

STATE OF ALABAMA)
TUSCALOOSA COUNTY)
CITY OF TUSCALOOSA)

CITY OF TUSCALOOSA MINOR PUBLIC WORKS (LESS THAN \$50,000)

NOTICE FOR BIDS – UNDER \$50,000

Sealed bids will be received by the City of Tuscaloosa, Alabama, a Municipal Corporation, in the Council Chamber in the City Hall, 2201 University Boulevard, on the 25th day of July, 2019, until 10:00, a.m., o'clock, local time, and then publicly opened and read for the furnishing of all labor and material (where required) and equipment for performing a public works project according to the plans, details, specifications and Contract Documents.

Bidders must identify on the outside envelope the project name.

Award of the contract will be made within forty-five (45) calendar days from the date of the receipt of bids.

1. The Project:

A. The Project shall be known as Water Tank Exterior Washing Project Phase 1 and the general character of said public works project shall consist of the following:

Cleaning of the exterior surface of between two and five existing water tanks. The cleaning will remove staining to allow for inspection purposes and general aesthetics. Please see bidder's response form below.

B. The approximate quantities of said Project are as follows:

Water Tanks of various dimensions as listed in priority order, please see bidder's response form below

C. Special instructions are as follows: See Instructions to Bidders, Bidders Response Form and Sample Contract.

D. The City will furnish the following: City will supply water via a city-supplied meter at no charge.

E. Time of Construction: From the date stated in the Notice to Proceed, the Project time of construction is 45 consecutive calendar days.

2. Qualification of Bidders:

A. All bidders must be responsible, meeting the criteria and requirements set forth in the Instructions to Bidders and bidder's response form.

B. Any non-resident corporation or entity must be qualified under Alabama State law to do business in the State of Alabama.

- C. All bidders shall possess all other licenses and/or permits that may be required by applicable law, rule or regulation for the performance of the work and must submit with their proposal any applicable license number and a copy of the license.

3. Contact Person, Plans and Specifications: The required Bidder's Response Form, plans and specifications and all related Contract Documents are open for public inspection at the office of Infrastructure and Public Services, located at 2201 University Blvd., Tuscaloosa, Alabama 35401, and required Bidder's Response Form, plans, specifications and other elements of the contract documents may be obtained from the office of Infrastructure and Public Services, designated as the office of the awarding authority for this purpose. **The contact person for the project is Kimberly Michael and she can be reached at (205) 248-5366 or kmichael@tuscaloosa.com. More information and documents related to this project may be found at <https://www.tuscaloosa.com/bids>.**

**CITY OF TUSCALOOSA, ALABAMA,
A MUNICIPAL CORPORATION
Walter Maddox, Mayor**

PLEASE SEE BIDDER'S RESPONSE FORM TO FOLLOW

Water Tank Exterior Washing Project Phase 1

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.

Base Bid

Ridgeland Tank \$ _____

Bowers Tank \$ _____

29th Street Tank \$ _____

Additive Alternate #1: Montgomery Hwy Tank \$ _____

Additive Alternate #2 Hillcrest Tank \$ _____

Total Base Bid.....\$ _____

Total Base Bid plus Additive Alternate #1.....\$ _____

Total Base Bid plus Additive Alternate #1 and 2:.....\$ _____

COMPANY NAME: _____

CONTACT PERSON: _____

COMPLETE MAILING ADDRESS: _____

TELEPHONE NUMBER: _____ FAX NUMBER: _____

E-MAIL ADDRESS: _____

AUTHORIZED SIGNATURE: _____

PRINTED NAME: _____ DATE: _____

**CITY OF TUSCALOOSA PUBLIC WORKS CONTRACT DOCUMENTS
SECTION TWO
INSTRUCTION TO BIDDERS
(2019)**

**NOTE: THIS DOCUMENT CONTAINS IMPORTANT BIDDING AND CONTRACTING INFORMATION.
ALL POTENTIAL BIDDERS SHOULD READ IT THOROUGHLY**

1. **Intention:** The Advertisement for Bids, Instruction to Bidders, Contract Agreement, any modifications or supplemental conditions to the Contract Agreement, Bid Proposal, and the Plans and Specifications are interrelated and apply to the complete work to which they relate.

2. **Definitions:** Where the following words, or the pronouns used in their stead, occur herein, they shall have the following meaning:

"Awarding Authority" shall mean the City of Tuscaloosa, Alabama.

"Bidder" shall mean any person, firm or corporation, that is responsible, submitting a responsive bid for the Project contemplated by the contract documents, who meets the requirements set forth in the contract documents, maintains a permanent place of business, has adequate forces and equipment to perform the work on the Project properly and within the time limit that is established, has sufficient experience in the type work provided for in the contract documents and has adequate financial status and resources to meet its obligations contingent to the work.

