

**SHELBY COUNTY
CONTRACTS ADMINISTRATION
MANUAL**



May 2011

**CONTRACTS ADMINISTRATION MANUAL
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I. INTRODUCTION

There are some very general¹, preliminary points you should be aware of with respect to contracting for Shelby County:

1. Definition of a Contract. Black's Law Dictionary defines a contract as follows:

"An agreement upon sufficient consideration to do or not to do a particular thing."

A contract has legal power and authority to bind the parties to do what it says and only what it says.

2. Contracting for Shelby County. Because of the gravity and importance of contracts as well as the unique nature of Shelby County Government as an entity operated by elected officials, the authority to contract for and on behalf of Shelby County Government is very specifically limited by the Shelby County Charter which provides at §3.03N that:

"[The County Mayor shall] except for contracts that are in the nature of franchises, have the sole power and authority to enter into contracts on behalf of Shelby County, except as otherwise provided in this charter, and subject to budgetary limitations. Contracts and purchases on behalf of Shelby County government shall be entered into by the County Mayor or the Mayor's designee (emphasis added). On all contracts in an amount greater than [\$100,000.00] or a greater amount as established in advance by the County Commission, the Mayor shall obtain the approval of the County Commission prior to execution."

3. Purchasing Determinations. State law and Shelby County policies and procedures require that decisions about who Shelby County procures goods and services from are made through the competitive or negotiated procurement process. Competitive bids are used to procure goods and services that are standardized in the applicable

¹ Please note that not all general provisions apply to every contract.

industry or market. Requests for proposals are used to negotiate the procurement of professional services.

4. Purchase Order vs. Contract.

- A. Some purchases may be made through purchase orders. **Purchase orders issued by Shelby County are contracts and are legally binding on Shelby County.** The laws customarily applicable to purchase orders are uniform across all fifty (50) states and, therefore, purchase orders are easily generated in a fixed format.
- B. Purchases of goods or services not available through purchase orders will require a contract, which establishes the scope and cost of the transaction, and the terms and conditions that the parties intend to govern same.

5. Follow the Procedures. Shelby County's policies and procedures, apply to all administrative departments, elected offices, boards and agencies of Shelby County. Violating these policies and procedures may result in a void transaction or may expose Shelby County to unnecessary legal liability. **ALL CONTRACTS MUST BE PROCESSED THROUGH CONTRACTS ADMINISTRATION. PLEASE DO NOT TAKE CONTRACTS OR RESOLUTIONS DIRECTLY TO THE MAYOR'S OFFICE OR THE COMMISSION OFFICE, RESPECTIVELY, FOR SIGNATURE.**

II. PROFESSIONAL SERVICES CONTRACTS

1. Definition. The essence of a professional service is that it involves specialized knowledge, labor and skill, and the labor and skill is predominately mental or intellectual, rather than physical or manual. Professional services contracts include, for example, contracts for the services of an architect, engineer, accountant, lawyer, computer consultant, or training consultant.
2. Procuring Professional Services. Shelby County Purchasing Policies and Procedures No. CA-020 establishes the policies and procedures governing the procurement of professional services for the County. The procurement or selection process is accomplished through use of a request for proposals ("RFP"). Exceptions to the RFP process are more fully set forth

in the Purchasing Policies and Procedures Manual. (See Addendum No. 1).

- A. The originating department will prepare, for submission to the County Administrator of Purchasing, specifications or a scope of work for the professional services to be procured.
 - (1) Any specific federal, state or local laws or regulations that are applicable to the project and with which the vendor will have to comply should be noted in the RFP.
 - (2) Any contract terms that the County will require in any final contract with the vendor should be noted in the RFP (e.g. "Contract with the successful respondent must contain the following provisions . . ."). This would include, without limitation, any desired renewal terms and applicable sections of the County's *General Contract Provisions* (See Addendum No. 2 and discussion below at paragraph IV.1).
 - (3) Any bonds or insurance coverages that the County will require for the project and of the vendor should be noted in the RFP (See discussion below at paragraph IV.3.).
- B. The Administrator of Purchasing will prepare the RFP in accordance with the information provided by the originating department, and distribute it as appropriate.

