/or the OWNER'S decision concerning requirements of the drawings, specifications, or other contract documents which the CONTRACTOR finds unclear. Discuss any other items pertaining to the work, as desired.

C. The ENGINEER will furnish to the CONTRACTOR written minutes of the Pre-Construction Conference, verifying the interpretations, clarification, instructions, agreements, and other information pertinent to the Project resulting from the conference.

5. LINES, GRADES, STAKES, AND TEMPLATES:

A. The construction horizontal and vertical control staking shall be performed by a licensed engineer or land surveyor acceptable to the OWNER.

B. The following shall be the minimum requirements of the Project for construction control staking:

1. Establish Centerline or Baseline Control

a. Establish in field all control points, P.I.'s, P.C.'s, P.T.'s, P.O.T.'s, etc.
b. Establish in field points on line of Centerline or Baseline.
   1. Maximum 100' intervals for straight tangents
   2. Maximum 50' intervals for horizontal curves
c. The stationing used shall correspond to the Centerline or Baseline stationing used in the plans. All points shall be labeled with the appropriate station.
d. All control points shall be referenced so they may be easily and accurately re-established.
e. The establishment of the Centerline or Baseline Control for the entire Project shall be established before any construction staking will be undertaken.

2. Field notes shall be kept in a Surveyor's Field Book of all construction and staking performed. The Field Book shall be available for review or reference by the OWNER or CONTRACTOR at all times.

C. Prior to final acceptance, the CONTRACTOR shall have a licensed engineer or land surveyor certify that the work has been constructed and completed essentially to the lines and grades shown on the contract drawings. Receipt of said certification under the signed seal of the engineer or land surveyor shall be a condition of release of the final payment for the Contract.

6. **WATER AND ELECTRICITY & GAS FOR CONSTRUCTION:**

A. Water: At no cost to the CONTRACTOR, the OWNER will furnish all necessary water for testing, sterilizing, flushing, dust control and other construction purposes, subject to following conditions:

1. Water will be available from existing facilities at locations designated by the OWNER. The CONTRACTOR shall obtain a fire hydrant use permit. The fee for the permit will be waived; however, the CONTRACTOR should be prepared to provide the estimated

quantity of water to be used. The CONTRACTOR shall provide all necessary hoses, temporary pipework, portable tanks, and other equipment to convey and use water.

2. The CONTRACTOR and subcontractors shall carefully conserve all water, and not waste it unnecessarily. If, in the opinion of the OWNER, the CONTRACTOR is using excessive amounts of water, the OWNER may require the CONTRACTOR to begin paying for all water used after such determination.

B. Electricity: At its own expense, the CONTRACTOR shall provide all electric power & gas for the Project construction.

7. LABORATORY TESTING:

A. The cost of laboratory testing services specified for earth work, concrete work, paving materials, and base course, and the cost of laboratory inspection, and stamping of pipe, fittings, equipment and other materials shall be included in the various unit prices; no separate payment shall be made thereof.

B. The OWNER may, at its own expense, make arrangements for any additional testing services that it may deem appropriate. These tests shall in no way release the CONTRACTOR of his responsibility to provide a quality product meeting the specification requirements for materials and workmanship of the project.

8. EXISTING UTILITIES, STRUCTURES, AND OTHER PROPERTY:

A. The position of pole lines, conduits, water mains, sewers, storm drains, natural gas lines, and other above and below ground utilities and structures is not necessarily shown on the contract drawings. Where shown, the accuracy of the position of such utilities and structures is not guaranteed. Before construction begins, the CONTRACTOR shall inform himself of the exact location of all such utilities and structures, and shall assume all liability for damaging them. Unless otherwise specified, the CONTRACTOR shall support all such utilities and structures, or temporarily remove them, and restore them to the satisfaction of the owners of the utilities and /or structures.

B. After commencing work, the CONTRACTOR shall use every precaution to avoid interfaces with existing underground and surface utilities and structures, and to protect them from damage.

C. The CONTRACTOR shall contact owners of underground utilities to determine the exact location of those utilities before performing any construction in the immediate vicinity of those respective utilities. Contact for relocation shall be made through the Tennessee One Call service, telephone number 1-800-351-1111. The location of the services must be requested three (3) days prior to digging.

Utility	Owner	Telephone
Gas and Electricity	Memphis Light, Gas, and Water	901-367-3300 (Hickory Hill Work Center)
Sewer and Water	City of Germantown	901-757-7350
Cable Television	Comcast	800-351-1111
Telephone	AT&T	800-351-1111
Traffic Signal	City of Germantown	901-757-7281

D. The CONTRACTOR shall repair or pay for any damage caused by his operations to all utility property, and private property whether it is above or below ground, and he shall settle in total cost all damage suits which may arise as a result of his operations.

9. EXISTING UTILITY RELOCATIONS AND/OR ADJUSTMENTS:

A. All relocations and/or adjustments required for electrical facilities, natural gas mains and service lines, and related appurtenances shall be performed by Memphis Light, Gas, and Water.

B. Telephone lines and cables, above and below ground, shall be relocated and/or adjusted as needed by AT&T Telephone Company.

