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|---|---|---|---------------------------------|---------------|-----------|--------------------|------------|-----------------|--|--|--|
| SUBMIT BIDS TO: | CITY OF TUSCALOOSA P.O. BOX 2089 TUSCALOOSA, AL 35403 | PURCHASING OFFICE 2201 UNIV. BLVD. TUSCALOOSA, AL 35401 | INVITATION TO BID | | | | | | | | |
| BID TITLE CITYVIEW CIVIC PLATFORM SOFTWARE | | | BID NO. 4030-102517-1 | | | | | | | | |
| PAGE 1 OF 40 PAGES | BIDS WILL BE OPENED AT 2:00 PM ON OCTOBER 25, 2017 IN THE OFFICE OF THE PURCHASING AGENT, 2201 UNIVERSITY BLVD. TUSCALOOSA, AL 35401 AND MAY NOT BE WITHDRAWN FOR THIRTY (30) DAYS AFTER SUCH DATE & TIME. | | ISSUE DATE 10/11/2017 | | | | | | | | |
|  <p>MAYOR WALTER MADDOX</p> <p>COUNCIL MEMBERS</p> <table border="0"> <tr> <td>PHYLLIS W. ODOM</td> <td>MATTHEW CALDERONE</td> </tr> <tr> <td>RAEVAN HOWARD</td> <td>KIP TYNER</td> </tr> <tr> <td>CYNTHIA LEE ALMOND</td> <td>EDDIE PUGH</td> </tr> <tr> <td>SONYA MCKINSTRY</td> <td></td> </tr> </table> <p>PURCHASING AGENT DAVID COGGINS</p> | | PHYLLIS W. ODOM | MATTHEW CALDERONE | RAEVAN HOWARD | KIP TYNER | CYNTHIA LEE ALMOND | EDDIE PUGH | SONYA MCKINSTRY | | <p>Vendor Information (SECTION TO BE COMPLETED BY VENDOR)</p> <hr/> <p>Company Name (Please Print)</p> <hr/> <p>Phone Number Fax Number</p> <hr/> <p>Email Address</p> | |
| PHYLLIS W. ODOM | MATTHEW CALDERONE | | | | | | | | | | |
| RAEVAN HOWARD | KIP TYNER | | | | | | | | | | |
| CYNTHIA LEE ALMOND | EDDIE PUGH | | | | | | | | | | |
| SONYA MCKINSTRY | | | | | | | | | | | |

GENERAL CONDITIONS OF INVITATIONS TO BID

1. PREPARATION OF BIDS

Bids will be prepared in accordance with the following:

- (a) Our enclosed Bid Proposal Form is to be used in submitting your bid.
- (b) All information required by the Bid form shall be furnished. The bidder shall print or type his name and manually sign the schedule and each continuation sheet on which any entry is made.
- (c) Unit prices shall be shown and where there is an error in extension of price, the unit price shall govern.
- (d) Proposed delivery time must be shown and shall include Sundays and holidays.
- (e) Bidder will not include federal taxes nor State of Alabama sales, excise, and use taxes in bid prices as the City is exempt from payment of such taxes. An exemption certificate will be signed where applicable upon request.
- (f) Bidders shall thoroughly examine the drawings, specifications, schedule, instructions and all other contract documents.
- (g) Bidders shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the bid conditions. No plea of ignorance by the bidder of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.
- (h) Bidders are advised that all City Contracts are subject to all legal requirements provided for in the Purchasing ordinance and/or State and Federal Statutes.

2. DESCRIPTION OF SUPPLIES

- (a) Any manufacturer's names, trade names, brand name, or catalog numbers used in specifications are for the purpose of describing and establishing general quality levels. SUCH REFERENCES ARE NOT INTENDED TO BE RESTRICTIVE. Bids will be considered for any brand which meets the quality of the specifications listed for any items.
- (b) Bidders are required to state exactly what they intend to furnish, otherwise they shall be required to furnish the items as specified.
- (c) Bidders will submit, with their proposal, data necessary to evaluate and determine the quality of the item(s) they are bidding.

3. SUBMISSION OF BIDS

- (a) Bids and changes thereto shall be enclosed in sealed envelopes addressed to David Coggins, Purchasing Agent, 2201 University Blvd., Tuscaloosa, Alabama 35401. The name and address of the bidder, the date and hour of the bid opening and the material or service bid on shall be placed on the outside of the envelope.
- (b) Bids must be submitted on the forms furnished. Telegraphic bids will not be considered.

4. REJECTION OF BIDS

- (a) The City may reject a bid if:
 - 1. The bidder misstates or conceals any material fact in the bid, or if,
 - 2. The bid does not strictly conform to the law or requirement of bid, or if,
 - 3. The bid is conditional, except that the bidder may qualify his bid for acceptance by the City on an "all or none" basis, or a "low item" basis. An "all or none" basis bid must include all items upon which bids are invited.
- (b) The City may, however, reject all bids whenever it is deemed in the best interest of the City. The City may also waive any minor informalities or irregularities in any bid.

5. WITHDRAWAL OF BIDS

- (a) Bids may not be withdrawn after the time set for the bid opening for a period of time as specified.
- (b) Bids may be withdrawn prior to the time set for the bid opening.
- 6. LATE BIDS OR MODIFICATIONS**
- (a) Bids and modifications received after the time set for the bid opening will not be considered.
- (b) Modifications in writing received prior to the time set for the bid opening will be accepted.
- 7. CLARIFICATIONS OR OBJECTION TO BID SPECIFICATIONS**
- If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of the specifications or other bid documents of any part thereof, he may submit to the Purchasing Agent on or before five (5) days prior to scheduled opening a request for clarification. All such requests for information shall be made in writing and the person submitting the request will be responsible for its prompt delivery. Any objection to the specifications and requirements as set forth in this bid must be filed in writing with the Purchasing Agent on or before five (5) days prior to scheduled opening.
- 8. DISCOUNTS**
- (a) Bidders may offer a cash discount for prompt payment; however, such discounts shall NOT be considered in determining the lowest net cost for bid evaluation purposes. Bidders are encouraged to reflect cash discounts in the unit prices quoted.
- (b) In connection with any discount offered, time will be computed from the date of receipt of supplies or services or from the date a correct invoice is received, whichever is the later date. Payment is deemed to be made on the date of mailing of the check.
- 9. SAMPLES**
- Samples, when required, must be submitted within the time specified at no expense to the City of Tuscaloosa. If not destroyed or used up during testing, samples will be returned upon request at the bidder's expense, unless stated otherwise in Special Conditions or Specifications. Each individual sample must be labeled with bidder's name and manufacturer's brand name and number.
- 10. AWARD OF CONTRACT**
- (a) The contract will be awarded to the lowest responsible bidder based upon the following factors: quality; conformity with specifications; purpose for which required; terms of delivery; transportation charges; dates of delivery.
- (b) The city reserves the right to accept and award item by item, and/or by group, or in the aggregate, unless the bidder qualifies his bid by specified limitations. Re Par.4(a)3.
- (c) If two or more bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder.
- (d) Prices quoted must be FOB Destination to Tuscaloosa with all transportation charges prepaid unless otherwise specified in the Invitation to Bid.
- (e) A written award of acceptance (Purchase Order), mailed or otherwise furnished to the successful bidder shall result in a binding contract.
- 11. DELIVERY**
- (a) Deliveries are to be FOB Destination unless otherwise specified in the Invitation to Bids.
- (b) Deliveries are to be made during regular business hours.
- 12. CONDITION OF MATERIALS AND PACKAGING**
- All items furnished must be new and free from defects. No others will be accepted under the terms and intent of this bid. All containers shall be new and suitable for storage or shipment, and price bid shall include standard commercial packaging.
- 13. CLAIMS**
- Successful bidder(s) will be responsible for making any and all claims against carriers for missing or damaged items.
- 14. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**
- Bidders shall comply with all local, state, and federal directives, orders and laws as applicable to this bid and subsequent contract(s).
- 15. PROVISION FOR OTHER AGENCIES**
- Unless otherwise stipulated by the bidder, the bidder agrees when submitting his bid to make available to all City agencies, departments, and in-city municipalities the bid prices he submits, in accordance with the bid terms and conditions, should any said department, agency, or municipality wish to buy under this proposal.
- 16. COLLUSION**
- The bidder, by affixing his signature to this proposal, agrees to the following: "Bidder certifies that his bid is made without previous understanding, agreement, or connection with any person, firm, or corporation making a bid for the same items and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action".
- 17. VARIANCE IN CONDITIONS**
- Any and all special conditions and specifications attached hereto which vary from General Conditions shall have precedence.
- 18. MINORITY / DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**
- The City of Tuscaloosa has voluntarily adopted a Minority / Disadvantaged Business Enterprise ("MBE/DBE/WBE") Program called Tuscaloosa Builds, which is designed to encourage the participation and development of minority and disadvantaged business enterprises and to promote equal business opportunities to the fullest extent allowed by state and federal law. To learn more about this program, visit <http://www.tuscaloosarecovery.com/blog/category/tuscaloosa-builds/>.

SPECIAL CONDITIONS

The General Conditions of Invitations to Bid and any Special Conditions stated shall be considered as part of the specifications of the bid.

Awards shall be made or contracts entered into with the lowest responsible bidder(s) meeting all specifications and terms and conditions established by the Division of Purchasing. The Division of Purchasing reserves the right to determine the lowest responsible bidder on the basis of an individual item or group of items. Delivery dates may be a factor in awards.

The successful bidder will be required to enter into a contract with the City of Tuscaloosa prior to notice to proceed. This contract will be substantially similar to the sample contract included with this bid document.

The term of this contract shall be for a period of one (1) year from the date of the Purchase Order and contract execution hereof and shall automatically renew each year for up to four (4) years for a total maximum contract term of five (5) years from the date of execution hereof, unless sooner terminated pursuant to the provision herein provided. However, either party may elect not to renew the contract by giving the other party thirty (30) days written notice prior to the anniversary date, in which event the contract shall terminate on the anniversary date.

Questions concerning the bid process should be directed to David Coggins at (205) 248-5186 or dcoggins@tuscaloosa.com (e-mail is preferred). Questions concerning Specifications should be directed to Chuck Crocker at ccrocker@tuscaloosa.com.

Any addendums issued for this bid will be posted on the City Of Tuscaloosa website at <http://www.tuscaloosa.com/e-services/bids>. It is the responsibility of the bidder to check this page for any addendums before submitting their bid.

Vendor to submit the following:

- Signed Special Conditions page
- Any necessary descriptive literature and/or specifications information as outlined above and/or elsewhere in this document
- Completed and signed Specifications/Bid Submissions pages
- Completed and signed Bidder's Response Form

NOTE: Sheet(s) submitted without Company Name & Signature WILL NOT be considered for bid award.

VENDOR MUST SUBMIT AN ORIGINAL BID AND ONE COMPLETE COPY OR THE BID MAY BE REJECTED.

Bid submissions shall be submitted in a sealed envelope and addressed to: David Coggins, Purchasing Agent, 2201 University Blvd., Tuscaloosa, AL 35401. The name and address of the bidder, the date and hour of the bid opening and the Bid Title shall be placed on the outside of the envelope.

SPECIFICATIONS

The City of Tuscaloosa intends to purchase the software CityView Suite Version 2017.8 (or higher) as a result of this Invitation to Bid. The City of Tuscaloosa has identified this software as the only available product which will provide a direct upgrade from our current BluePrince permitting software and which will interface with other related applications currently in use at the City of Tuscaloosa. Therefore, bids for alternate products and brands will not be considered.

This software package purchase shall include the following:

1. CityView Suite Version 2017.8 or higher and shall include the following CityView Suite modules:
 - a. Property Information
 - b. Permits & Inspections
 - c. Planning
 - d. Code/ByLaw Enforcement
 - e. Licensing
 - f. Rental Housing
 - g. Cashiering
2. CityView Suite Extensions, including:
 - a. CityView Electronic Plans Review
 - b. CityView Mobile
 - c. CityView Portal
 - d. GIS Integration
 - e. Microsoft Outlook Add-In
 - f. Microsoft Word Add-In
 - g. Microsoft Exchange Extension
 - h. Web Services Extension
 - i. Application Builder
 - j. Electronic Document Management System Integration
 - i. This integration shall be to the City of Tuscaloosa's existing Laserfiche Document Management System
3. Hosted Software as a Service (SaaS), including maintenance, support, version updates and data storage.
4. Complete implementation of CityView Suite and all CityView Extensions. Implementation schedule to be agreed upon by the City of Tuscaloosa and successful bidder prior to contract execution.
5. Training on CityView software for City personnel. Training schedule to be agreed upon by City of Tuscaloosa and successful bidder prior to contract execution.
6. Information and specifications for the following shall be provided:
 - a. Will SaaS or Cloud-Based data be accessible for purposes of using 3rd party analytics and reporting packages? Information provided shall be sufficient for the City of Tuscaloosa to determine if our data will be accessible for these purposes.

7. Pricing Information for 50 Concurrent Users shall be provided as follows:
- a. Annual cost for each item included under sections 1, 2 and 3
 - b. Total cost for Item 4
 - c. Total cost for Item 5

Information provided shall be sufficient for the City of Tuscaloosa to ascertain annual software as a service (SaaS) costs, including maintenance, support, and version updates.

Information provided shall be sufficient for the City of Tuscaloosa to ascertain total one-time costs for Implementation (Item 4) and Training (Item 5).

Pricing information shall also include per days costs for the following Additive Alternates:

- i. Training
- ii. System Configuration
- iii. System Consulting
- iv. Additional User Licenses (cost per license to add 1 or more concurrent user licenses)

The Additive Alternate items immediately above may or may not be used or procured during the scope of the agreed upon contract.

BID SUBMISSIONS

| ITEM NO. | DESCRIPTION | BID AMOUNT |
|----------|--|------------|
| 1. | Annual Cost - CityView Suite Version 2017.8 or higher | |
| 2. | Annual Cost - CityView Suite Extensions | |
| 3. | Annual Cost - Hosted Software as a Service (SaaS) | |
| 4. | Complete Implementation of CityView Suite & Extensions | |
| 5. | Training for CityView Suite & Extensions | |
| | TOTAL BID AMOUNT | |

* Bid Amounts for Item Nos. 1-5 shall be the total cost for 50 Concurrent Users

ADDITIVE ALTERNATES

| ITEM NO. | DESCRIPTION | BID AMOUNT |
|----------|--|------------|
| A1. | Per Day Cost – Additional Training | |
| A2. | Per Day Cost – Additional System Configuration | |
| A3. | Per Day Cost – Additional System Consulting | |
| A4. | Per User Cost – Additional License for One (1) Concurrent User | |

* Additive Alternates are for goods & services not included in the initial purchase and implementation.