3. Preparation of a Professional Services Contracts.

- A. General Requirements.
 - (1) All contracts for professional services must contain all requirements set out in the RFP, including but not limited to:
 - (a) applicable federal, state and/or local legal requirements,
 - (b) required contract terms and applicable sections of the County's *General Contract Provisions*,

- (c) applicable bonding or insurance coverage requirements.
 - (2) Contracts for professional services must not contain terms or provisions that the County prohibits or that Contracts Administration determines to be objectionable (See discussion below at paragraph IV.2.).
 - (3) General drafting instructions set out in paragraph II.3.C.(2) below must be followed where applicable.
 - (4) All contracts must be submitted to Contracts Administration for review, comment (if necessary) and approval prior to processing for signature by the Mayor.
- B. Vendor's Contract Form. Vendors that have their own contract form may prepare it as the contract. The originating department should assure that all vendors are aware of and comply with the general requirements set out in paragraph II.3.A. above.
- C. County's Contract Form.
- (1) Architect & Engineer Contracts. Vendors who are architects and/or engineers should prepare the contract using the County's form for architect and engineer contract forms. (See Addendum No. 7). An electronic copy of the County's Owner/Architect contract form can be found at [http://myshelbycounty.shelby.elink/Intranet/dotShoWDoc/Intranet/Purchasing/Content/prch forms index.htm](http://myshelbycounty.shelby.elink/Intranet/dotShoWDoc/Intranet/Purchasing/Content/prch%20forms%20index.htm). The originating department should assure that all architects and/or engineers are aware of and comply with the general requirements set out in paragraph II.3.A. above.
 - (2) General Vendor Contracts. For vendors, other than architects and/or engineers, who do not have their own contract form, the originating department should prepare the contract using the County's form for professional services contract (See Addendum No. 8). In preparing the contract, the originating department must comply with the

general requirements set out in paragraph II.3.A. above. Also, the following general drafting instructions must be noted and complied with, where applicable:

- (a) Date. The contract date is very important. The date should not be completed prior to the Mayor signing the contract. Contracts Administration will complete the date once the signed contract is returned to it from the Mayor's Office.
- (b) Vendor's Name. In completing the vendor's name, please note that you must use the vendor's correct legal name and that name must be the same name as used in any resolution authorizing and approving the contract.
- (c) First "WHEREAS" Paragraph. Complete the blank with the word "purpose" in parentheses by briefly describing the purpose of the contract. Please use additional "whereas" clauses or paragraphs as necessary to fully explain the purpose of the contract. The remaining "whereas" clause is standard.
- (d) Scope of Work. Use one or more paragraphs, as needed, to describe the scope of the work and job duties the County expects of the vendor. If the County has performance duties or approval authority or other contract rights, these should be detailed. Be as specific as possible so that there is no vagueness or ambiguity about what is expected of the parties and the possibility of future disputes is thereby less likely. The County's contract form references an exhibit that will detail the foregoing responsibilities of each contracting party.
- (e) Term. The term of the contract should run concurrently with the County's fiscal year (i.e. from July 1 through June 30). Please note that a contract with a term that crosses fiscal years and expends funds in more than one fiscal year requires approval by the Board of Commissioners and, therefore, a

resolution.

- (i) Use the language provided in parentheses for multiple year contracts.
 - (ii) Automatic renewals or renewals exercisable unilaterally by the vendor are ordinarily unacceptable.
- (f) Compensation.