C. Television cable lines shall be relocated and/or adjusted as necessary by Comcast.

D. If the plans for the Project provide for relocation and/or adjustment of sanitary and/or related service lines and/or storm drainage facilities, the CONTRACTOR shall be responsible for performing such work at his expense.

E. The CONTRACTOR shall cooperate fully with each of the companies named in A, B, and C above. The CONTRACTOR shall cooperate and schedule his work with these utilities to avoid all interference with each utility's and CONTRACTOR'S work.

F. Existing utilities and telecom lines located within the City's right of Way and on City projects will be relocated or adjusted by the appropriate utility/telecom provider at no cost to the Contractor

10. ACCESS TO PROPERTIES DURING CONSTRUCTION:

A. Each property owner affected by the Project will be provided with continuous access to his respective property. The CONTRACTOR shall plan his work so as to ensure this. When the situation requires, the CONTRACTOR shall provide signage and barricades to redirect local traffic to the appropriate detour.

B. Failure to provide appropriate signage and barricades shall be cause for the OWNER to stop work on all activities associated with the Project.

11. VEHICULAR TRAFFIC AND PEDESTRIAN WARNINGS:

The Contractor shall:

A. Schedule and perform all work to interfere as little as possible with vehicular and pedestrian traffic flow. Poor planning and gross inconsideration of traffic flow will be just cause to stop the CONTRACTOR'S work until the unsatisfactory conditions have been remedied.

B. Mark clearly all open ditches, open excavations, soft backfill, parked equipment, etc. with signs, fences, and/or barricades during daytime hours, and, in addition, with lights at night and maintain all flares, signs, fences, and/or barricades during weekend, holiday and all other times when work is not in progress.

C. Provide adequate signage, barricades, fences, and watchmen to comply with the requirements of all authorities having jurisdiction, and, as necessary, for the safety and convenience of the general public.

D. All traffic control shall conform to Section VI of the Manual on Uniform Traffic Control Devices as adopted by the Federal Highway Administration and the Tennessee Department of Transportation.

E. All existing structures, trees, fences, etc. that are not required to be removed in the execution of the work shall be preserved as specified in the appropriate sections of the Technical Specifications portion of this document.

12. EROSION AND SILTATION:

The Contractor shall:

A. During Project construction, use every precaution and make all provisions as required to minimize erosion and siltation, and to prevent damage to adjacent properties by erosion and siltation resulting from performance under this Contract.

B. All adjacent properties damaged by erosion and/or siltation resulting from this Project are shall be restored to at least pre-construction conditions by the CONTRACTOR.

13. AIR QUALITY PROTECTION:

A. General: The CONTRACTOR shall use suitable precautions to minimize air pollution during the progress of the work. The CONTRACTOR shall maintain all excavations, stockpiles, and all other work areas within and without the Project boundaries free from dust that would cause the standards for air pollution to be exceeded, thus causing a hazard or nuisance to others. All equipment utilized for dust control shall be of safe design and/or of sufficient capacity for the intended work. The CONTRACTOR shall perform dust control as the work

proceeds and when a dust hazard or nuisance occurs.

B. Burning: No burning will be permitted.

14. CHANGES IN WORK:

A. See Paragraph 33 of the General Provisions.

B. If conditions described in Paragraph 33E of the General Provisions are encountered and the CONTRACTOR fails to notify the ENGINEER and/or proceeds to work in area(s) without written permission from the ENGINEER, the CONTRACTOR shall assume full responsibility for all work performed. All unacceptable work performed under these conditions shall be promptly repaired or replaced at the CONTRACTOR'S expense with no cost to the City. No extra cost shall be allowed for any work performed in the area(s) described in Paragraph 33E without written approval from the ENGINEER.

15. CLEAN UP:

In addition to the requirements of Paragraph 36 of the General Provisions, the site and structures to be constructed thereon shall be maintained and kept clean and free of rubbish, unused materials, and equipment during the construction period. The CONTRACTOR shall remove all dirt, rubbish, and surplus materials of all descriptions, including equipment not in use, and maintain the site in a neat and orderly condition, all as approved by the OWNER in its sole discretion. Materials and equipment known to belong to others shall not be removed from the site without duly notifying the owner thereof.

16. WEATHER CONDITIONS:

In the event of temporary suspension of work, or during a period of inclement weather, or whenever the ENGINEER shall direct, the CONTRACTOR will protect, and will cause his subcontractor(s) to protect, the CONTRACTOR'S and the respective subcontractor's work and materials against damage or injury from the weather. If, in the opinion of the ENGINEER, any work or materials are damaged by reason of the failure of the CONTRACTOR or any of his subcontractors to protect said work or materials, such work or materials shall be removed and replaced at the expense of the CONTRACTOR.

17. SUBSTANTIAL COMPLETION:

A. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the OWNER can occupy or utilize the Work for its intended use.

B. When the CONTRACTOR considers that the Work, or a portion thereof which the OWNER agrees to accept separately, is substantially complete, representatives of the OWNER and the CONTRACTOR will make a thorough inspection of the entire Project and prepare a

"Punch List" of all items requiring correction or additional work prior to final payment. Failure to include an item on such list does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents.