BIDDER'S RESPONSE FORM

MESSAGE TO BIDDERS: Please review your bid documents for accuracy, completeness, required documentation, and necessary signatures before submitting. Please label the outer mailing/shipping package with the bid information as directed.

COMPANY NAME: _____

CONTACT PERSON: _____

COMPLETE MAILING ADDRESS: _____

AUTHORIZED SIGNATURE: _____

PRINTED NAME: _____

TELEPHONE NUMBER: _____

E-MAIL ADDRESS: _____

DELIVERY TIME: _____

COPIES SUBMITTED:

_____ **VENDOR MUST SUBMIT AN ORIGINAL BID AND ONE COMPLETE COPY OR THE BID MAY BE REJECTED.**

Awarded bidder(s) may be required to obtain a City of Tuscaloosa business license in order to provide goods and/or services in response to this bid and subsequent contract(s). Inquiries regarding business license requirements should be directed to the City's Revenue & Financial Services Division at (205) 248-5200. Failure to obtain and maintain required city business license(s) may result in rescinding of bid award and contract termination.

Note: By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

FAILURE TO COMPLETE ALL OF THE ABOVE WITH AN AUTHORIZED SIGNATURE MAY SUBJECT BID TO REJECTION.

SAMPLE CONTRACT

**CITY OF TUSCALOOSA, ALABAMA
PUBLIC WORKS CONTRACT DOCUMENTS**

WALTER MADDOX, MAYOR

CITY COUNCIL OF TUSCALOOSA

Council Members:

- Phyllis Odom**
- Raevan Howard**
- Cynthia Almond**
- Matthew Calderone**
- Kip Tyner**
- Edwin Pugh**
- Sonya McKinstry**

Glenda Webb, City Attorney

PROJECT: _____

OCA FILE NO.: _____ **ENGINEERING PROJECT NO.:** _____

FOR: _____

(2017)

STATE OF ALABAMA)
TUSCALOOSA COUNTY)
CITY OF TUSCALOOSA)

CITY OF TUSCALOOSA PUBLIC WORKS CONTRACT DOCUMENTS

SECTION FIVE
CONTRACT AGREEMENT
(2017)

THIS AGREEMENT made and entered into this ____day of _____, 20____, by and between _____, hereinafter sometimes called the CONTRACTOR, as party of the first part, and the CITY OF TUSCALOOSA, Alabama, a Municipal Corporation, hereinafter sometimes called the CITY or OWNER, as party of the second part,

W-I-T-N-E-S-S-E-T-H:

In consideration of the amounts herein named and of the mutual agreements and provisions herein contained, the Contractor and the City agree in regard to a public works project (hereinafter either the "work" or the "Project") as described in the Advertisement for Bids.

The Contractor will perform the work and/or construct the Project as well as furnish at his own cost and expense all labor, tools, equipment and transportation as are herein and in the Contract documents required to be furnished by the Contractor, and shall perform all the work in a manner and form required to construct the Project described in and shown on the contract documents as the same are hereinafter more specifically described and as provided by the plans, specifications and documents which are attached hereto and made a part hereof, as if fully set out herein and addenda together with all plans and drawings on file in the office specified below.

ARTICLE I. GENERALLY

A. **Contract Documents:** As used throughout the documents constituting the contract, the term "Contract Documents" shall mean and include the following: Advertisement for Bids, Addenda (if issued), the Instructions to Bidders, the Bid Proposal, the General Specifications, the Detail Specifications, Supplemental and Special Conditions (if attached), together with this Contract Agreement and any modifications, including change orders, if made, and the drawings, plans and profiles that are now on file in the office referred to in the advertisement, the Performance Bond and the Labor and Material Bond, executed by the Contractor in connection with this Contract and insurance requirements and certificates.

All such documents hereinabove enumerated are adopted herein by reference and constitute the Contract between the parties to the same extent as if each were set out in full in this agreement.

B. **Independent Contractor:** The Contractor enters into this Contract with the City as an independent contractor and, as such, agrees that neither the City nor its officers, agents, employees or inspectors shall be responsible for the acts or omissions of the Contractor, or any subcontractor, or any of the Contractor's or subcontractor's agents or employees, or any other persons performing any of the work pursuant to this Contract. The Contractor shall be solely responsible for controlling construction manner, means and techniques consistent with the contract documents, plans and specifications.

C. **Order of Precedence:** Should there be a direct conflict between the various elements of the contract documents to the extent that the same cannot be reconciled to be read *in para materia*, then precedence shall be given the same in the following order:

- 1. Subsequent modifications (change orders or amendments) to contract agreement after execution

2. Addenda (if issued)
3. Supplemental general conditions and special conditions (if included)
4. The Contract Agreement
5. General and technical specifications
6. Large Scale Drawings (if included)
7. Enlarged Plans (if included)
8. Plans (if included)
9. Instructions to bidders
10. Advertisement for bids
11. Proposal (Bid)
12. Purchasing Agent Appointment Agreement (if utilized)

Where more than one document relates to the same matter if both can be given reasonable effect both are to be retained. Written specifications will take precedence over drawings.

D. Integration; Contract Terms and Construction:

1. Integration: This Agreement, together with all documents which constitute the "Contract Documents," constitute the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. All understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.
2. Amendment in Writing: This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement or change order, in writing, properly executed by all of the parties.
3. Binding Effect: This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns.
4. Captions: The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend, or limit the scope or intent of this Agreement.
5. Construction: This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.
6. Mandatory and Permissive: "Shall," "will," and "agrees" are mandatory; "may" is permissive.
7. Governing Laws: The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.
8. Ownership of Contract Documents: The Contract Documents, and copies of parts thereof, are furnished and owned either by the City or the design professional. All portions of the Contract Documents, and copies of parts thereof, are the instruments of service for this Project. They are not to be used on other work and are to be returned to the City on request at the completion of the Project. Any reuse of these materials without specific written verification or adaptation by the City will be at the risk of the user and without liability or legal expense to the City or Engineer/Architect. Such user shall hold the City and Engineer/Architect harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adoption shall entitle the City to further compensation at rates to be agreed upon by the user and the City.

E. Rules of Construction: For the purposes of this contract, except as otherwise expressly provided or unless the context otherwise requires:

1. Words of masculine, feminine or neuter gender include the correlative words of other genders. Singular terms include the plural as well as the singular, and vice versa.

2. All references herein to designated "articles," "sections," and other subdivisions or to lettered exhibits are to the designated articles, sections and subdivisions hereof and the exhibits annexed hereto unless expressly otherwise designated in context. All article, section, other subdivision and exhibit captions herein are used for reference only and do not limit or describe the scope or intent of, or in any way affect this agreement.
 3. The terms "include," "including," and similar terms shall be construed as if followed by the phrase, "without being limited to".
 4. The terms "herein," "hereof," and "hereunder," and other words of similar import refer to this agreement as a whole and not to any particular article, section, other subdivision or exhibit.
 5. All recitals set forth in, and all exhibits to, this agreement are hereby incorporated in this agreement by reference.
 6. No inference in favor of or against any party shall be drawn from the fact that such party or such party's counsel has drafted any portion hereof.
 7. All references in this agreement to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.
- F. **Construction Manager - Multiple Trade Contracts:** If indicated in the Advertisement for Bids, the City has elected to engage the services of a Construction Manager for the work on this Project. If so, the same will be indicated in the bid packages and special supplemental conditions will be attached in regard to trade contracts. Contractor, as one of the multiple trade contractors on the Project shall adhere to all terms and conditions of the contract documents, particularly the supplemental conditions regarding multiple trade or multiple prime contractors. Any provision of the general conditions in direct conflict with the supplemental conditions is superseded to the extent of the conflict. If using a Construction Manager format, then this shall be a multiple trade or multiple prime contract agreement subject to the supervision and direction of a Construction Manager, in accordance with the terms and provisions of the Construction Manager's agreement with the City, which agreement is adopted herein by reference.
- G. **Coordination of Plans, Specifications, etc.:** The specifications, the plans, drawings and all supplementary documents are essential parts of the Contract, and requirements occurring in one are as binding as though occurring in all. They are intended to be comprehensive to describe and provide a complete work. In case of discrepancy, figured dimensions shall govern.
- H. **Corrections of Plans, etc.:** Should any portions of the plans, specifications or drawings be obscure or in dispute, they shall be referred to the Engineer/Architect and he shall decide as to the true meaning and intent. The Engineer/Architect shall also have the right to correct any errors or omissions at any time when such corrections are necessary for the proper fulfillment of said plans and specifications.
- I. **Taxes and Charges:** Except to the extent the City and the Contractor are utilizing a "Purchasing Agent Appointment agreement," Contractor shall withhold and pay all sales and use taxes and all withholding taxes, whether local, state or federal and pay all Social Security taxes and also all State Unemployment Compensation taxes, and pay or cause to be withheld, as the case may be, any and all taxes, charges, or fees or sums whatsoever, which are now or may hereafter be required to be paid or withheld under any laws. Pursuant to Ala. Code §39-1-3 (1975), Contractor shall be reimbursed for any additional severance, sales or uses taxes incurred as a result of an increase in such taxes during performance of the contract.
- J. **Shop Drawings and Submittals.** The Contractor shall submit shop drawings, samples and submittals depicting or representing the construction of portions of the Project in accordance with the plans and specifications to the Engineer/Architect and if there is no Engineer or Architect on the Project, to the City representative. The Contractor shall pay for or the cost may be withheld from payments to the Contractor for more than two (2) reviews of the shop drawings, samples or submittals or similar element of work by the Engineer, Architect or City representative.
- K. **Alabama Immigration Law.** By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in

breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

L. **Compliance with Affordable Health Care Act.** By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal compliance laws pertaining to the Affordable Health Care Act. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

M. **Compliance with Act 2016-312.** By signing this contract, the contracting parties affirm, for the duration of the agreement, that they are not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

ARTICLE II. PAYMENTS, CLAIMS AND CHARGES, ETC.

A. **Contract Price:** The City will pay and the Contractor will accept in full consideration for the performance of the work/Project, subject to additions and deductions (including but not limited to liquidated damages) as provided in the contract documents and herein, the sum of _____ (\$ _____) and/or in unit prices as shown in Bidder's schedule for the base bid amount of \$ _____, being the amount of the Contractor's bid as awarded by the City.

B. **Estimated Quantities and Unit Prices:** If award was made in whole or in part based upon unit prices, the Contractor agrees that the prices given in the Proposal are unit prices. The estimated quantities as stated in the Advertisement for Bids and in the Proposal and as indicated on the plans or in other places are approximate only, are subject either to increase or decrease and are only for the purpose of comparing on uniform basis the bids offered for the Project under this contract. The Contractor further agrees that should the quantities of any of the items of the work be increased, he will do the additional work at the unit prices set out in the Proposal and should the quantities be decreased, payment will be made on actual quantities at the unit prices and he will make no claim for anticipated profits for any decrease in the quantities. Actual quantities will be determined upon completion of the Project.

C. **Overtime Work by Contractor:** If the Contractor for his convenience and at his own expense should desire to carry on his work at night or outside regular hours, he shall submit written notice to the Engineer/Architect and he shall allow ample time for satisfactory arrangements to be made for inspecting the work in progress. At no time shall the notice be given less than 24 hours before such overtime work is started. The Contractor must obtain, through the Engineer/Architect, the City's approval for work at night, on Saturdays, Sundays or legal holidays. The Contractor shall light the different parts of the Project as required to comply with all applicable federal and state regulations and with all applicable requirements of the City.

Overtime hours shall be considered any hours worked by the Contractor on Saturday, Sunday and legal holidays, which in the Engineer/Architect's opinion requires the Engineer/Architect's resident observers' presence to observe such overtime work. Overtime hours requiring the presence of City inspectors shall be considered any hours worked by the Contractor in excess of eight (8) hours during any working day and/or in excess of forty (40) hours from Monday through Friday and/or any time on Saturday, Sunday or legal holiday. In general, it should be expected that the Engineer/Architect's resident observer(s) or City's inspectors will be present at all times that the Contractor is working.

If the Contractor elects to schedule and perform overtime work, the Contractor shall pay the City for the City's resident inspector's salary plus costs for each hour of overtime work. Overtime shall be rounded up to the nearest whole hour. This amount shall include the inspector's salary at overtime rate, labor additive, which includes insurance, social security, workmen's compensation, sick pay, paid holidays, vacation pay and his vehicle and equipment. Payment to the City shall be made by a deduction from the Contractor's monthly payment invoice for any overtime worked.

D. **Payments on Account/Payments Withheld/Retainage:** Upon presentation of a verified application for payment, which shall include a "Contractor's Affidavit of Payment of Debts and Claims," AIA Form G706 or equivalent, then usually by the fifteenth (15th) day of each calendar month or as soon thereafter as is practical, as the Project progresses, the City shall make partial payments to the Contractor of the billable work performed less payments already made and less deductions for any incomplete, unaccepted or defective work. In making partial payments to the Contractor, there shall be retained five (5%) percent of the estimated amount of work done and value of materials stored on the site or suitably stored and insured off-site. Provided; however, after fifty (50%) percent of the Project has been satisfactorily completed, no further retainage will be withheld.

Retainage shall be held until final completion and acceptance of all work covered by the Contract Documents unless escrow or deposit arrangements are agreed to by the City. When maintenance periods are included in the Contract Documents covering highways, bridges or similar structures, such period shall be considered a component part of the contract and retainage will be held until the expiration of such periods.

On completion and acceptance of each separate building, public work or other separately identifiable and complete division of the Project in regard to which a separate price has been stated in the Contract Documents or can be separately ascertained, payment may be made in full including retainage but less deductions. Provided; however, the City will not consider making such payment on any such item of work if it is an integral part of a complete project.