- (i) Every contract must include a total contract price to be paid, expressed as the amount that the vendor is "not to exceed." Contracts that are open ended as to the expenditure of funds are not allowed.
- (ii) Effective December 1, 2010, all Contracts and contract amendments must include the following language:

"Contractors shall not be permitted or authorized to incur costs beyond the extent that purchase orders have been issued on approved contracts and/or purchases prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of County contracts or purchases without prior, expressly written, appropriate authorization pursuant to County purchasing procedures and rules and regulations. County is not obligated to pay nor shall Contractor be entitled to receive payments for contract fees and expenses incurred in violation of this provision."

- (iii) If the contract provides for reimbursement of the vendor's expenses, it must also specify how much of the total contract price is to be allocable to such expenses.
- (iv) Be specific as to invoicing and payment terms (e.g. monthly, or by stages of

work) and detail same within this paragraph.

- (g) Bonds & Insurance. All bonding and insurance coverages required in the RFP must be specifically set out in the contract. The vendor must provide, at or before the time it executes the contract, all bonds and related documents and a certificate of insurance complying with all applicable contract requirements. (See discussion below at paragraph IV.3.).
- (h) General Contract (and Other) Provisions. The County's General Contract Provisions should be incorporated into the contract, as applicable, and should not be used as an attachment. (See Addendum No. 2 and discussion below at paragraph IV.1.).
- (i) Signature Lines. For vendors that are corporations, limited liability companies, partnerships, limited liability partnerships, or other form of legal entity, the contract must be signed in the presence of a notary public by a duly authorized official of the vendor, the official's signature must be identified by name and office, and the official's signature must be notarized (See also discussion below at paragraph IV.1.C.9.).

4. Initiating the Process of County Approval and Execution.

- A. The vendor (or its duly authorized official) must sign four (4) originals of the contract for submission to Contracts Administration for legal review, revision/comment (where needed) and approval. **NO FAXES.**
- B. Professional services contracts do not require approval of the County Commission if (I) the contract price is less than \$100,000.00 and (ii) the contract term does not cross fiscal years (See Addendum No. 1, Shelby County Purchasing Policies and Procedures No. CA-030 III.B.).

- (1) If a professional services contract does not meet the above criteria, it may require the approval of the County Commission and, therefore, the preparation of a resolution (See discussion of resolution preparation below at paragraph VI).
- (2) If a professional services contract does meet the above criteria, then the originating department must complete a Contract/Encumbrance Information Sheet ("C/E Info Sheet") in full, attach it to the vendor-signed contracts, and forward the packet to Contracts Administration for processing (See copy of C/E Info Sheet at Addendum No. 4 and discussion below at paragraph VII.2.A.). All of the information requested on the C/E Info Sheet, including signatures of the head of the originating department **and** the relevant division director, must be fully and accurately completed or the entire packet will be returned to the originating department for completion or correction.

III. GENERAL AGREEMENTS FOR PROCUREMENT OF GOODS AND SERVICES

1. Construction Contracts.

- A. Construction contractors are retained through and scope of work for the request for bids. The Purchasing Department will prepare the actual request for bids and distribute it as appropriate. The originating department must coordinate with the architect and/or engineer and with the Administrator of Purchasing to assure that all applicable (i) federal, state and/or local legal requirements, (ii) required contract terms and sections of the County's *General Contract Provisions*, (iii) bonding or insurance coverage requirements, and (iv) EOC regulations are included in the request for bids.
- B. The architect and/or engineer for the project will work with the selected contractor (as well as the originating department) to prepare the construction contract using the County's forms for

County/Contractor agreement (See Addendum No. 9). A copy of the County's form for County/Contractor agreement is available at http://myshelbycounty.shelby.elink/Intranet/dotShoWDoc/Intranet/Purchasing/Content/prch_forms_index.htm