"City" or "Owner" shall mean the City of Tuscaloosa, Alabama, as the awarding authority or its authorized and legal representatives.

"Contractor" shall mean initially the successful or probable low bidder and then the party of the first part to the construction agreement or the legally authorized representatives of such party, including a trade contractor.

"Engineer/Architect" shall mean an Engineer or Architect responsible for design and related services on the Project, and if no Construction Manager is employed, then the Engineer is the representative of the City of Tuscaloosa, Alabama, on the Project. References to the "Engineer" shall mean the Construction Manager, if the City has employed such services, to the extent such services are applicable to construction management activity as set forth in the agreement between the City and the Construction Manager, and the context herein indicates that it would relate to services traditionally and customarily performed by a Construction Manager; otherwise, "Engineer" shall refer to the Engineer or Architect.

"Force Account Work" work paid for by reimbursing for the actual cost for labor, materials and equipment usage incurred in the performance of the work, as directed, including a percentage for overhead and profit where appropriate.

"Gender": a word importing one gender shall if appropriate extend to and be applied to the other gender. The masculine shall include the feminine and vice versa, unless the context clearly indicates otherwise.

"Inspector" shall mean a representative of the Engineer/Architect, Construction Manager or the City, as the case may be.

"Non-Resident Contractor" shall mean a contractor which is neither (a) organized and existing under the laws of the State of Alabama nor (b) maintains its principal place of business in the State of Alabama. A non-resident contractor which has maintained a permanent branch office within the State of Alabama for at least five (5) continuous years shall not thereafter be deemed to be a non-resident contractor so long as the contractor continues to maintain a branch office within Alabama.

"Project" shall mean the Public Work to which these Contract Documents relate, including the labor, materials and all work to be done by Contractor that is the subject of the bid, plans, specifications and contract documents.

"Public Property" Real property which the awarding authority owns or has contractual right to own or purchase, including easements, rights-of-way, or otherwise.

"Public Work(s)" shall mean a Project consisting of the construction, repair, renovation, or maintenance of public buildings, structures, sewers, water works, roads, bridges, docks, underpasses and viaducts, as well as any other improvement to be constructed, repaired or renovated or maintained on public property to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.

"Responsible Bidder" shall mean a bidder who, among other qualities determined necessary for performance, is competent, experienced and financially able to perform the contract.

"Responsive Bidder" shall mean a bidder who submits a bid that complies with the terms and conditions of the invitation for bids, including plans, drawings, specifications and other provisions of the contract documents.

"Retainage" shall mean that money belonging to the Contractor which has been retained by the awarding authority conditioned upon final completion and acceptance of all work in connection with the Project.

"Singular/Plural" the singular shall include the plural and vice versa, unless the context clearly indicates otherwise.

"Trade Contracts" "Trade contracts" or "multiple prime contracts" are multiple but separate contracts with the City on the same Project that represent significant construction activities performed concurrently with and closely coordinated with construction activities performed on the Project under other trade contracts.

"Unbalanced Bid" Unbalanced bids may be considered non-responsive and may be subject to rejection. An unbalanced bid includes but is not limited to one which results in a substantial advance payment to the contractor.

3. Work to be Performed: The City contemplates the construction of a public works project as generally described in the Advertisement for Bid and as more particularly described, shown and depicted on the plans, specifications, drawings and in the contract documents.

4. Bidding, Generally:

- A. All bids must be made upon the bid proposal form and all blanks shall be properly filled in and bid proposal executed as required.
- B. Any bidder may withdraw his or its bid, either personally or by telegraphic or written request (not by facsimile), at any time prior to the scheduled opening time for receipt of bids. Except as provided in Ala. Code §39-2-11(b)(c)(d), no bid may be withdrawn after opening of bids prior to the time of returning bid bonds as provided for herein.
- C. Any unauthorized conditions, limitations or provisos attached to the bid proposal, except as otherwise provided herein, will render a bid proposal informal and may cause its rejection. Unbalanced bids may be subject to rejection.
- D. All bids will be opened in public at the time and date specified in the Notice of Advertisement for bids, unless otherwise altered by addendum. All bidders are invited to be present at the opening of bids. No bids will be received after the time established for the opening of bids.

- E. All bids are to be enclosed in a sealed envelope addressed to the City of Tuscaloosa, P. O. Box 2089, Tuscaloosa, Alabama and/or hand delivered to the City Clerk, 2201 University Boulevard, City Hall, Tuscaloosa, Alabama. All bids are to be marked to indicate clearly the Project to which it applies and include the following language: "Bid Enclosed" and "Attention City Clerk."

5. Responsible, responsive bidders: The City reserves the right to reject any bid that is submitted by a bidder that is determined by the City to not be a responsible bidder or whose bid proposal is not responsive.