All materials and work covered by partial payments as provided for herein shall become the sole property of the City; provided, however, the Contractor shall not be relieved from the sole responsibility for the care and protection of materials and work upon which payments have been made and for the restoration of any damaged work.

The City may also withhold from time to time from payment to the Contractor such an amount or amounts as may be necessary to pay and fully satisfy all claims and demands for labor and services rendered in and about the Project, including any such amount or amounts due to be paid to or by any subcontractor or supplier, amounts for City's or Engineer/Architect's observers or inspectors for contractors' overtime as herein provided, or for engineering or design services associated with Contractor initiated change orders or submittals in excess of that permitted herein. The Contractor hereby authorizes the City as its agent, to apply such amounts so withheld to the payment of any amount so due to be paid and all other just and lawful claims other than claims for damages for tort. In case of disagreement with reference to any such claim or claims, the City may keep such amounts so withheld on account of such claim or claims until such disagreement is finally settled and determined.

In addition, the City may also withhold payment of the whole or any part of a verified or approved application for payment from the Contractor to such an extent as may be necessary to protect itself from loss on account of any of the following causes discovered subsequent to its verification or approvals:

1. Defective work.
2. Evidence indicating probable filing of claims by other parties against the Contractor.
3. Failure of the Contractor or subcontractor to promptly make payments to subcontractors or for materials, labor, food stuffs and supplies.
4. Damage to another contractor under separate contract with the City.
5. Assessment of liquidated damages.

When the above grounds are removed, applications for payment will then be verified and/or approved for amounts not previously verified and approved because of them.

The Contractor shall not attempt to withdraw at any time during the term of this contract or any extensions thereof, without the expressed written consent of the City, the whole or any part of the amounts so retained by the City from payments due the Contractor by the establishment of an escrow account or by depositing securities in lieu thereof, pursuant to Ala. Code §39-2-12(e) or (f), or any amendments thereto or any equivalent law, ordinance or regulation. It is expressly agreed between the parties hereto that should the City elect not to consent to the same, then the Contractor shall not elect to, attempt to or in any manner

endeavor to withdraw such retained amounts.

- E. **Claims for Extra Cost:** If the Contractor claims that any instructions by drawings or otherwise involve extra cost or any extension of time, he shall notify the City in writing within ten (10) days after the receipt of such instructions and in any event before proceeding to execute the Project. Thereafter, the procedure shall be the same as that for change orders. No such claim shall be valid unless made in accordance with the terms of this section. There shall be no damages for delay.

Except as otherwise herein provided, no charge for any extra work will be allowed unless the same has been duly authorized in writing by the City and the price stated in such order.

- F. **Differing Site Conditions:** If, in the performance of the Contract, subsurface or latent conditions are found to be materially different from those indicated by the plans and specifications, or unknown conditions of an unusual nature are disclosed differing materially from conditions usually inherent in work of the character shown and specified, the Contractor shall immediately notify the Engineer/Architect in writing regarding such conditions but in no event later than forty-eight (48) hours after discovery of such conditions by the Contractor.

The written notice shall describe the conditions, and other pertinent information, in no event shall such notice be later than forty-eight (48) hours before such conditions are disturbed. Upon such notice, or upon such observation of conditions, the Engineer/Architect will promptly make such changes in the plans and/or Specifications as he finds necessary (if any are necessary) to conform to the different conditions, and any increase or decrease in the cost of the Project resulting from such changes may be adjusted as provided under Change Orders or Claims for Extra Cost as set forth in the Contract documents.

- G. **Change Orders:** Change orders shall be allowed only under the following conditions: 1) Minor changes for a total monetary amount less than that required for competitive bidding; or 2) Changes for matters incidental to the original contract necessitated by unforeseeable circumstances arising in the course of work under the contract; or 3) Changes due to emergencies; or, 4) Changes provided for in the original bidding and original Contract Documents as alternates; 5) Changes of relatively minor items not contemplated when the plans and specifications were prepared and the Project was bid and which are in the public interest and generally do not exceed 10 percent of the Contract Price, subject to Alabama Bid Law exceptions.

The Contractor or successful bidder is expected to complete the Project as bid and specified within the financial parameters stated therein. However, if it shall be determined that a change order condition possibly exists in any given case during the performance of the contract, the Contractor shall promptly notify in writing the representative of the City and shall not implement such change until having notified the representative of the City. If the change is minor in the opinion of the representative of the City and does not involve, 1) an adjustment in the contract sum or construction bid price, or 2) result in extension of the contract time, or 3) a material change in the contract scope of services, then the City representative may authorize the change in writing to the Contractor. The Contractor shall not perform such change until receipt of such written change order.

In the event the change order requested by the Contractor involves, 1) an increase in the contract sum or construction bid price, 2) extend the contract time, or 3) materially change the Contractor's scope of work or services, then the Contractor shall request a change order in writing and present the same to the City representative. The representative of the City, shall determine whether this is a change order which can be allowed and, if so, what exception it would fall under. The representative of the City shall then document the same, attach the same to the Contractor's request for a change order and submit the same with his recommendation to the City Council at its next or any subsequent regularly scheduled Council meeting for approval.

The City reserves the right to institute change orders as the Owner pursuant to the aforesaid terms and conditions.

In no event is a change order to be executed by the Contractor prior to approval thereof by the City, except for emergencies.

H. **Determination of Adjustment of the Contract Sum:** The adjustment of the Contract Sum resulting from a change in the Work shall be determined by one of the following methods as determined by Owner:

1. By mutual agreement to a lump sum based on or negotiated from an itemized cost proposal from the Contractor.
2. Additions to the Contract Sum shall include the Contractor's direct costs plus a maximum 15% markup for overhead and profit. Where subcontract work is involved, the total mark-up for the Contractor and a subcontractor shall not exceed 25%. No allowance for overhead and profit shall be figured on a change which involves a net credit to the Owner. For the purposes of this method of determining an adjustment of the Contract Sum, "overhead" shall cover the Contractor's indirect costs of the change, such as the cost of bonds, superintendent and other job office personnel, watchman, job office, job office supplies and expenses, temporary facilities and utilities, and home office expenses.

I. **Construction Schedule and Periodical Estimates:** Immediately after execution and delivery of the contract and before the first partial payment is made, the Contractor shall deliver to the City and Engineer/Architect and Construction Manager, a construction schedule in a form satisfactory to the City or Construction Manager, which may include CPM for all major trades, showing the proposed dates of commencement and completion of each of the various activities, of work required under the Contract documents, the interrelationship of each activity, sequences, resources for each and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor shall also furnish (1) a detailed estimate giving a complete breakdown on the contract price and (2) periodical itemized estimates of the work done for the purpose of making partial payments, however the same will not be considered as fixing a basis for additions to or deductions from the contract price. Scheduling is particularly critical if Contractor is a trade contractor and adherence to the Construction Manager progress schedule is required.

NOTE: Depending upon the complexity of the work the City may require CPM or equivalent meeting all criteria above.

J. **Sales and Use Tax Savings:** Pursuant to the invitation for bids, sales and use taxes are not to be included in the bid. The project will be administered in compliance with the State of Alabama Act 2013-205, Certificate of Exemption from Sales and Use Tax for Governmental Entities, regarding sales and use taxes. The Contractor shall be responsible for obtaining a certificate of exemption from the Alabama Department of Revenue for purchases of materials and other tangible property made part of the project. Any subcontractors purchasing materials or other tangible personal property as part of the project shall also be responsible for obtaining a certificate of exemption. The estimate sales and use tax saving must be accounted for on the bid proposal. Failure to provide the estimated sales and use tax savings may render the bid as non-responsive. Other than determining responsiveness of the bid, sales and use tax accounting shall not affect the bid pricing nor shall be considered in the determination of the lowest responsible and responsive bidder

ARTICLE III. TIME

A. Time for Completion/Delays:

The term of this contract shall be for a period of one (1) year from the date of the Purchase Order hereof and shall automatically renew each year for up to four (4) years for a total maximum contract term of five (5) years from the date of execution hereof, unless sooner terminated pursuant to the provision herein provided. However, either party may elect not to renew the contract by giving the other party thirty (30) days written notice prior to the anniversary date, in which event the contract shall terminate on the anniversary date.

Delay: If the Contractor is delayed at any time in the progress of work by any of the following causes, the Contractor may be entitled to a reasonable extension of time as determined by the City in which to complete the Project. Provided, however, no such delay nor the extension of time if granted shall be grounds for a claim by the Contractor for damages or for additional cost, expenses, overhead or profit or other compensation:

1. Fires, abnormal floods, tornadoes or other cataclysmic phenomenon of nature.
2. Strikes, embargoes, lockouts, war, acts of public enemy.
3. Change orders.
4. Acts of performance or delays in performance by other contractors employed by the City or their subcontractors.
5. Causes beyond the control of the Contractor.

Provided further, that the Contractor shall immediately give notice in writing to the City and follow extension of time procedures as provided for herein. The City expressly disclaims any liability to Contractor for any cost, expense or damage caused by other contractors, subcontractors or suppliers, including those engaged by the City. The City shall not be liable for damages or cost to the Contractor sustained due to any interference from utilities or appurtenances or from the operations of relocating the same.

- B. **Extensions of Time:** All written requests for extensions of time must be submitted to Engineer/Architect within ten (10) days after the occurrence of the cause for delay. The Engineer/Architect shall ascertain the facts and the extent of the delay and shall recommend to the City Council whether it should extend the time for completing the Project. Any extension of time shall be in writing and processed as a change order.

For change orders requesting extensions of time due to rain, wind, flood or other natural phenomenon, the Contractor's written request must be accompanied, at the City's request, by a detailed report of weather at this site for the last ten (10) years with averages showing means and statistical deviations from mean averages to support request for extension.

No extension shall be made for delays due to rain, wind, flood or other natural phenomenon of normal intensity for the locality.

In the event any material changes, alterations, or additions are made as herein specified, which in the opinion of the Engineer/Architect will require additional time for execution of any work under the contract, then in that case, the time of the completion of the Project may be extended through change order. No extensions of time shall be given for any minor changes, alterations or additions. The Contractor shall not be entitled to any reparation or compensation on account of such additional time or extensions of time. To the extent that the construction schedule contains "float," the parties agree that the same belongs to the Project and may be utilized by either party.

- C. **Right of the City to Terminate Contract:** If the Contractor should be adjudged as bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for the Contractor or any of its property, or if it should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or if it should refuse or fail to make prompt payment to persons supplying labor for the Project under the Contract, or persistently disregard instructions of the Engineer/Architect or fail to observe or perform any provisions of the Contract documents, or fail or neglect to promptly prosecute or perform the Project in accordance with the contract documents or otherwise be guilty of a substantial violation of any provision of the Contract documents, then the City may, on giving at least thirty (30) days' written notice to the Contractor, without prejudice to any other rights or remedies of the City in the premises, terminate the Contractor's right to proceed with the Project. In such event, the City may take over the Project and prosecute the same to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any and all excess cost occasioned to the City thereby, including attorney's fees; and in any such case, the City may take possession of and utilize in completing the Project such appliances and plant of the Contractor or its subcontractors as may be on the site work and necessary or useful thereof. In the event of termination, the same shall not relieve the Contractor nor any of its sureties of their obligation pursuant to this agreement. In the event it becomes necessary for the City to maintain any legal action against the contractor, to enforce its rights herein, the Contractor shall pay the City all expenses associated therewith including a reasonable attorney's fee.

Owner may at any time and for any reason terminate Contractor's services and work at Owner's convenience. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement. Upon such termination,

Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by Owner; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit.

- D. **Liquidated Damages:** Should the work under this contract not be completed within the time specified, scheduled or as extended, it is understood and agreed that there may be deducted by the City or Engineer/Architect from the partial and/or final payments to the Contractor or otherwise charged to the Contractor, a sum computed at the rate of Two Hundred Dollars (\$200.00) per day beginning from the stated or extended date of completion and continuing for so long as the Project remains incomplete. It is understood and agreed that the above deduction is not a penalty, but money due to reimburse the City/Owner for inconvenience and damage to the general public, due to the delay in the completion of the Project and is reasonable. The collection of liquidated damages by the City shall not constitute an election or waiver by the City of recovery of additional delay or non-delay related damages from the Contractor, and the City expressly reserves the right to recover actual damages for other harms resulting from delay. The provisions of the liquidated damage clause shall apply and continue to apply even if the Contractor terminates or abandons the Project prior to the scheduled completion dates.

The amounts of such liquidated damages and actual damages incurred by reason of failure to complete the work stipulated in the Contract are hereby agreed upon as reasonable estimates of the costs which may be accrued by the City. It is expressly understood and agreed that these amounts are not to be considered in the nature of penalties, but as damages which have accrued against the Contractor. The City shall have the right to deduct such damages from any amount due, or that may become due the Contractor, or the amount of such damages shall be due and collectible from the Contractor or Surety.

ARTICLE IV. WORK AND MATERIALS

- A. **Cooperation of Contractor:** The Contractor shall have available on the job site, at all times, at least one (1) copy of the plans and specifications if prepared for the Project.

He shall give the Project the constant attention necessary to facilitate the progress thereof and shall cooperate with the City, Engineer/Architect and with other Contractors in every way possible. The Contractor shall at all times have a superintendent, capable of acting as his agent on the Project, who shall receive communications from the Engineer/Architect or his authorized representatives or the City's authorized representative. The superintendent shall have full authority to give and execute orders relating to the Project without delay and to promptly supply such tools, plant equipment, materials and labor as may be required.

The City reserves the right to utilize its own forces on the site or those of another contractor and to communicate through its representative directly with the Contractor.

- B. **Coordination - Trade Contractors:** If the supplemental conditions are attached to these general conditions indicating that this Project involves the use of multiple trade or multiple prime contractors under the supervision and direction of a Construction Manager employed by the City, then each such trade contractor shall cooperate and coordinate its construction activities and operations with those of other trade contractors and other entities involved in the Project and included under different sections of the specifications that are dependent upon each other in any manner for proper and correct installation, connection and operation, to assure efficient, prompt, orderly and proper installation of each part of the Project.

When utilizing trade contractors and/or multiple prime contractors under the supervision of Construction Manager cooperation and coordination of activities is extremely important. Refer to the provisions of the supplemental conditions for detailed requirements.