- (1) The construction contract must contain all requirements set out in the request for bids, including but not limited to:
 - (a) applicable federal, state and/or local legal requirements,
 - (b) required contract terms and applicable sections of the County's *General Contract Provisions*,
 - (c) applicable bonding or insurance coverage requirements.
- (2) The construction contract must not contain terms or provisions that the County prohibits or that Contracts Administration determines to be objectionable (See discussion below at paragraph IV.2.).
- (3) The construction contract should not refer to contingency funds. If an increase in the contract price becomes necessary during the project work, a change order should be used to amend the construction contract, up to the approved contingency amount. If the change order increases the total contract amount in excess of the approved contingency amount, or any change order that is inconsistent with the original intent and/or scope of the project, shall follow the procedures set forth in CA-070. (See discussion below at paragraph V.2).
- (4) In preparing the construction contract do not simply fill in the blanks in the form, but rather use the form to draft a customized contract with terms and conditions that are specifically applicable to the project. General drafting instructions set out in paragraph II.3.C.2. must be followed where applicable.

(5) The form construction contract incorporates certain documents and requires that they be attached as Exhibits. The following instructions should be noted as to the referenced attachments:

- (a) Bid Specifications and Exhibit "A", Contractor's Bid/Proposal. The Bid Specifications are contained in the request for bids issued by the Purchasing Department, and the Contractor's Bid/Proposal is the "bid" actually submitted by the contractor in response thereto. These documents can be obtained from the Purchasing Department.
- (b) Exhibit "B", General Conditions to Contract (See example at Addendum No. 9). This document is a standardized form and should be obtained from Contracts Administration at the time that the County's form construction contract is requested, so that the contractor can review it as part of the construction contract.
- (c) Exhibit "C", List of subcontractors who will be performing work on project with required information attached thereto (See example at Addendum No. 9). This form document should also be obtained from Contracts Administration at the time that the County's form construction contract is requested. All information requested on the form, must be completed by the contractor.
- (d) Bond, Related Documents and Insurance Certificates. The contractor must provide, at the time it executes the contract, all bonds and related documents and a certificate of insurance complying with all applicable contract requirements (See discussion below at paragraph IV.3.D.).

C. When the preparation of the construction contract

is completed, the contractor must sign four (4) originals for submission to Contracts Administration for review, revision if necessary and approval. **NO FAXES.** The following exhibits must be attached to each contractor-signed original of the construction contract: (Omissions will result in the contracts being returned to the originating department for completion).

- (a) Bid Specifications
- (b) Exhibit "A", Contractor's Bid/Proposal
- (c) Exhibit "B", General Conditions to Contract
- (d) Exhibit "C", List of subcontractors who will be performing work on project with required information attached thereto.
- (e) Exhibit "D", Construction Justification Statement (**Only If Projects Are Over \$100,000**)
- (f) Performance Bond
- (g) Labor and Material Bond
- (h) Insurance Certificate

D. Construction contracts require approval of the Board of Commissioners and, therefore, preparation of a resolution, if (i) the contract price is greater than \$100,000.00, (ii) the contract term crosses fiscal years, or (iii) the contract requires the use of Capital Improvement Projects ("CIP") funds. The need for contingency funds must be addressed within your original resolution (See discussion of resolution preparation below at paragraph VI).

2. Miscellaneous Contracts.

A. Procurement of goods and services for Shelby County shall be made pursuant to Shelby County Government's Purchasing Policies and Procedures. The originating department is responsible for developing specifications for the solicitation and for including in the solicitation all applicable (i) federal, state and/or local legal requirements, (ii) required contract terms and sections of the County's *General Contract Provisions*, (iii) bonding or insurance coverage requirements, and (iv) EOC regulations.

- B. The vendor should prepare and submit its own contract for review, revision, if necessary and approval by Contracts Administration. If the vendor does not have its own contract form, please contact Contracts Administration for assistance.
- C. The originating department should assure that the contract (i) contains all requirements set out in the solicitation, including without limitation, those items listed in III.2.A. above, (ii) does not contain terms or provisions that the County prohibits or that Contracts Administration determines to be objectionable (See discussion below at paragraph IV.2.), and (iii) complies with the general drafting instructions set out in paragraph II.3.C.2., where applicable.
- D. Note the following comments regarding certain specific types of contracts:

(1) Maintenance Agreements.