In determining whether a bidder or bid is responsible and/or responsive, the City reserves the right to also request and consider the following factors:

- A. Types or kinds of materials or items best suited to the City's needs for the Project.
- B. A current financial statement of the bidder and/ or bonding capability or limits.
- C. An accurate inventory of equipment to be used on the Project for a list of key personnel to be used on the Project and detailed histories of their experience.
- D. A list of similar work performed by any person, firm, or corporation with the same name as the name or any of the names in the bidder's proposal within the last five (5) years.
- E. A list of five (5) references familiar with the bidder's competence, experience, capabilities, skill and integrity.
- F. A statement of bidder pertaining to bankruptcies, judgments, liens or litigation within the last five (5) years. Such statement shall also apply to each company, officer and the key personnel on the Project.
- G. The General Contractor's State license number and class.
- H. Bidder's performance and prosecution of past projects for the City.
- I. An unbalanced bid.
- J. Other information supplied in the bid proposal.

The City may make such investigations as he deems necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Bidder fails to satisfy the City that such Bidder is properly qualified to carry out the obligations of the Contract and complete the work contemplated therein.

6. Consideration of Bid Proposals:

- A. Generally: The contract will be awarded to the lowest responsible and responsive bidder, unless the City determines that all the bids are unreasonable or that it is not in the best interest of the City to accept any of the bids. Award of the contract will be made on the basis of the lowest actual bid amount for the contract, which is defined as the total of the bid and/or extended total amounts for unit price items, plus requested and accepted additive or deductive alternates, pursuant to the provisions hereof. The City reserves the right to reject all bids and/or reject and rebid the Project should it determine the same is in the best interest of the City.
- B. Minor irregularities as determined by the City or its representatives, will not cause a bid to be non-responsive and may be waived by the City.
- C. Bidder must possess all licenses and permits required by applicable law, rule or regulation for the performance of the work prior to bidding.
- D. Joint ventures shall not generally be considered acceptable bids without special waiver from the City, which must be requested in writing at least thirty (30) days prior to bid opening.
- E. Additive and/or Deductive Alternates: If the City has elected to request bids for additive and/or deductive alternates, then the following procedure shall be the basis for calculating such bids:

- 1) Deductive Alternates: Any deductive alternate from the base bid shall constitute cumulative deductions from the base bid; and in determining the lowest bidder, if the City elects to consider any deductive alternates, the City will proceed to consider the bids upon the basis of the base bids of all qualified bidders minus the respective deduction stated for the first alternate. If the City determines that it wishes to proceed to consider additional deductive alternates, it may do so sequentially and in like manner throughout the deductive alternates the City elects, so that the base bids of all qualified bidders shall be calculated minus the respective number of deductive alternates in sequence the City has elected to consider. The lowest responsible responsive bid will be the lowest actual base bid of a qualified bidder less the selected sequential deductive alternates.
 - 2) Additive Alternates: To determine additive alternates, any additive alternate shall constitute cumulative additions to the base bid; and in determining the lowest bidder if the City elects to consider any additive alternates, the City will proceed to consider the bids upon the basis of the base bid of all bidders plus the respective addition stated for the first alternate. If the City determines that it wishes to proceed to consider additional additive alternates it may do so sequentially, and in like manner, throughout the additive alternates, the City elects, so that the base bids of all qualified bidders shall be calculated plus the respective number of additive alternates in sequence the City has elected to consider. The lowest responsible responsive bid will be the lowest actual base bid of a qualified bidder plus the selected sequential additive alternates. Once the City has determined the lowest responsible responsive bidder as set forth herein, then it may award the contract on the basis of accepting and/or rejecting any additive and/or deductive alternates of that bid as it determines is in the best interest of the City.
- G. No Bids or Only One Bid: In the event no bid proposals or only one bid proposal is received in response to the City's Advertisement for Bids at the time stated for the opening of bids, the City may elect at its discretion, any of the following options:
- 1) Advertise for and seek other competitive bids.
 - 2) Direct that the work shall be done by force account under its direction and control.
 - 3) Negotiate for the work through the receipt of informal bids. Provided; however, where only one responsible and responsive bid has been received, any negotiation for the work shall be for a price lower than that bid.
- H. An unbalanced bid.

7. Materials and Work: All materials, which the engineering plans specify or are required, will be installed as they are shown on the drawings, plans and/or specs.