- C. **Superintendence:** The Contractor shall assign to and keep at the Project site competent supervisory personnel. The Contractor shall designate, in writing, before starting work, an authorized representative who shall be an employee of the Contractor and shall have complete authority to represent, to receive notice for, and to act for the Contractor. The

Contractor shall not permit or allow any work to be conducted upon the Project site without the presence of supervisory personnel. The Engineer/Architect shall be notified in writing prior to any change in superintendent assignment. Using his best skill and attention, the Contractor shall give efficient supervision to the Project. The Contractor shall be solely responsible for all construction means, methods, techniques, and procedures, for providing adequate safety precautions, and for coordinating all portions of the Project under the Contract. It is specifically understood and agreed that neither the Engineer/Architect nor the City shall not have control or charge of and shall not be responsible for the construction means, methods, techniques, or procedures, or for providing adequate safety precautions in connection with the Project under the Contract.

- D. **Contractor's Tools and Equipment:** The Contractor's tools and equipment used on the Project shall be furnished in sufficient quantity and of a capacity and type that will adequately and safely perform the work specified, and shall be maintained and used in a manner that will not create a hazard to persons or property, or cause a delay in the progress of the Project.
- E. **Furnishing Labor and Equipment:** The Contractor shall furnish and pay for all equipment, labor and supervision, and all such materials as required to be furnished in the Notice to Bidders and as may other-wise be necessary to the completion of the Project and the operation of each construction crew required.
- F. **Employees:** The Contractor shall employ only competent, skillful workers on the Project, and whenever any person shall appear to be incompetent or to act in a disorderly, unsafe improper manner, such person shall promptly be removed from the Project by the Contractor.
- G. **Materials and Appliances:** Unless otherwise stipulated, the Contractor shall provide and pay for all other materials, water, heating, lighting, fuel, power, transportation, machinery, appliances, telephone, sanitary facilities, temporary facilities and other facilities and incidentals necessary for the execution and completion of the Project.

The Contractor warrants to the City and the Engineer/Architect that, unless otherwise specified, all materials and equipment furnished under this contract shall be new, and both workmanship and materials shall be of good quality, free of faults and defects, and in conformance with the Contract Documents. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. In selecting and/or approving equipment for installation in the Project, neither the City nor Engineer/Architect assume responsibility for injury or claims resulting from failure of the equipment to comply with applicable federal, state, and local safety codes or requirements, or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials. Material and/or equipment damaged by flooding or other causes during the construction period shall be subject to rejection by the Engineer/Architect; reconditioning and/or repairing material and/or equipment is not acceptable.

- H. **Asbestos and Hazardous Materials:** Unless specifically authorized and instructed to the contrary by the City, the Contractor shall not permit, allow, place, install or incorporate into the Project or upon the work site, any hazardous material(s), including, but not limited to, any products or materials that contain asbestos in any quantity. It shall be the responsibility of the Contractor to inspect all materials and products delivered for incorporation or installation in the Project to ensure that they contain no hazardous materials or asbestos. Where the Contractor or any subcontractor has or should have a reasonable suspicion that any product or material contains asbestos or other hazardous material, the Contractor shall immediately inspect the material or product, obtain a product or material data sheet, and notify the City's representative prior to installation or incorporation of the same into the Project. Any product or material determined to contain asbestos or other hazardous material shall be removed from the Project immediately and properly disposed of as required by law. Products or material to which the contractor should pay particular attention to avoid the presence of asbestos incorporated therein include, but are not limited to the following: concrete, batt insulation, roof insulation, building felts, mastics, water proofing products, adhesives, resilient flooring products, ceiling tiles, interior coatings, exterior coatings, roofing, pipe installation, duct installation and pre-assembled items of equipment.

At the completion of the Project, the Contractor shall submit a duly executed Asbestos Affidavit in the form as attached

hereto prior to final payment.

The Contractor is responsible for insuring that all of its employees and subcontractors are adequately trained to handle hazardous materials in accordance with 49 CFR §172(g).

- I. **Protection of Work and Property:** The Contractor shall furnish and install all necessary temporary works for the protection of the Project. The Contractor shall at all times adequately maintain, guard and protect his own work from damage, and safely guard and protect private, commercial, industrial, the City's and others' property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except such as may be directly due to errors in the plans or specifications or caused by agents or employees of the City.

The Contractor shall protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site which are not required to be removed or do not unreasonably interfere with construction, as may be determined by the Engineer/Architect, and be responsible for all cutting or damaging of trees and shrubs or grassed areas, including damage due to careless operation of equipment, stockpiling of materials or equipment.

Care shall be taken by the Contractor in felling trees that are to be removed to avoid any unnecessary damage to vegetation or other trees that are to remain in place. Any limbs or branches unavoidably broken during such operations shall be trimmed with a clean cut and painted with an approved tree priming compound. The Contractor may be required to replace or restore at his own expense all vegetation not protected and preserved, as above required, that may be destroyed or damaged.

The Contractor shall provide and maintain all passageways, guard fences, lights, and other facilities required for protection by federal, state or municipal laws and regulations or local conditions.

The Contractor shall comply with local and state regulations governing the operation of premises which are occupied and shall perform the contract in such a manner as not to interrupt or interfere with the operation of other facilities.

The Contractor shall store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the Project as will not unduly interfere with the progress of his work or the work of any other contractor.

Necessary crossings of curbs, sidewalks, roadways or parkways shall be protected against damage and any damage shall be repaired by or at the expense of the Contractor.

The Contractor shall not place upon the Project or any part thereof, loads inconsistent with the design or safety of that portion of the Project.

The Contractor shall provide and maintain access to all public and private properties at all times and be responsible for any damage caused by his operation to existing driveways, yards, streets, parking lots, utilities, railroads, etc., and such damage shall be corrected at the Contractor's expense. Roadways authorized closed by State or Local authorities shall be maintained to provide access to all fire, police, and other emergency vehicles and all individuals having private property in the closed area. The Contractor shall notify at least 24 hours in advance the Fire, Police, and Transportation Departments having local jurisdiction, the Owner and any other individuals, businesses, or agencies that may be affected.

- J. **Protection of Existing Utilities.** Contractor shall be responsible for any damage to existing structures or the interruption of any utility services which shall be repaired or restored promptly by and at the expense of the Contractor.

To that extent, the Contractor shall provide whatever measures are necessary to properly protect and maintain all existing utilities encountered in the course of the work. The Contractor shall be exclusively responsible to the utility owner for any and all damages to the various utilities caused by the Contractor's actions or lack of actions to adequately protect the same.

The Contractor shall determine the exact location of all existing utilities before commencing work and agrees hereby to

be fully responsible and liable for any and all damages which might occur by his failure to exactly locate and/or preserve the location of any and all underground or overhead utilities. The Contractor shall be solely and directly responsible to the utility owner for any and all damages to the various utilities, caused by the Contractor's actions or lack of actions to adequately protect such utilities. If any utilities are to be affected during the course of construction, the Contractor shall so notify the owners thereof at least seventy-two (72) hours prior to any such construction activity. The Contractor shall fully cooperate and coordinate with all utility owners in the event of an interruption to any utility service. The cost for locating, uncovering and protecting underground and/or overhead utilities is included within the Contractor's bid price for various other items of work.

The Contractor shall maintain all storm sewers, drains and/or ditches so that flow is not disturbed or impeded. The Contractor shall protect storm drains, inlets and/or ditches, lawns, landscaping and other facilities, from damage during the testing, and flushing.

K. **Limiting Exposures:** The Contractor shall prosecute the work on the Project to insure that no part of the construction, complete or in progress, is subject to harmful, dangerous, damaging, or otherwise deleterious exposure during the construction period. Where applicable, such exposures include, but are not limited to the following:

- | | |
|--|--|
| Excessive static or dynamic loading | Rodent and insect infestation |
| Excessive internal or external pressures | Combustion |
| Excessively high or low temperatures | Electrical Current |
| Thermal shock | High speed operation |
| Excessively high or low humidity | Improper lubrication |
| Air contamination or pollution | Unusual wear or other misuse |
| Water or ice | Contact between incompatible materials |
| Solvents | Destructive Testing |
| Chemicals | Misalignment |
| Light | Excessive weathering |
| Puncture | Unprotected storage |
| Abrasions | Improper shipping or handling |
| Heavy traffic | Theft |
| Soiling, staining and corrosion | Vandalism |
| Bacteria | |

The Contractor shall minimize dust and air pollution through the use of water or other devices, require the use of properly operating combustion emission control devices and by encouraging the shutdown of construction vehicles when not in use.

L. **Safety:** The completed Project shall include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items as may be appropriate or required by law. Further, any feature of the Project (including City-furnished or City-selected equipment) subject to such safety regulations shall be fabricated, furnished, and installed in compliance with these requirements. Contractors and manufacturers of equipment shall be held responsible for compliance with the requirements included herein. Contractors shall notify all equipment suppliers and subcontractors of the provisions of this Article.

In selecting and/or accepting equipment for installation in the Project, neither the City nor Engineer/Architect assume responsibility for any personal injury, property damage, or any other damages or claims resulting from failure of the equipment to comply with applicable safety codes or requirements, or the safety requirements of a recognized agency, or failure due to manufacturer's faulty design concepts, or defective workmanship and materials. The Contractor shall indemnify and hold the City, Program Coordinator, and Engineer/Architect harmless against any and all liability, claims, suits, damages, costs, or expenses without limitation arising out of the installation or use of such equipment.

The Contractor shall take all necessary precautions for the safety of employees on the Project and shall comply with all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on

or about or adjacent to the premises where the Project is being performed. He shall erect and properly maintain at all times, as required by conditions, and progress of the Project, all necessary safeguards for the protection of workmen and the public, and shall post danger signs warning against the hazards created by features of construction and the site.

Machinery, equipment and all hazards shall be guarded or eliminated in accordance with the State Accident Prevention in Construction provisions to the extent that such provisions are not in contravention with applicable laws.

The Contractor shall do whatever work is necessary for safety and be solely and completely responsible for conditions of the jobsite, including safety of all persons (including but by no means limited to the public, site personnel, visitors, or employees) and property during the Contract period. The contract period shall include any subsequent warranty or other period associated with Project deficiency or repair and all hours including, and in addition to, normal working hours.

Safety provisions shall conform to the Federal and State Departments of Labor and the Occupational Safety and Health Act (OSHA), and all other applicable federal, state, county, and local laws, ordinances, codes, the requirements set forth herein, and any regulations that may be specified in other parts of these Contract Documents. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth therein.

The Contractor shall at all times provide proper facilities for safe access to the work by authorized government officials (federal, state, county and local) and representatives of the Owner.

- M. **Traffic Control:** The Contractor shall be responsible for traffic control, including plan and devices to the extent the same is required due to work in, upon or in proximity to public right-of-way, streets, roads or vehicular traffic. The traffic control plan and all traffic control devices shall conform at a minimum to the Manual on Uniform Traffic Control Devices for Streets and Highways, Latest Edition, Federal Highway Administration. A copy of which is on file in the office of the City of Tuscaloosa Director of the Department of Transportation for examination. Copies may be obtained from the Alabama Department of Transportation. Should the appropriate public authority determine a greater degree of traffic control is required, then the Contractor shall promptly provide same. The Contractor shall submit a plan to the City Engineer for approval before commencing construction.

Reasonable means of ingress and egress by vehicular and/or pedestrian traffic to property adjacent to the Project shall be maintained at all times. The Contractor shall indemnify and hold the City harmless for any claims or causes of action including but not limited to those for inverse condemnation and/or lost profits arising out of or in any manner associated with access to or the restriction or prevention thereof to adjoining property. Traffic control and erosion control is of paramount importance during the construction of this Project and the terms and conditions in the contract documents in regard to these matters must be strictly adhered to.

- N. **Responsibility to Act in Emergency:** In case of an emergency which threatens loss or damage to property, and/or safety, the Contractor shall act, without previous instructions from the City or Engineer/Architect, as the situation may warrant. The Contractor shall notify the Engineer/Architect thereof immediately thereafter. Any claim for compensation by the Contractor, together with substantiating documents in regard to expense, shall be submitted to the City through the Engineer/Architect. The claim will be handled in accordance with the provisions for extra work. However, if the emergency is created or aggravated by the Contractor, he shall be liable for the resulting damages. If the Contractor fails to take necessary action as required by such an emergency, the City may assign another Contractor or use his own forces to perform the emergency work. Costs or damages arising from the failure of the Contractor to act in an emergency may be deducted from the Contractor's request for payment.

- O. **Sanitary Regulations:** The Contractor shall provide and maintain such sanitary accommodations for the use of his employees and those of his subcontractors as may be necessary to comply with the requirements and regulations of the local and State Department of Health. At a minimum, necessary sanitary conveniences for the use of the laborers on the work shall be erected and maintained by the Contractor, in such a manner and at such points as shall be approved

by the Engineer/Architect. Their use shall be strictly enforced. In the Construction Manager format, the City may provide sanitary accommodations through the Construction Manager.

- P. **Cutting, Patching, etc.:** Unless otherwise stated in the contract documents, the Contractor shall do all necessary cutting, fitting and patching of the Project that may be required to properly receive the work, to make its several parts join together properly, receive and provide for the work of various trades, and be received by the work of other contractors, or as required by drawings and specifications to complete the Project. After such cutting, he shall replace or restore or repair and make good all defective or patched work as required by the Engineer/Architect. He shall not cut, excavate or otherwise alter any work in any manner or by a method or methods that will endanger the Project, adjacent property, workmen, the public or the work of any other contractor. The Contractor shall check the location of all sleeves, openings, slots, etc., for the piping, ducts, breeching, conduits, louvers, grills, fans, etc., as they are laid out on the job.

Provisions for openings, holes and clearances through walls, beams, floors, ceilings and partitions shall be made and checked by the Contractor and/or his subcontractor in advance of constructing such parts of the Project and unnecessary, superfluous or dangerous cutting shall be avoided.

Pipes passing through concrete or masonry walls shall be protected by pipe sleeves two sizes larger than the pipe, plus its installation to provide free movement.