- (a) Maintenance agreements for \$5,000.00 or less do not have to be signed by the Mayor. Instead they are reviewed by Contracts Administration and, if acceptable, signed by the Administrator of Purchasing.
- (b) The term of a maintenance agreement will often cross fiscal years. When the contract price is small and will be paid in the current fiscal year no resolution will be required.
- (c) Maintenance agreements must not contain provisions that the County prohibits or that Contracts Administration determines objectionable (See discussion below at paragraph IV.2.). Any such provisions should be modified or deleted by pen and ink interlineation, and initialed by the vendor before initiating the process of County approval and execution (See a sample modified maintenance agreement at Addendum No. 11).

- (2) Computer Hardware/Software & License Agreements. Please contact Contracts Administration to assist with negotiation and development of these agreements.
 - (3) Leases. Please contact Contracts Administration to assist with negotiation and development of these agreements. Master Leases must be reviewed by the County's bond counsel as well as Contracts Administration.
 - (4) Negotiated/Development Agreements. Please contact Contracts Administration to assist with negotiation and development of these agreements.
3. Grant Agreements. The originating or responsible department must determine if a budget amendment is necessary for the County to receive the grant amount or to pay a matching amount. If a budget amendment is necessary, then approval by the Board of Commissioners will be required and, therefore, a resolution will be necessary (See discussion of resolution preparation below at paragraph VI).

IV. GENERAL CONTRACT PROVISIONS

1. Required Provisions.
 - A. Contracts Administration has compiled the *General Contract Provisions* that are required in all County contracts, unless inapplicable (See Addendum No. 2). All blanks in the *General Contract Provisions* require insertion of the descriptive name or "nominative" used in the contract for the vendor (e.g. Consultant, Contractor, Vendor, etc.). Be consistent with the use of nominatives throughout the entire contract.
 - B. Applicable *General Contract Provisions* should be incorporated into the contract.
 - C. Please note the following:
 - (1) "Termination or Abandonment" addresses termination of the contract and contains three (3) different provisions or reasons for termination, any one or more of which may be

applicable to a given contract. Termination of County contracts is very important and the County prefers to be able to terminate an agreement for any cause or for no cause upon very short notice.

- (2) "Subject to Funding" clause should be used in contracts with terms that cross fiscal years or provide for renewals. Expenditure of funds in future fiscal years is not authorized until the Shelby County yearly operating budget is approved by the Board of Commissioners.
- (3) "Travel Expenses" is applicable only if the County is to reimburse the vendor for its travel expenses. These expenses should not be reimbursed at a rate that exceeds that allowed pursuant to the Shelby County Travel and Expense Policy.
- (4) "Performance and Labor and Material Bonds" should be used, when a request for bids or RFP requires that the vendor provide a bond or worker's compensation insurance coverage. Remember that required bonds and certificates for all required insurance coverages must be attached to the contract prior to execution by the Mayor.
- (5) "Incorporation of Other Documents" should be used if there was a request for bids or RFP to select the vendor. Delete the reference to the solicitation process that does not apply.
- (6) "Employment of Convicted Felons" is applicable to security contracts.
- (7) "Proprietary Information" is particularly applicable to computer hardware, software and general technology contracts.
- (8) "Organization Status and Authority" must be used in every contract where the vendor is a corporation, limited liability company or corporation, partnership, limited liability partnership, trust or other legal entity, as

opposed to an individual. Additional documentation of the vendor's legal status and identity will be required in contracts that are outside the vendor's ordinary course of business.

(9) "Living Wage" clause requires compliance with Ordinance Number 328. Vendors engaged in service contracts with the County shall pay a Living Wage to employees for all work performed on said service contract, as defined in the Living Wage Ordinance.

(10) "Prevailing Wage" clause requires compliance with Ordinance Number 374. Contractors on specific construction contracts are required to pay local prevailing wages and benefits. In instances where the Prevailing Wage Ordinance applies, it will override the Living Wage requirement.