- A. Brand names, catalog numbers, weights, etc., are used to indicate levels of quality only and are not intended to restrict the bidding. If bidding on an item of another brand or manufacturer than that specified, bidder's proposal should be accompanied by brochures or other pertinent literature giving detailed specifications of the item(s) on which the proposal is being made. Bids or proposals received without sufficient literature to determine equal quality may not be considered. Final determination as to equal quality will be made by the City.
- B. Quantities: The quantities shown in the proposal shall be considered by the contractor as the quantities required to complete the work for the purpose of bidding. Should the actual quantities required in the construction of the work be greater or less than the quantities shown, an amount equal to the difference of quantities at the unit prices bid for the items will be added to or deducted from the contract total.
- C. Adjustment Items: During the course of work, the prices bid for adjustment items may be used by the City to increase or decrease the total cost for the work if the quantity of work exceeds or is less than the amount shown on plans.

- D. The attention of all bidders is called to the fact that all or a portion of this Project may be federally funded and if so, the special conditions of a federally funded contract including federal labor standard provisions, the minimum wage rates included in the contract documents, plans and specifications must be followed.
- E. Construction Crews: The Contractor will be required to furnish at least one separate construction crew during the work as set forth in the contract. Unless waived by the City, the Contractor shall perform on the sites and with his own organization and equipment, at least fifty percent of the total amount of the work to be performed under this Contract. The Contractor may only subcontract a maximum of fifty (50%) percent of the work without City consent. If, during the progress of the work hereunder, the Contractor requests a reduction of such percentage, and the City representative determines that it would be to the City's advantage, the percentage of the labor required to be performed by the Contractor's own organization may be reduced; PROVIDED prior written approval of such reduction is obtained by the Contractor from the City.
NOTE: Bidders are advised to carefully review all other elements of the contract documents for more details concerning requirements for performing work on the Project.
- F. In the event the City elects to utilize a Purchasing Agent Appointment agreement in conjunction with this contract, the Contractor will be required to execute such an agreement and perform in accordance therewith.

8. Execution of Contract, Notice to Proceed: Award of the contract will be made within the time specified after the opening of bids.

The bidder to whom award is made shall enter into a written contract for the Project with the City on the forms provided in the contract documents, furnish the required performance and labor and material bonds with proper surety and furnish the evidence of insurance as required, all within thirty (30) days of presentation of the prescribed forms to the bidder. If extenuating circumstances prevail, the City may grant an extension of time not exceeding five (5) days for the return of the contract, required bonds and evidence of insurance.

Within twenty (20) days after presentation by the bidder to the City, the City shall review the bonds, surety and evidence of insurance to ascertain whether they meet the requirements of the contract documents, and if such requirements have been met the City shall complete the execution of the contract.

A notice to proceed order will be issued by the City or its representatives within fifteen (15) days after final execution of the contract by the City. The Contractor shall begin work on the date specified in the Notice to Proceed.

9. Labor, Material and Performance Bonds: Within thirty (30) days after the prescribed forms have been presented, the successful bidder shall execute a performance bond with good and sufficient surety from a company duly authorized and qualified to make such bond in the State of Alabama, a performance bond made payable to the City of Tuscaloosa, with a penalty equal to 100 percent of the amount of the contract price and in addition thereto, another bond with good and sufficient surety by a surety company duly authorized and qualified to make such bond in the State of Alabama, payable to the City of Tuscaloosa, in an amount equal to 100 percent of the contract price with an obligation that such contractor shall promptly make payments to all persons supplying it or them with labor, materials or supplies for or in prosecution of the Project provided for in such contract and for the payment of reasonable attorneys fees incurred by any successful claimants or plaintiffs in civil actions on said bond, pursuant to the provisions of Ala. Code §39-1-1 (1975).

10. Insurer Qualifications: All certificates of insurance shall be countersigned by a licensed agent residing and engaged in doing business in the State of Alabama. The Insurer shall be licensed and authorized to do business in the State of Alabama.

11. Power-of-Attorney: The attorney-in-fact (resident agent) who executes the performance bond and/or payment bond on behalf of the surety must attach a notarized copy of his or her power-of-attorney as evidence of his authority to bind the surety of the date of execution of the bonds. Certification by a resident agent authorized to do business in Alabama is required.

12. Insurance: The successful contractor shall file with the City, at the time of delivery of the signed contract, satisfactory evidence of insurance, the requirements as set forth in the contract agreement. Satisfactory evidence of insurance shall include at a minimum, the insurers standard "Certificate of Insurance" (modified pursuant to insurance requirements of the contract agreement) and the agents verification of insurance as required by Section 26. If the City deems that additional evidence or clarification, etc., of insurance is appropriate, the bidder shall promptly furnish the same to the City upon request.