Under no condition shall structural, framing or other parts or members subjected to computed stress be cut or disturbed without the approval of the Engineer/Architect. Any plates, studs or joists, and/or rafters that are approved to be cut to execute necessary work shall be securely strapped and braced to restore their strength by approved methods.

Unless otherwise indicated in Supplemental Conditions, all road crossings and/or driveways cut by the Contractor during the performance of the Project shall be returned to service as soon as possible and replaced or repaired within seven (7) calendar days.

All major thoroughfares must be repaired the same day as cut. The Contractor shall be responsible for the safety and welfare of the traveling public while construction work is being done and until the City accepts the Project.

The Contractor will replace at his own expense, all pipe and accessories that may be broken, damaged, stolen or lost and all materials that may become damaged, lost, stolen or misused.

The Engineer/Architect's approval shall be obtained before cutting or drilling holes in concrete or masonry that tend to damage or weaken the load capacity.

- Q. **Trailers:** With the approval of the City or Engineer/Architect, the Contractor may park trailers or other structures for housing men, tools, machinery and supplies, but they will be permitted only at approved places and their surroundings shall be maintained at all times in a sanitary and satisfactory manner by the Contractor. On or before the completion of the Project, all such trailers or structures shall be removed, unless the City authorizes their abandonment without removal, together with all rubbish and trash, at the expense of the Contractor.
- R. **Construction Staking:** If necessary, the Engineer or the City will furnish initial lines and grades to establish the initial horizontal and vertical control points and define the beginning and ending points of the Project. The Contractor is responsible for engaging the services of a qualified Engineer or land surveyor to replace and/or re-establish in accordance with the construction plans and/or specs, all construction stakes that are disturbed, displaced or destroyed during construction.

If the Contractor finds any errors or discrepancies with the construction staking or the criteria upon which it is based, he/she shall promptly notify the Owner's representative.

S. **Periodic Cleanup:** The Contractor shall periodically, at least weekly, or as requested during the progress of the Project, clean up and remove from the premises, all refuse, rubbish, scrap materials and debris caused by its employees or its subcontractors resulting from its work, to the end that all times the premises are sanitary, safe, reasonably clean, orderly and workmanlike. Trash and combustible materials shall not be allowed to accumulate inside buildings or elsewhere on the premises. At no time shall any rubbish be thrown from window openings, except during renovations with adequate precautions and into proper receptacles. The Contractor shall comply with all municipal litter and construction site ordinances.

Before the Project is considered as complete, all rubbish created by or in connection with the construction must be removed by the Contractor and the premises left in a condition by the Contractor satisfactory to the City. Street, curbs, crosswalks, pavements, sidewalks, fences and other public and private property disturbed shall be restored to their former condition or better, and final payment will be withheld until such work is finished by the Contractor.

Contractor shall conduct cleaning and disposal operations to comply with local ordinances and anti-pollution laws. No burning or burying of rubbish or waste materials is permitted on the Project site. The Contractor shall dispose of any hazardous material in a safe manner, off site, in accordance with applicable laws and regulations and shall not dispose of volatile or hazardous waste in storm or sanitary sewer drainage ditches, streams or waterways.

Contractor shall periodically wet down dry materials and rubbish to lay dust and prevent blowing dust; and shall provide adequate and approved containers for collection and disposal of waste material, debris and rubbish, removing grease, dust, dirt, stains, labels, fingerprints and other foreign materials from exposed and semi-exposed surfaces.

T. **Termite Control.** If the Project involves construction of a building or if otherwise specifically required by the City, then the Contractor shall provide soil treatment for termite control under all interior slabs on grade and foundation walls, and as herein specified. Contractor shall also comply with manufacturer's instructions and recommendations for work, including preparation of substrate and application and shall engage a professional pest control operator, licensed in accordance with regulations of governing authorities for application of soil treatment solution and doing business in the state where the Project is located for a minimum of five (5) years.

Contractor shall not apply soil treatment solution until excavating, filling and grading operations are completed, except as otherwise required in construction operations. To insure penetration, the soil treatment will not be applied to frozen or excessively wet soils or during inclement weather. Contractor shall comply with all handling and application instructions of the soil toxicant manufacturer. The type of materials to be used for soil poisoning shall first be submitted to the City for approval.

The soil treatment solution shall be an emulsible concentrate insecticide for dilution with water, specially formulated to prevent infestation by termites. Fuel oil will not be permitted as a dilutant.

Contractor shall strictly comply with the Environmental Protection Agency's (EPA) rules and regulations governing chemicals and their use. Only soil treatment solutions which are not injurious to planting shall be used. Other solutions may be used as recommended by Applicator when acceptable to the EPA, local governing authorities, and the Engineer/Architect.

Contractor shall comply with the following requirements when applying the soil treatment solution:

1. **Surface Preparation:** Remove foreign matter which could decrease effectiveness of treatment on areas to be treated. Loosen, rake, and level soil to be treated, except previously compacted areas under slabs and foundations. Toxicants may be applied before placement of compacted fill under slabs if recommended by toxicant manufacturer.
2. Under slab-on-grade structures, treat soil before concrete slabs are placed using either power sprayer or tank type garden sprayer.

- (A) Apply 4-gallons of chemical solution per 10 linear feet to soil in critical areas under slab, including entire inside perimeter inside of foundation walls, along both sides at interior partition walls, around plumbing pipes and electric conduit penetrating slab, and around interior column footings.
 - (B) Apply one gallon of chemical solution per 10 sq. ft. as an overall treatment under slab and attached slab areas where fill is soil or unwashed gravel. Apply 1-1/2 gallons of chemical solution to areas where fill is washed gravel or other coarse absorbent material.
 - (C) Apply 4 gallons of chemical solution per 10 linear feet of trench for each foot of depth from grade to footing, along outside edge of building. Dig a trench 6" to 8" wide along outside of foundation to a depth of not less than 12". Punch holes to top of footing at not more than 12" o.c. and apply chemical solution. Mix chemical solution with the soil as it is being replaced in trench.
3. Post signs in areas of application warning workers that soil poisoning has been applied. Remove signs when areas are covered by other construction.
 4. Reapply soil treatment solution to areas disturbed by subsequent excavation or other construction activities following application.

U. Erosion Control.

1. To the extent there has been issued by the City Engineer a land development permit in accordance with applicable ordinances, the Contractor shall conform to and abide by all terms and conditions of such permit.
2. Erosion control measures shall be performed on all disturbed areas in accordance with the BMPP included in the Notice of Intent and with Section 665, Alabama Highway Department Specifications. The CONTRACTOR will perform all erosion control measures necessary to prevent silt and soil from leaving construction area and entering private property or the "Waters of the State." Erosion control measures shall be in strict accordance with Alabama Non Point Source Management Program Document and EPA Storm Water Pollution Prevention for Construction Activities.
3. In accordance with Section 665 of Alabama Highway Department Specifications, temporary erosion control work shall involve the construction of temporary berms, dikes, drains, fences, dams, etc. with the use of temporary seeding, mulching, erosion control netting, hay bales, sandbags, check dams, etc., as necessary in order to prevent silt and soil from leaving rights-of-way and entering private property or from washing into drainage structures located on State or County rights-of-way. CONTRACTOR shall mow grassed areas as required during the construction phase of the contract.
4. Erosion control measures shall be maintained by the CONTRACTOR through the warranty period of the contract. If additional measures are required to correct problems which might occur, these shall be performed by the CONTRACTOR at no additional cost to the OWNER.
5. Materials used for erosion control measures shall be in accordance with Section 665.02 of Alabama Highway Department Specifications and shall include hay bales, sandbags, silt fencing rip rap, crushed stone, mulch or other materials necessary in order to accomplish erosion control.

- V. **Wastewater Containment and Management Plan.** In accordance with ADEM Consent Order, NPDES permit NO. AL0022713, Tuscaloosa WWTP, Tuscaloosa County (125) dated September 8, 2009 and the "City of Tuscaloosa, Water and Sewer Department Engineering Report and Compliance Plan", December 2009; to the extent that construction activity by the Contractor involves any wastewater infrastructure or construction activities in close proximity to any wastewater infrastructure and/or to any City sanitary sewer assets the Contractor shall submit to the City Engineer, prior to commencing construction, a wastewater containment and management plan (the "Plan"). The Plan shall adequately address the means, methods and techniques to be employed by the Contractor for containing and transporting wastewater in a sanitary manner without, at any time, permitting the discharge of wastewater into the environment or creating the necessity of a State required sanitary sewer overflow report. The Plan shall be submitted by the Contractor to the Office of City Engineer for review and approval before commencing any construction activity. The City Engineer may waive the requirement of submitting a Plan if he/ she determines that the construction activity to which the Plan would relate does not involve any potential for the discharge of wastewater into the environment or creating the potential for the necessity of a State required sanitary sewer overflow report.

W. **Environmental Clause/Covenant.** Contractor shall not allow any toxic, hazardous or contaminated substances or gases (including, but not limited to, asbestos and raw materials which include hazardous constituents or any other similar substances or materials which are included under or regulated by any local, state, or federal law, rule or regulation pertaining to environmental regulations, contamination, clean-up or disclosure such as, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"); the Clean Air Act (42 U.S.C. Sec. 7401 et seq.); the Clean Water Act (33 U.S.C. §1251 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.); and the Toxic Substances Control Act (42 U.S.C. §2601 et seq.) or state environmental clean-up or disclosure acts and statutes as all such acts and statutes exist now or are hereafter amended (such acts and statutes referred to herein as "Environmental Laws")(such substances or gases referred to herein as 'Hazardous Substances') to be stored, located, or discharged on the premises without specific prior written consent of the City. Contractor shall comply with all Environmental Laws affecting the premises. Contractor covenants to hold the City, its officers, agents and employees harmless from and against any loss, costs, damage or expenses (including attorney's fees and expenses) arising out of the presence of Hazardous Substances (as hereinbefore described) on or about the premises or the violation of any Environmental Laws with respect thereto, the occurrence of which Hazardous Substances on the premises or the violation of any Environmental Laws shall have arisen solely from the acts or omissions of Contractor, its subcontractors, agents, invitees and employees. This indemnity shall survive the termination of this contract and shall inure to the benefit of the City of Tuscaloosa, its successors and assigns.

ARTICLE V. INSURANCE, LIABILITY, ETC.

A. Contractor's Insurance (Generally):

1. Insurance Required. The Contractor shall not commence work under this contract until it has obtained all insurance required by the Contract documents and such insurance has been accepted by the City. The Contractor shall maintain the required insurance during the term of the contract including any extensions of the term.

Insurance shall be written in comprehensive form by insurance companies rated A- or better by A. M. BEST and shall protect the Contractor and the City against claims for injuries to members of the public (including City employees) or damages to property of others (including City property) arising out of any act of the Contractor or any of its agents, employees or subcontractors and shall cover both on-site and off-site operations under this contract and insurance coverage shall extend to any motor vehicles or other related equipment, irrespective of whether the same is owned, non-owned or hired.

The obtaining and maintaining by Contractor and subcontractors of the insurance required herein does not relieve the Contractor of any responsibilities, obligations or duties to the City pursuant to this contract.

2. Additional Insurance. The Contractor shall have an insurance professional review the Contractor's activities in regard to the performance of this contract and the Contractor shall obtain any further or additional insurance or greater limits as recommended by the insurance professional.

3. Insurance Limits. Neither the setting of insurance limits or requirements nor the acceptance or approval of the same by the City imply or represent that the limits or the insurance carrier is sufficient or that such insurance actually has been obtained, that being the responsibility of the Contractor.

4. Subcontractors. The Contractor shall require all subcontractors to take out and maintain the type of insurance required herein to the extent of their involvement in the Project so as to be adequate to protect against liability. In the event any work under this Contract is performed by a subcontractor(s), the Contractor shall remain responsible for any liability directly or indirectly arising out of the work performed under this Contract, regardless of whether or not such work is covered by the subcontractor's insurance. The Contractor shall not allow any subcontractor to commence work on the project until all similar insurance required of the subcontractor has been obtained. All subcontractors shall maintain required insurance during the term of the contract including any extensions of the term.

5. City's Right to Review Coverage. The City shall have the right to inspect and approve Contractor's insurance coverage herein required. Should the City deem it advisable to modify the coverage in any way, it shall so request of the Contractor in writing and should the Contractor fail to modify the coverage, then the City may pay the cost of any increased coverage or take credit for any decreases as may be appropriate. Review or acceptance of insurance by the City or representatives of the City shall not relieve or decrease the responsibility of the Contractor hereunder.

6. Waiver of Subrogation. To the extent that the Contractor is required to maintain insurance coverage for loss or damage to property or bodily injury, including Builders Risk All Risk insurance, the insurance must waive and the Contractor hereby waives subrogation of claims against the City, its officers, agents and employees.

7. City as Additional Insured. The City shall be named as additional insured, for ongoing and completed operations for up to two (2) years, on the Contractor's and any subcontractor's policies for any claims arising out of work performed under this Contract. The Contractor shall provide the City with a Certificate of Insurance naming the City as an additional insured using ISO for CG 2010 1185 (or a substitute form providing equivalent coverage) or on the combination of ISO forms CG 20 10 07 04 or CG 20 33 07 04 and CG 20 37 07 04 (or a substitute or ISO form providing equivalent coverage) naming the City as an additional insured, giving all parties a 30 day notice of cancellation or intent not to renew the insurance, a waiver of subrogation and list any and all exclusions. The coverage available to the City as an additional insured shall not be less than \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate (subject to a per project general aggregate applicable to the project,), \$2,000,000 Products/completed Operations Aggregate, and \$1,000,000 Personal and Advertising injury limits. Additional insured coverage shall apply as primary, non-contributory, insurance with any other insurance afforded to the City and the Contractor.

8. Elevators, Hoist and Cranes. If the Contractor or a subcontractor will utilize in connection with the performance of the work pursuant to this contract an elevator, material hoist, crane or other equipment, or conveyor, then the Contractor shall take out and maintain or require the subcontractor to take out and maintain insurance that shall protect the Contractor and the City against claims for injuries to members of the public (including City employees) or damages to property of others (including City property) arising out of any act of the Contractor or any of its agents, employees or subcontractors resulting from the operation of such elevator, material hoist, crane or other equipment, or conveyor.