C. Upon receipt of the CONTRACTOR'S Punch List, the ENGINEER or the OWNER'S designee (as applicable) will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection by the ENGINEER or the OWNER'S designee (as applicable) discloses any item, whether or not included on the CONTRACTOR'S Punch List, which is not sufficiently complete in accordance with the Contract Documents so that the OWNER can occupy or utilize the Work or designated portion thereof for its intended use, the CONTRACTOR shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the ENGINEER, or the OWNER'S designee, (as applicable). In such case, the CONTRACTOR shall then submit a request for another inspection by the ENGINEER or OWNER'S designee to determine Substantial Completion.

D. When the Work or designated portion thereof is substantially complete, the ENGINEER or OWNER'S designee will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion, shall establish responsibilities of the OWNER and CONTRACTOR for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the CONTRACTOR shall finish all items on the Punch List accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

E. The Certificate of Substantial Completion shall be submitted to the OWNER and CONTRACTOR for their written acceptance of responsibilities assigned to them in such Certificate.

18. PARTIAL OCCUPANCY OR USE:

A. The OWNER may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated in accordance with the Special Conditions herein contained, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the OWNER and CONTRACTOR have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the CONTRACTOR considers a portion substantially complete, the CONTRACTOR shall prepare and submit a Punch List to the ENGINEER or OWNER'S designee (as applicable) as provided under Section 17.

B. Immediately prior to such partial occupancy or use, the OWNER, the CONTRACTOR and ENGINEER or OWNER'S designee (as applicable) shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

19. <u>FINAL INSPECTION AND FINAL PAYMENT</u>:

A. After the CONTRACTOR has corrected all of the items listed on the Punch List to the satisfaction of the ENGINEER or the OWNER'S designee (as applicable), the ENGINEER or the OWNER'S designee (as applicable) will notify the CONTRACTOR, in writing, that the project is accepted (i.e., the "Notice of Acceptance") and final payment will be made to the CONTRACTOR not less than thirty (30) days thereafter.

B. The CONTRACTOR'S one (1) year guarantee period will commence with the date of the Notice of Acceptance. All necessary repairs required during this period due to defective workmanship or material shall be made promptly by the CONTRACTOR without cost to the OWNER at times convenient to the OWNER. An additional one (1) year guarantee period from the date of acceptance of the repaired items by the OWNER shall apply to any such repaired item.

C. Neither final payment nor any retained percentage shall become due until the CONTRACTOR submits to the OWNER: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the OWNER or the OWNER'S property might be responsible or encumbered (less amounts withheld by OWNER) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the OWNER; (3) a written statement that the CONTRACTOR knows of no reason that the insurance will not be renewed to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; and (5) other data requested by the OWNER establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the OWNER. If a Subcontractor refuses to furnish a release or waiver required by the OWNER, the CONTRACTOR may furnish a bond satisfactory to the OWNER to indemnify the OWNER against such lien. If such lien remains unsatisfied after payments are made, the CONTRACTOR shall refund to the OWNER all money that the OWNER may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

D. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the CONTRACTOR or by issuance of Change Orders affecting final completion, the OWNER may in the OWNER'S sole and absolute discretion, upon application by the CONTRACTOR without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the

Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the ENGINEER or OWNER'S representative (as applicable) prior to certification of such payment. Such payment, if any, shall be made under terms and conditions governing final payment.

E. The making of final payment shall not constitute a waiver of claims by the OWNER.

F. Acceptance of final payment by the CONTRACTOR, a Subcontractor or material supplier shall constitute a waiver of claims by that payee.

[END OF SPECIAL CONDITIONS]

PRIME CONTRACTOR NAME & ADDRESS

_____

_____

_____

License Number _____

Date of Expiration _____

Classification _____

SUBCONTRACTORS

ELECTRICAL:

Name _____

Address _____

City & State _____

Expiration Date _____

Classification _____

PLUMBING:

Name _____

Address _____

City & State _____

Expiration Date _____

Classification _____

HVAC:

Name _____

Address _____

City & State _____

Expiration Date _____

Classification _____

MASONRY:

Name _____

Address _____

City & State _____

Expiration Date _____

Classification _____

BID DUE

Date _____

Time _____

Project Name _____

ATTENTION: ALL CONTRACTORS

State law (Tennessee Code Annotated, Section 62-6-119) requires that the name, license number, expiration date thereof, and license classification of the contractors applying to bid for the prime contract and for the electrical plumbing, heating, ventilation and air conditioning contracts appear on the outside of the envelope containing the bid except when the bid is in an amount less than $25,000. Effective July 1, 2010, the amendment to Public Chapter 78 now requires the Masonry contractor to also be listed on the bid envelope, unless the portion is less than $100,000 (including materials and labor). Failure to include the aforesaid information on this envelope will result in your bid not being opened and disqualifying your bid from consideration.

CITY OF GERMANTOWN
Procurement Department
1930 South Germantown Road
Germantown, Tennessee 38138