13. Examination of Contract Documents and of the Site of the Project: Before submitting a bid proposal for the Project, each bidder shall carefully examine the Contract Documents, including but not limited to plans, drawings, specifications, contract, etc., visit the site, and satisfy itself as to the nature and location of the Project, and the general and local conditions, including weather, the general character of the site or building, the character and extent of existing work within or adjacent to the site, any other work being performed or proposed thereon at the time of submission of their bids. It shall obtain full knowledge as to transportation, disposal, handling, and storage of materials, availability of water, electric power, and all other facilities in the area which will have a bearing on the performance of the Project for which they submit their proposals. The submission of a proposal shall be prima facie evidence that the bidder has made such examination and visit and has judged for and satisfied himself as to conditions to be encountered regarding the character, difficulties, quality, and quantities of work to be performed and the material and equipment to be furnished, and as to the contract requirements and contingencies involved. It shall be the Bidder's obligation to verify for himself and to his complete satisfaction, all information concerning site and surface conditions.

14. Interpretation of Plans and Specifications: If any bidder contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of plans, specifications, or other proposed contract documents, he may submit to the Engineer/Architect or Construction Manager, as the case may be, a written request for an interpretation thereof at least ten (10) days prior to bid opening. The bidder submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by written addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of such documents. The City, Construction Manager or Engineer/Architect will not be responsible for any other explanations or interpretations of the proposed documents.

15. U. S. Products Preference: The successful bidder (contractor) shall comply with Ala. Code §39-3-1 (1975), shall agree to utilize in the execution of the Project, materials, supplies and products manufactured, mined, processed or otherwise produced in the United States or its territories, if the same are available at reasonable and competitive prices and not contrary to any sole source specifications. It is further stipulated that a breach of the foregoing provision of this agreement by the contractor in failing to utilize domestic products shall result in a downward adjustment in the contract price equal to any realized savings or benefit to the Contractor.

16. Use of Domestic Steel: The attention of all bidders and that of the successful bidder (contractor) is drawn to Ala. Code §39-3-4 (1975), requiring the use of steel produced within the United States for municipal construction projects when specifications in the construction contract require the use of steel and do not limit its supply to a sole source. This provision is subject to waiver if the procurement of domestic steel products becomes impractical as a result of national emergency, national strike or other causes. Violations of the use of domestic steel requirements shall result in a downward adjustment in the contract price to equal any savings or benefit to the Contractor.

17. Applicable Laws: Each Bidder shall inform himself of, and the Bidder awarded a contract shall comply with, federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes,

but is not limited to, applicable regulations concerning minimum wage rates, the use of domestic products, U.S. steel and resident labor, non-discrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees and similar subjects. Certain statutory requirements are summarized immediately hereinafter. The attention of all bidders is called to the fact that the work will be subject to compliance with all applicable City building and technical codes and will be subject, in addition to all other inspections, to inspection by a representative of the City of Tuscaloosa Building Inspections Department.

18. Agent's Verification of Insurance. This form or a letter equivalent from the Insurance Agent should be submitted with each Contractor's Bid, or in the alternative, Contractor may provide a copy of the insurance policy or policies reflecting the coverages required herein.

19. Compliance with 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.

20. 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.

21. 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.

[END INSTRUCTION TO BIDDERS—OFFICE OF THE CITY ATTORNEY]

SAMPLE CONTRACT TO FOLLOW / NOT FOR EXECUTION:

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: Water Tank Exterior Washing Project Phase 1

FILE NO.: A19-0808 **ENGINEERING PROJECT NO:** N/A

**FOR: IPS
(2019)**

STATE OF ALABAMA)
TUSCALOOSA COUNTY)
CITY OF TUSCALOOSA)

MINOR PUBLIC WORKS CONTRACT
(2019)

THIS AGREEMENT for a City of Tuscaloosa Public Works Project is made and entered into on this the _____ day of _____, 20 ____, by and between _____ (Licensed Alabama General Contract # _____) hereinafter sometimes called the CONTRACTOR, as party of the first part, and the CITY OF TUSCALOOSA, Alabama, a Municipal Corporation, hereinafter sometimes referred to as the City or the Owner, as party of the second part.

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") known as the Water Tank Exterior Washing Project Phase 1.

The Contractor will furnish at his own cost and expense all labor, tools, equipment and transportation as are required or necessary, and shall perform all the work in a manner and form required to construct the Project as the same is hereinafter more specifically described and if the same have been prepared, then also as provided by the plans, specifications and documents which are attached hereto and made a part hereof, as if fully set out herein and any addenda together with all plans and drawings, if prepared, on file in the office of the Owner's representative.

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

ARTICLE I. THE PROJECT

A. The Project shall be known as Water Tank Exterior Washing Project Phase 1 and the general character of said public works project shall consist of the following:

Cleaning of the exterior surface of between two and five existing water tanks. The cleaning will remove staining to allow for inspection purposes and general aesthetics. Please see bidder's response form below.

B. The approximate quantities of said Project are as follows: Water Tanks of various dimensions as listed in priority order, please see bidder's response form below.