A. Insurance:

1. Workmen's Compensation Insurance: The Contractor shall take out and maintain during the term or any extensions of this contract Workmen's Compensation Insurance as required by Alabama law for all of its employees employed at the site of the Project or off-sites related to the Project and, in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor.

In case any class of employees engaged in any work under this contract at the site of the Project is not protected under the Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate accident insurance for the protection of its employees not otherwise protected.

Water or Navigational Exposure; Where work under this contract may trigger the requirement for Federal Longshoreman's and Harbor worker's Act and Federal Jones Act or insurance required by other applicable law or regulations, the Contractor shall obtain the same if required.

2. Comprehensive Automobile and Vehicle Liability Insurance: The Contractor shall maintain during the term or any extensions of this contract, comprehensive automobile and vehicle liability insurance. The limits of liability shall not be less than \$1,000,000 combined single limit or equivalent.

3. Commercial General Liability Insurance: The Contractor shall maintain during the term or any extensions of this contract, Commercial General Liability Insurance, including officers, agents and employees. The limits of liability shall not be less than \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate (subject to a per project general aggregate applicable to

the project), \$2,000,000 Products/Completed Operations Aggregate, and \$1,000,000 Personal and Advertising Injury Limits Combined Single Limit or equivalent.

4. Owner's Protective Insurance: For projects with a contract amount of \$500,000.00 or greater, an Owner's Protective Policy is required in the minimum amount of \$1,000,000 each occurrence. Provided; however, the City may require such insurance on projects of lesser amount if an insurance limit amount is stated herein.

5. Umbrella Excess Liability Over Primary Insurance: The Contractor shall take out and maintain during the term of this contract, and any extensions thereof, Umbrella Excess Liability Insurance. The minimum limits of coverage shall be as follows:

| | |
|-----------------|------------------------|
| Each Occurrence | \$ <u>1,000,000.00</u> |
| Aggregate | \$ <u>1,000,000.00</u> |

The coverage shall be over the required general liability insurance and automobile liability insurance as a minimum. There shall be no gaps or sublimit deductibles, etc.

6. Miscellaneous Insurance: The Contractor shall provide whatever insurance may be required of the City or the Contractor by permits or agreements, etc., with the railroad, highways, or other utilities. The Contractor shall familiarize himself with all insurance requirements contained in easements, permits, and agreements associated with this Project. The Contractor shall provide any Railroad Protective Liability and other General Liability Insurance in the amounts contained in the agreements, permits or easements or in greater amounts if higher limits are appropriate or required elsewhere. The Contractor shall bear the cost of all required insurance and shall include in his bid a sufficient amount to cover the cost of all required insurance. To the extent the City obtains permits or licenses for railroad or highway bores, crossings or other work involved in the Project, the Contractor shall obtain adequate insurance to protect itself and the City.

7. Builders Risk All Risk Insurance: To the extent applicable to the Project, the Contractor shall secure and maintain during the life of this Contract, Builder Risk All Risk Insurance coverage for 100 percent of the Contract Price. This insurance shall not exclude coverage for earthquake, landslide, tornado, flood, collapse or loss due to the result of faulty workmanship. Such insurance shall also provide for any damages caused by injury to, or destruction of, tangible property, including loss of use resulting therefrom, and shall pay all losses to the Contractor and the City as their interest may appear.

If this is a trade contract under a construction manager format, the provisions of this subsection shall not apply.

8. Proof of Carriage of Insurance: The Contractor shall furnish the City with satisfactory proof of carriage of the insurance required herein, in the form of an insurance certificate or if the City elects in the form of a policy. Insurance shall be in a form satisfactory to the City.

- (A) The Contractor's and any subcontractor's general liability and automobile liability insurance shall endorse the Owner (City of Tuscaloosa), its officers, agents and employees, as additional insured's for any claims arising out of work performed under this contract.
- (B) The Contractor's insurance endorsing the Owner and others as additional insured's shall be "primary" and non contributory as to such endorsed insured's.
- (C) Cancellation: The certificate and policy, as the case may be, shall state that the City shall be given thirty (30) days' written notice of cancellation or any change in the insurance coverage.
- (D) There shall be a statement that the Contractor and any subcontractors waive subrogation as to the City, its officers, agents, employees and Program Coordinator.
- (E) There shall be a statement that full aggregate limits apply per job or contract.
- (F) Agents verification of Contractor's insurance on form provided by the City or equivalent.
- (G) Insurance shall contain no exclusions for x, c or u.
- (H) Full aggregate limits must apply per job or contract.

- B. **No Personal Liability of Public Officials:** In carrying out any of the provisions hereof in exercising any authority granted by the Contract, there will be no personal liability upon any public official.
- C. **Indemnity:** To the maximum extent permitted by law, the Contractor shall save harmless, indemnify and defend the City, its officers, agents and employees from and against any and all claims and losses, cost, expense or liability including attorney's fees and litigation costs caused by, arising out of, resulting from, or occurring in connection with the performance of the work by the Contractor or any subcontractor, regardless of the fault, breach of contract, or negligence of the City, its officers, agents or employees excepting only such claims or losses that have been adjudicated to have been caused solely by the negligence of the City and regardless of whether or not the Contractor is or can be named a party in a litigation.

Contractor agrees to indemnify and/or reimburse the City for any fines, violations, charges, suits, or sums of money imposed by the Alabama Department of Environmental Management (ADEM), Environmental Protection Agency (EPA), or any administrative agency on the City of Tuscaloosa for any sewage or contaminate discharged or Wetlands regulations violation as a result of or arising out of the work by the Contractor pursuant to this agreement.

- D. **Errors and Omissions.** The Contractor does agree to release and hold harmless the City of Tuscaloosa or any of its officers, agents and employees and its Program Coordinator from any damages claimed by the Contractor or subcontractors resulting from or attributable in whole or in part to, errors in or omissions of the plans and specifications, including final drawings of the Engineer/Architect or other design professionals. As to plans, specifications or designs prepared by independent design professionals, the parties agree that any City review or approval thereof was only for overall suitability, maintenance and usability and there are no express or implied warranties by the City as to the adequacy, accuracy, correctness, or code compliance thereof.
- E. **Exclusion of Contractor Claims:** In performing its obligations, the Engineer/Architect and its consultants may cause expense for the Contractor or its subcontractors and equipment or material suppliers. However, those parties and their sureties shall maintain no direct action against the City or its officers, employees, agents and program coordinator for any claim arising out of, in connection with, or resulting from the Engineering services performed or required to be performed where such services are performed in good faith to protect the City or the Public.
- F. **Inadequate Surety/Insurance.** It is further mutually agreed between the parties hereto that if, at any time after the execution of this agreement, any of the surety bonds of the Contractor or subcontractors relating to the Project for its faithful performance shall be deemed by the City to be unsatisfactory, or if for any reason such bond(s) ceases to be adequate to cover the performance of the work or the surety ceases to do business by agent in Tuscaloosa County, Alabama, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the City so to do, furnish an additional bond or bonds in such form and amount and with such surety or sureties as shall be satisfactory to the City. In such event, no further payment to the Contractor shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the City.
- G. **Changes.** When changes in the scope of work by written order or change orders aggregate in amount equal to 10 percent of the total contract, including the change order or change orders, the insurance coverage included under this heading shall be increased accordingly by the Contractor. Proof of coverage shall be established by endorsement to the original policy or by re-issue of the original policy to include the added coverage, or in accordance with any other acceptable policy with the insuring company for increasing the coverage.

ARTICLE VI. OBSERVATION OF THE PROJECT

- A. **Generally:** The Contractor shall furnish the Engineer/Architect and/or the City's observer with every reasonable facility for ascertaining whether or not the work performed is in accordance with the requirements and intent of the Specifications

and Contract Documents. No work shall be done without suitable inspection by the Engineer/Architect's Inspector or the City's observer. Payment for work or failure to reject any defective work shall not in any way prevent later rejection when such defect is discovered, nor obligate the City to final acceptance. All work done when not in accordance with the Plans, specifications and contract will be rejected and, without cost to the City, shall immediately be removed and other work done in accordance therewith by the Contractor. If the Contractor fails to remove the work as above ordered, then the Engineer/Architect shall have the right and authority to stop the Contractor and his work at once and the City may correct the work as herein provided at the cost and expense of the Contractor.

Inspection is not acceptance and shall not constitute acceptance by the City.

The work shall also be subject to inspection by representatives of the City of Tuscaloosa Building Inspection Department.

- B. **Observation of the Project:** The Engineer/Architect, the City and its observers, agents, any agency having jurisdiction, and their representatives shall have access at all times to the Project for inspection whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and inspection. The City or the Engineer/Architect may appoint or assign observers, with designated duties and restricted authority, to inspect the Project as may be directed, or to make special observations requested in advance by the Contractor, and to report progress of the Project, and manner of procedure, quality of the material and workmanship, and compliance with the Contract Documents.

Inspection or observation is not acceptance and shall not constitute acceptance by the City.

All materials, workmanship, equipment, processes of manufacture, and methods of construction, shall be subject to inspection, examination, and test by such persons at any and all places where such manufacture and/or construction are being carried on. The Engineer/Architect shall have the right to reject material, workmanship and/or equipment that are defective or otherwise not in accordance with the drawings and Specifications and require its correction by the Contractor. Rejected workmanship shall be satisfactorily corrected, and rejected material shall be satisfactorily replaced with proper material by the Contractor without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises. Provided; however, neither the presence or absence of such observers nor the giving or failure to give such advice, direction or instruction shall in any manner relieve the Contractor from any contract requirement.

Upon rejection of material and/or workmanship by the Engineer/Architect or the City, there may be occasion where such deficiencies may be corrected more economically and timely through modification of the design versus removal and replacement. In such instances, the Engineer/Architect shall provide design services on behalf of the City necessary for analysis and correction of the rejected work. Costs associated with hourly fees for these professional services shall be paid by the City and deducted from payment to the Contractor based on the actual costs incurred. Prior to beginning any analysis and accrual of associated professional service fees, the Engineer/Architect shall provide the Contractor and City notice in writing of the intent to begin, summary of the scope of work, estimated time to complete, and estimated total fees. Any costs associated with corrective work performed by the Contractor to remedy such deficiencies shall be the sole responsibility of the Contractor.

Neither the City observers nor the Engineer/Architect, will be authorized to revoke, alter, relax, or waive any requirements of the Contract Documents; to issue instructions contrary to the drawings and Specifications; nor shall they supervise and direct work for the Contractor, nor unreasonably interfere with the Contractor's operations beyond the extent necessary to make certain that the Project is being carried out according to the contract requirements.

Any advice which they may give the Contractor shall not be construed as binding the City in any way, nor as releasing the Contractor from any of the contract requirements.

If the Contractor considers any work demanded of it to be outside the contract requirements, or any ruling of the Engineer/Architect or an inspector to be unfair, it may immediately, upon such work being demanded or ruling made, request written instructions from the Engineer/Architect, or inspector, or within ten days file an appeal to the Engineer/Architect or the City, stating clearly and in detail the basis of its objections. However, pending the decision on such appeal no work shall be done in disregard of the rulings of the Engineer/Architect or inspector or his instructions on items of work affected by such appeal.

The Contractor shall furnish promptly, without extra compensation, all reasonable facilities, labor, and material necessary for safe and convenient access, inspection, and tests that may be required by the Engineer/Architect.

- C. **Authority and Duties of Observers:** If City or consultant inspectors, whether for the Engineer/Architect or Construction Manager, are being utilized, they shall be authorized and permitted to inspect all work done. The Inspector shall not be authorized to alter or waive any requirements of the Specifications. He shall have authority to call the attention of the Contractor to failure of the work to conform to the specifications and Contract. He may suspend the Project until any questions at issue can be referred to and decided by the Engineer/Architect or the City.

Neither the Engineer/Architect, Inspector, the City or other representatives for the City shall be responsible in any way for construction means, methods or techniques, nor for the safety of the construction work, progress, or employees of the Contractor or any subcontractors, except as set forth in the Construction Manager contract, if applicable.

The presence of the Inspector shall not in any manner lessen the responsibility of the Contractor pursuant to this agreement.

- D. **Defective Work/Correction of Work by the City:** The inspection of the work shall not relieve the Contractor of any of its obligations to fulfill its contract and defective work shall be made good, notwithstanding that such work has been previously inspected by the Engineer/Architect and accepted or estimated for payment. The failure of the Engineer/Architect or inspector to condemn improper workmanship shall not be considered as a waiver of any defect, whether known at the time or discovered later, or as preventing the City at any time subsequently from recovering damages for work actually defective. All work shall be guaranteed by the Contractor against defects in workmanship for a period of one year from date of final payment.

Upon failure and/or neglect by the Contractor to promptly prosecute or perform the work in accordance with the contract documents, including any requirements with respect to the construction schedule, plans or specifications, the City may, without prejudice to any other remedy it may have, correct such deficiencies and may deduct the actual cost thereof from payment, then or thereafter due to the Contractor.

- E. **Disagreement:** Should any disagreement or difference arise as to the estimated quantities or classifications or as to the meaning of the drawings or specifications, or any point concerning the character, or acceptability or nature of the several kinds of work, or construction thereof, the decision of the Engineer/Architect shall be final and conclusive and binding on the Contractor.
- F. **Stop Work Orders:** During unseasonable weather all work must stop when the Engineer/Architect so directs and all work must be suitably protected by Contractor at all times. However, the Engineer/Architect shall be under no obligation to stop work on the Project. If the Project is stopped, the Contractor shall not be entitled to extra compensation for delays or problems associated with the stoppage.
- G. **Progress Meetings:** The Contractor shall conduct regular progress meetings during the course of the Project at least once a month or more often if requested by the City or Engineer/Architect. The meetings shall be held at a site convenient to all parties and if a site cannot be agreed upon, the City will designate a site.

The Contractor or designated representative, the Contractor's Superintendent, all subcontractors, engineers, inspectors, and the City's representative shall attend.

The Contractor shall keep accurate written minutes of the meetings and forward copies thereof to the Engineer/Architect and the City's representative before the next scheduled meeting.

If a trade contract, progress meetings will be conducted by the Construction Manager, who will keep minutes. All trade contractors shall attend unless excused by the Construction Manager.