C. Special instructions are as follows: N/A.

D. The City will furnish the following: City will supply water via a city-supplied meter at no charge.

E. Time of Construction: From the date stated in the Notice to Proceed, the Project time of construction is 45 consecutive calendar days.

ARTICLE II. MATERIALS AND WORK

All materials will be installed properly as they are shown on the manufacturer's instructions or if there are drawings, plans and/or specs in association with the project, then in accordance therewith.

A. Quantities: Any quantities shall be considered by the contractor as the quantities required to complete the project. Should the actual quantities required in the construction of the project be greater or less than the quantities shown, an amount equal to the difference of quantities at the unit prices bid for the items will be added to or deducted from the contract total.

B. Adjustment Items/ Determination of Adjustment of the Contract Sum: During the course of work, the prices for adjustment items may be used by the City to increase or decrease the total cost for the work if the quantity of work exceeds or is less than the amount shown on plans.

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 markup 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.

C. Federal Funding: The attention of the Contractor is called to the fact that all or a portion of this project may be federally funded and if so, the special conditions of a federally funded contract including federal labor standard provisions, the minimum wage rates included in the contract documents, plans and specifications must be followed.

D. Construction Crews: The Contractor shall furnish at least one separate construction crew for the project. Unless waived by the City, the Contractor shall perform on the sites and with his own organization and equipment, at least fifty percent of the total amount of the work to be performed under this Contract. The Contractor may only subcontract a maximum of fifty (50%) percent of the work without City consent. If, during the progress of the work hereunder, the Contractor requests a reduction of such percentage, and the City representative determines that it would be to the City's advantage, the percentage of the labor required to be performed by the Contractor's own organization may be reduced; PROVIDED prior written approval of such reduction is obtained by the Contractor from the City.

E. General Contractor's Permit or License: The attention of the Contractor is called to the provisions of the State law governing general contractors as set forth in Ala. Code §34-8-1 et seq. (1975), particularly in regard to the need for and evidence of a State general contractor's license. The provisions of said statutes are adopted herein by reference and form a part of the Contract.

F. U. S. Products Preference: The Contractor shall comply with Ala. Code §39-3-1 (1975) and agrees to utilize in the execution of the project, materials, supplies and products manufactured, mined, processed or otherwise produced in the United States or its territories, if the same are available at reasonable and competitive prices and not contrary to any sole source specifications. It is further stipulated that a breach of the foregoing provision of this agreement by the contractor in failing to utilize domestic products shall result in a downward adjustment in the contract price equal to any realized savings or benefit to the Contractor.

G. Use of Domestic Steel: The attention of the Contractor is drawn to Ala. Code §39-3-4 (1975), requiring the use of steel produced within the United States for municipal construction projects when specifications in the construction contract require the use of steel and do not limit its supply to a sole source. This provision is subject to waiver if the procurement of domestic steel products becomes impractical as a result of national emergency, national strike or other causes. Violations of the use of domestic steel requirements shall result in a downward adjustment in the contract price to equal any savings or benefit to the Contractor.

H. Applicable Codes: The work will be subject to compliance with all applicable City building and technical codes and will be subject, in addition to all other inspections, to inspection by a representative of the City of Tuscaloosa Building Inspections Department.

I. 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 City 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.

J. 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.

K. 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 otherwise be necessary to the completion of the Project and the operation of each construction crew required.

L. Employees: The Contractor shall employ only competent, skillful workers to do 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.

M. 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.

N. 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. 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).

O. 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.

Any damage to existing structures, or the interruption of a utility service shall be repaired or restored promptly by and at the expense of the Contractor.

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.

P. 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 | |

Q. 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, its officers, agents and employees, 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.

R. 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 State Highway Department. 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 to the City Traffic Engineer such a traffic control plan before commencing construction.

S. 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 City and 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.

T. 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.

U. 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.

V. Trailers: With the approval of the City or Engineer/Architect, the Contractor may locate 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.

W. Construction Stakes: 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 replacing and/or re-establishing in accordance with the construction plans and/or specs, all construction stakes that are disturbed, displaced or destroyed during construction by engaging the services of a qualified Engineer or land surveyor.

If 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.

X. Periodic Cleanup: The Contractor shall periodically, 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.

Y. Erosion Control:

1. Erosion control measures shall be performed on all disturbed areas in accordance with the Construction Best Management Practices Plan (CBMPP) included in the Notice of Intent for coverage under ALR1000000. 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 law.
2. 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.
3. 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.
4. Materials used for erosion control measures shall be in accordance with the Alabama Handbook and CBMPP and shall include hay bales, sandbags, silt fencing rip rap, crushed stone, mulch or other materials necessary in order to accomplish erosion control.

Z. 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.

AA. 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, at cost, 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 Permittee, 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 III. MONETARY ISSUES

A. Taxes and Charges: Except to the extent that Ala. Code §40-9-33 (1975) exempts the payment of state, county and municipal sales and use taxes for this project, Contractor shall withhold and pay all 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.

B. 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 _____ (\$ _____). **NOTE:** This amount does not include the payment of sales and use tax to the state, county, or municipality for this project on items otherwise exempt pursuant to Ala. Code §40-9-33 (1975).

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 City representative 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 the City's approval for work at night or on Saturdays or Sundays. 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 City representative's opinion requires the 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. The rate at which the Contractor shall reimburse the City for this cost will be \$ _____ per 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, 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 contract 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, and 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. In accordance with §13, 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 this character, the Contractor shall immediately notify the City representative 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 City representative 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 (\$7,500); 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 do not exceed 10 percent of the Contract Price, subject to Alabama Bid Law exceptions.

The Contractor is expected to complete the project within the financial parameters stated herein. 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.

ARTICLE IV. TIME

A. Time for Completion/Delays: The Contractor hereby agrees to commence work under this contract on the date to be specified in a written "Notice to Proceed" of Owner's representative or thirty (30) days from the date of contract execution if no notice is issued, and to fully complete the project within 45 consecutive calendar days thereafter. The Contractor shall begin work on the date specified in the Notice to Proceed. The Contractor further agrees to pay to the City, liquidated damages for each consecutive calendar day thereafter as hereinafter provided. Time is of the essence and a material element to this agreement.

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.

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, 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 the City representative within ten (10) days after the occurrence of the cause for delay. The City representative 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 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 City representative 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.

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 five (5) 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. Regardless, the City reserves the right to terminate this contract should it determine it is in the City's best interest. 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.

D. Liquidated Damages: Should the work under this contract not be completed within the time specified 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 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 these 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 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.

B. 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. 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. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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. INSPECTION OF THE PROJECT

A. Inspection (Generally): The Contractor shall furnish the Engineer/Architect and/or the City's representative 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. No work shall be done without suitable inspection by the Engineer/Architect or his representative. 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 Inspection Department for compliance with applicable codes.

B. Inspection of the Project: The Engineer/Architect, the City and its 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.

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

All materials, workmanship, processes of manufacture, and methods of construction, if not otherwise stipulated in the specifications, shall be subject to inspection, examination, and test by the Engineer/Architect, or the City representative as the case may be, at any and all places where such manufacture and/or construction are being carried on. The Engineer/Architect, or the City representative as the case may be, shall have the right to reject defective material and workmanship and/or 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.

The Engineer/Architect, or the City representative as the case may be, may appoint or assign inspectors, with designated duties and restricted authority, to inspect the Project as he may direct, or to make special inspections requested in advance by the Contractor, and to report to him progress of the Project, and manner of procedure, quality of the material and workmanship, and compliance with the Contract Documents. The Engineer/Architect, or the City representative as the case may be, shall have authority to reject materials, workmanship, or equipment clearly defective or otherwise not in accordance with the drawings and Specifications; but neither the presence or absence of such inspectors nor the giving or failure to give such advice, direction or instruction in any manner relieve the Contractor from any contract requirement.

Neither the inspectors, nor the Engineer/Architect, or City representative as the case may be, 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 the City representative as the case may be, 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 representative as the case may be, 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 Inspector: If City or consultant inspectors, whether for the Engineer/Architect, the City 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, inspector or City representative 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 upon the Contractor.

F. Stop Work Orders: During unseasonable weather all work must stop when the Engineer/Architect or City representative so directs and all work must be suitably protected by Contractor at all times. However, the Engineer/Architect or City representative shall be under no obligation to stop the Project. If the Project

is stopped, the Contractor shall not be entitled to extra compensation for delays or problems associated with the stoppage.

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 work 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 7 continuous days of successful, trouble-free operation of the facility 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 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 or City representative as the case may be.

Upon completion of all such repairs in a satisfactory manner, and when the Engineer/Architect, or City representative as the case may be, 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, or the City representative as the case may be, 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 accepted by 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: After the completion of the contract and acceptance by the Owner as provided for herein, as required by Ala. Code §39-1-1(g), 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 by the Contractor and acceptance by the City's representatives of all work required of the Contractor for the Project, but not until one entire week after posting of the notice of completion, 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. 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. (Publication to be performed by City).
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. 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.
2. Guarantee: If, 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. (Publication to be performed by City)
4. Termite Warranty: If the Project involves termite treatment, 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, 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.

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 real property of the site of 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.

The Contractor shall obtain any and all necessary National Pollutant Discharge Elimination System (NPDES) Permits required by USEPA or the Alabama Department of Environmental Management as well as any applicable storm water permits for the construction of the improvements specified in the Contract Documents. The Contractor shall abide by all regulations and conditions relative to the permit and attachments to the permit, 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).