ARTICLE VII. PROJECT COMPLETION

- A. **Substantial Completion:** "Substantial completion" shall be that degree of completion of the Project or a defined portion of the Project, as evidenced by the Engineer/Architect's written notice of Substantial Completion, sufficient to provide the

City, at its discretion, the full-time use of the Project or defined portion of the work for the purposes for which it was intended. "Substantial Completion" of an operating facility or operating component of the Project shall be that degree of completion that has provided a minimum of seven (7) continuous days of successful, trouble-free operation in a "fully automatic" manner acceptable to the City and Engineer/Architect and with all redundant systems fully operational. All equipment contained in the Project, plus all other components necessary to enable the owner to operate the facility in the manner that was intended, shall be complete on the substantial completion date.

When the Contractor considers that the Project, or where acceptable to the City, a designated portion thereof is substantially complete, the Contractor shall prepare and submit to the Engineer/Architect a list of items to be completed or corrected and request an inspection for Substantial Completion. The failure by the Contractor to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. After inspection and/or if an operating facility, after a minimum of seven (7) continuous days of successful, trouble free operation has been achieved during startup, the Engineer/Architect may, at his sole discretion, issue a written notice of substantial completion for the purpose of establishing the starting date for specific equipment guarantees or warranties, and to establish the date that the City will assume the responsibility for the cost of operating such equipment.

Said notice shall not be considered as final acceptance of any portion of the Project or relieve the Contractor from completing the remaining work, including any remaining performance or acceptance testing, within the specified time and in full compliance with the Contract Documents. Specifically, the issuance of a written notice of Substantial Completion shall not relieve the Contractor of his obligation to promptly remedy any omissions and latent or unnoticed defects in the Project covered by the written Notice of Substantial Completion.

- B. **Final Inspection:** Upon notice from the Contractor that its work is complete, the Engineer/Architect and/or other representatives of the City shall make a final inspection of the work or Project and conduct test or tests if applicable. The Engineer/Architect shall notify the Contractor of all apparent and/or visible instances where the Project fails to comply with the plans and specifications and contract documents, as well as any defects he may discover (punch list). The Contractor shall immediately make such alterations as are necessary to make the Project comply with the plans and specifications and to the satisfaction of the Engineer/Architect.

Upon completion of all such repairs in a satisfactory manner, and when the Engineer/Architect has determined that the work or Project is acceptable under the contract, including this provision and after publication of final completion and all other requirements of final payment as provided for in this agreement, then he shall issue a final certificate of payment to the City stating that the balance is due the Contractor, less such amounts as may have been withheld by the City from time to time as provided in the contract documents. In recommending to the City that it make such final payment to the Contractor, the Engineer/Architect shall also issue a certificate of final acceptance wherein he shall recommend to the City that it accept the Project and/or work as final and complete pursuant to the contract documents.

Verification, approval, inspection, final inspection, issuance of final acceptance, issuance of final certificate of payment, action or approval by the City upon the final certificate of payment or final acceptance shall not in any way relieve the Contractor of responsibility for faulty materials or workmanship.

All warranty or guarantee periods shall commence and start to run from the date of substantial completion.

- C. **"As Built" Drawings:** Unless waived by the City representative, the Contractor must provide to the City a set of "as built" drawings acceptable to the City as a component part of the Project prior to final payment.
- D. **Final Cleanup:** Before final completion and final acceptance, the Contractor shall remove from the City's property or rights-of-ways and from all public and private property, all tools, scaffolding, false work, temporary structures and/or utilities, including the foundations thereof (except such as the City permits in writing to remain); rubbish and waste materials resulting from its operation or caused by its employees; and shall remove all surplus materials, leaving the site clean and true to line and grade, and the Project in a safe and clean condition ready for use and operation. In addition

to the above, the Contractor shall be responsible for the following special cleaning for all trades as the Project shall have been completed:

1. Cleaning of all painted, enameled, stained or baked enamel work: removal of all marks, stains, fingerprints and splatters from such surfaces.
2. Cleaning of all glass: cleaning and removing of all stickers, labels, stains and paint from all glass and the washing and polishing of the same on interior and exterior.
3. Cleaning or polishing of all hardware.
4. Cleaning all tile, floor finishing of all kinds; removal of all splatters, stains, paint, dirt, and dust, the washing and polishing of all floors as recommended by the manufacturer or required by the Engineer/Architect.
5. Cleaning of all manufactured articles, materials, fixtures, appliances and equipment; removal of all stickers, rust stains, labels (except instructional and/or safety labels) and temporary covers and cleaning and conditioning of all manufactured articles, materials, fixtures, appliances, electrical, heating and air conditioning equipment as recommended or directed by the manufacturers, unless otherwise required by the Engineer/Architect; blowing out or flushing out of all foreign matter from all dust pockets, piping, tanks, pumps, fans, motors, devices, switches, panels, fixtures, boilers, similar features; and freeing identification plates on all equipment or excess paint and the polishing thereof.

In the case of failure to comply with the above requirements for any part of the Project within the time specified by the Engineer/Architect, he may cause the work to be done and deduct the cost thereof from the contract price on the next or succeeding application for payment, or in the event that the cost exceeds the balance due the Contractor, bill the Contractor for the excess.

- E. **Notice of Completion:** The Contractor shall, immediately after the completion of the Project and acceptance by the Owner as provided for herein, give notice as required by Ala. Code §39-1-1(f) by an advertisement in some newspaper of general circulation published within the city or county wherein the Project has been done for a period of four (4) successive weeks. The advertisement shall advise interested parties to contact both the Contractor and the specific City representative. The City's representative shall be named along with his proper mailing address. In no instance shall a final payment be made upon the contract until the expiration of thirty (30) days after the completion of the notice. Proof of publication of said notice shall be made by the Contractor to the City of Tuscaloosa by affidavit of the Publisher and a printed copy of the notice published.

Provided, however, that the requirements hereinabove stated for notice and advertisement shall not apply to contractors performing contracts of less than Fifty Thousand Dollars (\$50,000.00) in amount and the governing body of the City of Tuscaloosa so as to expedite final payment, shall cause notice of final completion of such contract to be published one time in Tuscaloosa County and shall post notice of final completion on the City of Tuscaloosa's bulletin board for one (1) week and shall require the Contractor to certify under oath that all bills have been paid in full. Final settlement with such Contractor may be made at any time after the notice shall have been posted for one (1) entire week.

NOTE: When maintenance periods are included in the contract for highways, bridges or similar structures, such periods shall be considered component parts of the contract.

- F. **Final Payment:** Upon completion of the Project by the Contractor and acceptance by the City's representatives of all work required of the Contractor for the Project, but not until thirty (30) days after completion of the notice, the amount due the Contractor pursuant to the Contract Documents shall be paid upon the presentation by the Contractor to the City's representative of the following:

1. A properly executed and duly certified voucher for payment, verified by architect, engineer or other City representative, including therewith evidence that all payrolls and all amounts due for labor and materials, other than claims for damages due to tort, have been fully paid and satisfied and there are no outstanding claims or demands associated with the work on the Project.

2. A release of all claims and claims of lien against the City from the Contractor and all major subcontractors (the City may waive the requirement for subcontractor releases) arising under and by virtue of the contract, on the form attached, duly executed by the Contractor and with the consent of the surety. The Contractor may specifically except claims of the Contractor from the operation of the release if specifically excepted therefrom in stated amounts and the reason therefor.
The Contractor may with the consent of the City representative, if any subcontractor refuses to furnish such a release, furnish a bond with surety satisfactory to the City representative to indemnify against such claims.
 3. Proof of publication of notice of completion including affidavit of publisher and a printed copy of the notice so published, as provided by law.
 4. In accordance with Ala. Code §39-2-12(c), a non-resident contractor shall satisfy the City that he or she has paid all taxes due and payable to the State, the City and all applicable political subdivisions.
- G. **Acceptance of Final Payment Constitutes Release:** The acceptance by the Contractor of the final payment shall release the City, the Engineer/Architect, as representatives of the City, and their officers, employees, agents, and subconsultants from all claims and all liability to the Contractor for all things done or furnished in connection with the Project, and every act of the City and others relating to or arising out of the work except claims previously made in writing and still unsettled. No payment, however, final or otherwise, shall operate to release the Contractor or his Sureties from obligations under this Contract and the Performance Bond, Payment Bond, and other bonds, warranties and guarantees as herein provided.

ARTICLE VIII. WARRANTY AND GUARANTEES

A. Warranty and Guarantee:

1. Warranty: The Contractor warrants to the City and the Engineer/Architect that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all work, materials and equipment will be of good quality, free from fault and defects and in conformance with the contract documents. The work must be safe, substantial and durable construction in all respects. All work, materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Warranties shall commence to run from the date of substantial completion.

The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Contractor hereby guarantees the Project and the work on the Project against defective materials or faulty workmanship for a minimum of one (1) year after final payment by the City and shall replace or repair any defective materials or equipment or faulty workmanship during the period of guarantee at no cost to the City.

2. Guarantee: If, within the designated warranty period or if not designated, within one (1) year from the date of substantial completion, any of the work, materials or equipment is found to be defective or not in accordance with the contract documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so, unless the City has previously specifically given the Contractor a written acceptance of such specific condition. This obligation shall survive termination of the Contract. The City shall give such notice promptly after discovery of the condition.
3. Roofing Guarantee: If the Project involves a roof on a building or other structure, then the Contractor shall execute and provide the Roofing Guarantee in the form attached hereto. The guarantee shall be delivered to the City and Engineer/Architect prior to final payment.
4. Termite Warranty: If the Project involves termite treatment as required in Article IV, then the Contractor shall furnish to the City a written warranty certifying that the applied soil poisoning treatment will prevent the infestation of subterranean termites and that if subterranean termite activity is discovered during the warranty period, Contractor shall re-treat the soil and repair or replace any damage caused by termite infestation. The warranty

shall be for a period of five (5) years from the date of treatment signed by Applicator and Contractor.

- B. **Correction of Defective Work During Warranty/Guarantee Period:** The Contractor hereby agrees to make, at his own expense and no cost to the City, all repairs or replacements necessitated by defects in materials or workmanship, provided under the terms of this Contract, and pay for any damage to other works resulting from such defects, which become evident within 1 year after the date of substantial completion unless substantial completion is established by the Engineer/Architect only for specified items of equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents unless the City has previously given the Contractor a written acceptance of such defects. The Contractor shall promptly correct such defects upon receipt of a written notice from the City to do so. This obligation shall survive the termination of the Contract.

Unremedied defects identified for correction during the warranty period described herein before, but remaining after its expiration, shall be considered as part of the obligations of the warranty. Defects in material, workmanship, or equipment which are remedied as a result of obligations of the warranty shall subject the remedied portion of the Project to an extended warranty period of 1 year after the defect has been remedied.

Repetitive malfunction of equipment shall be cause for equipment replacement and an extension of the guarantee period for the equipment to a date 1 year following acceptable replacement.

The Contractor further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors or manufacturers of packaged equipment components.

The Contractor also agrees to hold the City and the Engineer/Architect and employees harmless from liability or damages, including the Engineer/Architect's and attorneys' fees, and cost and expenses of litigation of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written order for same from the City. If the Contractor fails to make the repairs and replacements promptly, or in an emergency where delay would cause serious risk, or loss, or damage, the City may have the defective work corrected or the rejected work removed and replaced, and the Contractor and his Surety shall be liable for the cost thereof. The Contractor during the warranty period shall repair/replace as rapidly as possible any and all equipment, materials, etc., which are found to be defective. Should any items not be repaired/replaced within thirty (30) days from the time it is reported to the Contractor by the City, then the warranty period shall be extended on that item for a period equal to the time that the item has remained defective, incomplete, or inoperable as determined by the City. The Contractor must certify that the item has been corrected.

The City's rights under this Article shall be in addition to, and not a limitation of, any other rights and remedies available by law.

ARTICLE IX. LAWS, PERMITS, ETC.

- A. **Laws and Regulations/Royalties, Patents, Copyrights and Permits and Rights-of-Way:** The Contractor shall comply with and keep itself fully informed of all laws, ordinances and regulations of federal, state, City and county in any manner effecting those engaged or employed in the Project, or the materials used in the Project, or in any way affecting the conduct of the Project, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. The Contractor shall possess all permits and licenses required by applicable law, rule or regulation for the performance of the Project. If any discrepancy or inconsistency should be discovered in this contract, or in the drawings or specifications herein referred to, in relation to any law, ordinance, regulation, order or decree, it shall forthwith report the same in writing to the Engineer/Architect. It shall at all times, itself, observe and comply with all such existing and future laws, ordinances and regulations.

The Contractor shall protect and indemnify the City, Engineer/Architect, and their respective employees, officers, subconsultants, and agents against any claim or liability arising from or based on the violation of any such laws, ordinances, or regulations. All permits, licenses, and inspection fees necessary for prosecution and completion of the Project shall be secured

and paid for by the Contractor, unless otherwise specified.

The Contractor shall obtain and pay for all licenses and permits and shall pay all fees and charges for connection to outside service and the use of property required for the execution and completion of the Project.

The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and code requirements applicable in or bearing on the conduct of the Project unless in conflict with contract requirements. If the Contractor ascertains at any time that any requirements of the Contract is at variance with applicable laws, ordinances, regulations, or building code requirements, it shall promptly notify the Engineer/Architect and any necessary adjustment of the Contract will be made as herein specified under change in orders.

The Contractor shall pay all applicable federal, state and local taxes and assessments on the Project. Wherever the law of the place of building requires a special tax, consumer, use, occupation, or other tax, the Contractor shall pay such tax.

The Contractor shall pay all royalties and license fees. The Contractor shall hold and save the City and its agents and employees harmless from liability of any nature or kind, including costs 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 City.

To the extent that the Project has not been permitted or registered by the Engineer or City, the Contractor shall register or obtain any and all necessary National Pollutant Discharge Elimination System (NPDES) Permits required by USEPA or the Alabama Department of Environmental Management (ADEM) as well as any applicable storm water permits or registration for the construction of the improvements specified in the Contract Documents. The Contractor shall abide by all regulations and conditions relative to the permit or registration and attachments to the permit or registration, including but not limited to sampling and monitoring. The Contractor shall fulfill for the City all the requirements made upon the City by the permit(s) or registration.