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: The Contractor agrees to provide the Alabama Department of Transportation bond or certified checks in the amount required, made payable to the Alabama Department of Transportation, to guarantee the faithful performance of this provision of the permit and to guarantee that the Contractor shall maintain this work 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: The Contractor agrees to execute 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.

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 Kimberly Michael and whose address is 2201 University Blvd., Tuscaloosa, Alabama 35401. 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 and
 - (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: This Contract Document, 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, 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.

ARTICLE XI. COMPLIANCE WITH 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.

ARTICLE XII. 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.

ARTICLE XIII. 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.

IN TESTIMONY WHEREOF, the 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 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: _____

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

ATTEST:

City Clerk.

Walter Maddox, Mayor

STATE OF ALABAMA)
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)
TUSCALOOSA COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Walter Maddox, whose name as Mayor of the City of Tuscaloosa, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, 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)
TUSCALOOSA COUNTY)
CITY OF TUSCALOOSA)

CONTRACTOR'S RELEASE OF LIENS AND CLAIMS

Project No. _____

THIS Contractor's Release of Liens and Claims is made in accordance with that certain contract between the CITY OF TUSCALOOSA, ALABAMA, a Municipal Corporation, (hereinafter the "City") and _____ (hereinafter the "Contractor" or undersigned), for a project known as _____ in regard to which the undersigned warrants and certifies to the City as follows:

1. That there are no amounts owed by the undersigned or any tier of subcontractor or supplier of the undersigned which could become the basis for a lien or suit against the properties of the Contractor or the property of the City or any funds held by or in the possession of the City in regard to the project.

2. That the undersigned has satisfied all claims and indebtedness of every nature in any way connected with the work, including (but not limited to) all payrolls, amounts due to subcontractors, accounts for labor performed and materials furnished, incidental services, liens and judgments.

3. In consideration of the receipt by the undersigned from the City of final payment under the above mentioned contract, the undersigned hereby waives and relinquishes all liens and claims of lien which the undersigned may have against the aforesaid property or funds; and further, undersigned also hereby remises, releases and forever discharges the City, its officers, agents and employees, of any and all claims, demands and causes of action whatsoever which the undersigned has, might have or could have against the City by reason of or arising out of the above-mentioned contract. The undersigned further agrees to indemnify and hold the City, its officers, agents and employees harmless against any and all claims or demands from subcontractors or suppliers arising out of the aforementioned contract.

IN WITNESS WHEREOF, the undersigned has duly executed this release this the _____ day of _____, 20_____.

CONTRACTOR:

BY: _____

TITLE: _____

STATE OF ALABAMA)
COUNTY OF TUSCALOOSA)

CITY OF TUSCALOOSA)

**LEGAL NOTICE
NOTICE OF COMPLETION OF PUBLIC WORKS PROJECT
(Less than \$50,000)**

PURSUANT TO ALA. CODE §39-1-1 (1975), NOTICE is hereby given by the City of Tuscaloosa, a Municipal Corporation, that _____
(Name of Company)

has completed its contract with the City of Tuscaloosa, Alabama for the project known as _____ located
(Name of Project)

at _____. This notice will
(Location of the Project)

be advertised for one week beginning _____ and posted on the
(Date)

City's official bulletin board at City Hall, Annex Lobby, 2201 University Boulevard, for one week.

Final settlement with the contractor may be made at any time after notice has been posted one week. Any person or firm having claims on said project for materials or labor should contact the above contractor at _____ in the time and manner as required by law.
(Address of Contractor)

**CITY OF TUSCALOOSA
OFFICE OF THE CITY ATTORNEY
P. O. BOX 2089
TUSCALOOSA, ALABAMA 35403**

DATED: _____

PROJECT NAME _____

PROJECT NO. _____

CONTRACTOR/INSURED _____

STATE OF ALABAMA)

TUSCALOOSA COUNTY)

AGENT'S VERIFICATION OF CONTRACTOR'S INSURANCE

This is to certify to the City of Tuscaloosa, Alabama, a Municipal Corporation, that the Contractor in the above referenced project does possess a policy or policies of insurance reflected on the Certificate of Insurance issued for the Project by the undersigned agency of which I am an authorized representative. I have read the contract document as it relates to insurance requirements and said Contractor's insurance meets or exceeds all ratings, limits, amounts and terms as required by the same. If there are any exclusions, riders, endorsements or other terms or conditions of the Contractor's insurance which would nullify or limit that required by the contract document, the same are fully explained on the attached letter.

This the _____ day of _____, 20_____.

AGENCY: _____

BY: _____

ITS: _____