The Contractor shall be fully responsible for all aspects of erosion and sediment control. The Contractor shall utilize whatever measures are necessary to prevent pollution or siltation due to his activities. As a minimum, the Contractor shall strictly comply with the erosion control methods referenced in the Alabama Soil and Water Conservation Committee "Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas," latest edition (referred to as the "Alabama Handbook").

If the Contractor has information that any process, article or item specified or delineated by the Engineer/Architect is an infringement of a patent or a copyright, it shall promptly give such information to the Engineer/Architect.

B. Alabama Department of Transportation Rights-of-Way: If any portion of the Project involves work upon State right-of-way, the Contractor agrees to provide the Alabama Department of Transportation with a bond or certified check in the amount required, made payable to the Alabama Department of Transportation, to guarantee the faithful performance of the provisions of a permit and to guarantee that the Contractor shall maintain the work in a manner suitable to the Alabama Department of Transportation for a period of one (1) year. The Alabama Department of Transportation Bond Form must be used. At the end of one (1) year from the completion of this work, the Department of Transportation will return the certified check or bond to the applicant provided all provisions of this permit have been complied with. Otherwise, the Department of Transportation shall apply the certified check or bond to the cost of repairing the rights-of-way with State forces.

C. Tuscaloosa County Right-of-Way: If any portion of the Project involves work upon County right-of-way, the Contractor agrees to execute an application and file with Tuscaloosa County a bond or certified check in the amount required, made payable to Tuscaloosa County to guarantee the faithful performance of this provision of this work suitable to the County for a period of one (1) year. At the end of one year from the completion of this work, the County will return the certified check or bond to the applicant provided all provisions of this permit have been complied with. Otherwise, the County shall apply the certified check or bond on the cost of repairing the right-of-way with the County forces.

D. Storm Water Permit and Monitoring:

1. To the extent that the Project has not been permitted or registered by the Engineer or the City, and the Project is defined as an NPDES Construction Site per ADEM Admin. Code Chapter 335-6-12 (the Rule), the Contractor shall submit to the Alabama Department of Environmental Management (ADEM) a Notice of Registration (NOR) under the Rule for Storm Water Discharges during construction activities.
The Contractor shall strictly adhere to all requirements of the NOR and the rule regardless of which party has obtained coverage.
2. Compliance with all provisions of ADEM Admin. Code Chapter 335-6-12 and this registration is required, including but not limited to, the preparation and implementation of a Construction Best Management Practices Plan (CBMPP) and any other plans as may be required, the regular maintenance of the Best Management Practices (BMPs) to the maximum extent practicable and the submittal of required reports. As required by the Rule, the Contractor shall retain a Qualified Credentialed Professional (QCP) to prepare the CBMPP and to certify that it was prepared in accordance with the requirements of the "Alabama Handbook" and the Rule.
3. This registration neither precludes nor negates an operator's responsibility or liability to apply for, obtain, or comply with other ADEM, federal, state, or local government permits, certifications, licenses, or other approvals.
4. The Contractor, unless application for registration has already been made, will be furnished a Storm Water NOR application package when the contract is awarded. The Storm Water NOR application package will include the following:
 - a. Typical transmittal letter to ADEM.
 - b. NOR applications filled out with Project information.
 - c. Project area map.
 - d. Other data as required by the NOR for Tier 1 waters if applicable.
5. The Contractor will complete or furnish the following items and submit to ADEM within five working days of the receipt of the NOR application provided by the Owner.
 - a. Information as outlined in the typical letter of transmittal, to the address indicated on the letter of transmittal, by registered mail or hand deliver.
 - b. The "Alabama Department of Environmental Management (ADEM), Field Operations Division Storm Water Program" Notice of Registration (NOR); NOR shall be signed by a responsible official who is the operator, owner, the sole proprietor of a sole proprietorship, a general/controlling member or partner, or an executive officer of at least the level of vice-president for a corporation. Additionally, the QCP is required to sign the CBMPP certification part of the NOR.
 - c. Determine applicable fee per ADEM Fee Schedule F and make check payable to: Alabama Department of Environmental Management for the NOR and submit to the Alabama Department of Environmental Management with the NOR application.
6. Application for the Storm Water Permit shall be made by the Contractor no later than five working days after receipt of application provided by Owner. The Contractor shall not commence any construction activities until ADEM has issued the authorization number for the Project.
7.
 - a. Payment will be made to the Contractor for obtaining the storm water NOR as specified herein for the lump sum amount as shown in the bid schedule. If there is no line item for registration, obtaining the NOR shall be considered a subsidiary obligation of mobilization.
 - b. Individual erosion and sediment control items shall be paid for at the unit prices as shown in the bid schedule. Routine inspections will be performed by the Owner's representative or Engineer to verify compliance with the CBMPP and the Rule shall be the Contractor's responsibility and shall be incidental to the storm water registration.
 - c. If no individual erosion and sediment control items are included in the bid schedule the cost of these items shall be incidental to the lump sum amount as shown in the bid schedule for Storm Water Monitoring and Temporary Erosion and Sediment Control and payment shall be made pro rata as the Project progresses.

E. The Contractor shall perform all work in compliance with and as required by any State, Federal or Local registration, permit or license, the terms and conditions of which are adopted herein by reference. The Contractor agrees to indemnify and hold harmless the City, Engineer, and their respective officers, agents and employees from any fines, penalties, damages, claims, liability or judgment arising out of or in any manner associated with the Contractor's failure to perform work on the Project in strict accordance with all storm water registration, permit or license requirements.

ARTICLE X. MISCELLANEOUS CLAUSES

A. Notice and Service Thereof:

1. All notices, demands, requests, change orders, instructions, approvals and claims shall be in writing. Unless expressly otherwise provided elsewhere in this agreement, any election, notice or other communication required or permitted to be given under this agreement shall be in writing and deemed to have been duly given if provided in accordance with the provisions hereof.
2. Any notice to or demand upon the Contractor shall be in writing and shall be sufficiently given if addressed to the Contractor at the address stated herein and deposited in the United States mail in a sealed envelope with sufficient postage prepaid or delivered with charges prepaid to any telegraph company for transmission to the Contractor at such address. It shall also be sufficient if such notice or demand be served upon the Contractor personally or its local representative in charge of the Project or delivered at his local office. The Contractor shall, from time to time, designate to the City in writing any change of address to which such notice or demand shall be sent.
3. Any notice to or demand upon the City shall be in writing and shall be sufficiently given if delivered to the office of the City's representative or if addressed to the City representative and deposited in the United States mail in a sealed envelope with sufficient postage prepaid or delivered with charges prepaid to any telegraph company for transmission to such representative of the City.

B. City Representative: The City's representative on this Project is hereby designated as _____ and whose address is _____. All references to Engineer or Architect shall be to the City representative if no Engineer or Architect is involved in the Project.

With a copy to: Glenda Webb, Esquire, City Attorney, Office of the City Attorney
City of Tuscaloosa, Post Office Box 2089, Tuscaloosa, Alabama 35403-2089
Telephone: (205) 248-5140, Facsimile: (205) 349-0328

C. Contractor Representative: The Contractor's representative on this Project is hereby designated as _____ and whose address is _____.

D. Capacity: Each party to this agreement represents and warrants to the other as follows:

1. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.
2. That each has full power and capacity to enter into this agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.
3. That to the extent required, each party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the party.

4. That each party has duly authorized and empowered a representative to execute this agreement on their respective behalf and the execution of this agreement by such representative fully and completely binds the party to the terms and conditions hereof.
5. That absent fraud, the execution of this agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other party shall be entitled to rely upon the same. To the extent a party is a partnership, limited liability company or joint venture, the execution of this agreement by any member thereof shall bind the party and to the extent that the execution of agreement is limited to a manager, managing partner or specific member then the person so executing this agreement is duly authorized to act in such capacity for the party.
6. That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this agreement.
7. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this agreement.
8. Under the provisions of the Constitution and laws of the State of Alabama, each party has the power to consummate the transactions contemplated by this agreement;
9. Each party represents and warrants that the execution and delivery of this agreement and the consummation of the transactions contemplated herein will not conflict with, be in violation of, or constitute (upon notice or lapse of time, or both) a default under the laws of the State of Alabama, any resolution, agreement, or other contract agreement, or instrument to which a party is subject, or any resolution, order, rule, regulation, writ, injunction, decree or judgment of any governmental authority or court having jurisdiction over the party.
10. This agreement constitutes the legal, valid and binding obligation of each party and is enforceable against each party in accordance with its terms, except in so far as the enforceability thereof may be limited by:
 - (a) Bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights
 - (b) General principles of equity, regardless of whether such enforceability is considered as a proceeding at equity or at law.
11. Neither party will enter into any agreement to do anything prohibited in this agreement or enter into any agreement or take any action which would in any way impair the ability of the other party to faithfully and fully perform its obligations hereunder.
12. Under the provisions of the Constitution and laws of the State of Alabama, each party has the power to consummate the transactions contemplated by this agreement.

E. Ownership of Contract Documents: The Contract Documents, and copies of parts thereof, are furnished and owned either by the City or the Engineer/Architect. All portions of the Contract Documents, and copies of parts thereof, are the instruments of service for this Project. They are not to be used on other work and are to be returned to the City on request at the completion of the Project. Any reuse of these materials without specific written verification or adaptation by the City will be at the risk of the user and without liability or legal expense to the City or Engineer/Architect. Such user shall hold the City, its officers, agents and employees harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adoption shall entitle the City to further compensation at rates to be agreed upon by the user and the City.

F. No Waiver of Rights: Neither the inspection by the City or the Engineer/Architect or any of their officers, employees, agents, or subconsultants, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Project by the City or Engineer/Architect, nor any extension of time or change order, nor any possession taken by the City or its employees, or non enforcement of any provision of this agreement by either party shall operate as a waiver of any provision of this agreement, or any power herein reserved to the City, or any right to damages, nor shall any waiver of any breach in this agreement be held to be a waiver of any other or subsequent breach. Acceptance or final payment shall not be final and conclusive with regards to latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the City's rights under any warranty.

G. Subletting or Assigning of Contract:

1. **Limitations:** The Contractor shall not sublet, assign, transfer, convey, sell or otherwise dispose of any portion of the agreement, his obligations, right, or interest therein, or its power to execute such agreement, to any person, firm or corporation without written consent of the City and such written consent shall not be construed to relieve the Contractor of any duty or responsibility for the fulfillment of the agreement. A sale, conveyance or transfer of 50% or more of the stock or ownership of the Contractor shall be considered an assignment. Provided; however, in no event shall any portion of this agreement be assigned to an unsuccessful bidder whose bid was rejected because he or she was not a responsible or responsive bidder. Use of subcontracts up to a combined (total) value of 50 percent of the value of all work will not be construed as an assignment. Unless otherwise stipulated in the proposal or general conditions, the Contractor shall perform, with its own organization, work with the value not less than fifty (50) percent of the value of all work embraced in the contract.
2. **Subcontractor's Status:** A subcontractor shall be recognized only in the capacity of an employee or agent of the Contractor.

H. Third Party Beneficiaries: It is the intent of the parties hereto that there shall be no third party beneficiaries to this agreement.

I. Final Integration: This Agreement constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.

J. Force Majeure: Neither party to this Agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

K. Amendment in Writing: This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

L. Binding Effect: This agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns.

M. Captions: The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend, or limit the scope or intent of this Agreement.

N. Construction: This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

O. Mandatory and Permissive: "Shall", "will", and "agrees" are mandatory; "may" is permissive.

P. Governing Laws: The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.

Q. Liability of the City or City Officials. Notwithstanding any provision hereof to the contrary, the parties agree and acknowledge that the liability and obligations of the City, City officials or City employees as set forth herein are subject to the limitations imposed on municipalities by the Constitution and laws of the State of Alabama. No present or future official, officer or employee of the City shall ever be personally liable for the performance of any obligations hereunder.

R. Non Discrimination: The Contractor agrees that in performing the work and services as required herein under this agreement, not to discriminate against any person on the basis of race color, religion, sex, age or disability. (The Contractor shall fully comply with the Americans with Disabilities Act), the Fair Labor Standards Act and all other applicable laws and regulations).

S. Fines and Penalties: The Contractor shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the Owner and/or Contractor which are related to the Contractor's operations. The Owner shall deduct the amount of the levied fine or penalty from the Contract amount.

T. Agreement Date/Counterparts: The date of this Agreement is intended as and for a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

U. Use of Words and Phrases. The following words and phrases, where used in this document, shall be given the following and respective interpretations: "Herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.

The definitions set forth in any portion of this Agreement unless the text or context indicates differently shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

V. Severability. Each provision of this agreement shall be considered to be severable and, if for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this agreement that are valid, but this agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

IN TESTIMONY WHEREOF, said Contractor has hereto affixed its signature and said City of Tuscaloosa has caused these presents to be executed by Walter Maddox, Mayor of the City of Tuscaloosa, and attested by the City Clerk, on the day and year first above written, in four counterparts, each of which shall, without proof or accounting for the other, be accepted as an original.

PARTY OF THE FIRST PART

ATTEST

Contractor

BY: _____
ITS: _____

ATTEST:

CITY OF TUSCALOOSA, A MUNICIPAL CORPORATION/PARTY OF THE SECOND PART/CITY, OWNER

City Clerk

Walter Maddox, Mayor

COUNTY OF TUSCALOOSA)

I, _____, a Notary Public in and for said State at Large, hereby certify that _____, who is named as _____, is signed to the foregoing document, and,

- Who is known to me, or
- Whose identity I proved on the basis of _____, or
- Whose identity I proved on the oath/affirmation of _____, a creditable witness to the signer of the above document

and that being informed of the contents of the document, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the ____ day of _____, 20_____.

Notary Public.

My Commission Expires: _____

STATE OF ALABAMA)
COUNTY OF TUSCALOOSA)

Before me, the undersigned, a Notary Public in and for the State of Alabama, appeared Walter Maddox, Mayor of the City of Tuscaloosa and acknowledged that his signature is affixed hereto in his capacity as Mayor of the City of Tuscaloosa.

Done this the _____ day of _____, 20_____.

Notary Public in and for the
State of Alabama at Large

My Commission Expires: _____

[END OF CONTRACT AGREEMENT OFFICE OF THE CITY ATTORNEY]