2. Prohibited Provisions. In situations where vendors prepare and submit their own contract form, the originating department should be aware of the fact that these contract documents may contain provisions that are prohibited by the County or determined by Contracts Administration to be unacceptable, and the originating department should assist in contract review by advising the vendor to delete such provisions. Prohibited or unfavorable provisions include, without limitation, the following:

A. Governing Law. All contracts with Shelby County must be governed by the law of the State of Tennessee. Example **BAD** provision:

THIS CONTRACT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MISSISSIPPI.

B. County Indemnification. Shelby County, as a governmental entity, is prohibited from granting any type of indemnity by contract. (See Addendum No. 12, TN. OAG No. 93-01). Example **BAD** provision:

THE COUNTY SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE VENDOR, ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, CLAIMS, ACTIONS OR DAMAGES OF ANY NATURE BROUGHT BECAUSE OF, ARISING OUT OF OR DUE TO BREACH OF THIS CONTRACT BY THE COUNTY, ITS OFFICIALS OR EMPLOYEES OR DUE TO ANY NEGLIGENT ACT OR OCCURRENCE OF OMISSION OR COMMISSION OF THE COUNTY, ITS OFFICIALS OR EMPLOYEES WHICH OCCUR PURSUANT TO THE PERFORMANCE OF THIS CONTRACT.

- C. Liability for Taxes. Shelby County is exempt from most taxes that would be relevant to a contract for goods and services, and accordingly, the County will not agree to any provision that requires it to pay taxes. Contracts Administration or the Administrator of Purchasing will provide vendors with tax exempt certificates upon request.
- D. Liability for Late Fees. Shelby County is legally required to follow certain processes in order to complete its business transactions, many of which are very time consuming and not within the control of any single individual. For this reason, Shelby County cannot guarantee the timeliness of its performance obligations under a contract and does not favor provisions requiring it to pay late fees or penalties. If absolutely necessary, Contracts Administration will approve late fee provisions that are substantially in accordance with the provisions applicable to the State of Tennessee pursuant to state law. In such event, it is the responsibility of the originating department to coordinate with the Administrator of Finance and assure that all of the County's contract obligations subject to the penalty of late fees are timely performed.
- E. Liability for Legal Fees. Contracts Administration objects to contract provisions that require the County to pay a vendor's attorney fees and legal expenses in the event of a contract dispute. Example **BAD** provision:

THE COUNTY ASSUMES ALL RESPONSIBILITY FOR REIMBURSING VENDOR FOR COLLECTION AND LEGAL FEES, INCLUDING BUT NOT LIMITED TO ATTORNEY FEES, COURT COSTS, ETC., RESULTING FROM THE COUNTY'S FAILURE TO MAKE OR DELAY IN MAKING PAYMENTS DUE FROM IT HEREUNDER.

- F. Limitations of Liability. Contracts Administration does not accept provisions that limit a vendor's liability for its breach of contract or for negligence in its performance of the contract, including limitations or waivers of consequential damages.
- G. Waivers. Contracts Administration objects to provisions that waive any rights that the County has under applicable statutes or ordinances and common law, including but not limited to waivers of subrogation rights and statutory warranties.
- H. Risk of Loss. Contracts Administration does not accept contract provisions for shipping of goods to the County Freight On Board ("FOB") point of shipment. All such provisions should provide for shipping FOB point of destination. Additionally, Shelby County does not accept defective goods and, therefore, Contracts Administration will not accept any contract provisions that shift title to goods to the County prior to opportunity to inspect.
- I. Automatic Renewals. Automatic renewals or renewals exercisable unilaterally by the vendor are ordinarily unacceptable.

3. General Insurance and Bond Requirements.

A. Vendor General Liability.

- (1) Any contract that does or may require a vendor, its employees or agents, to be on Shelby County property creates the risk that the vendor, its employees or agents, may thereby be injured or may negligently cause injury to Shelby County employees, third parties or property owned by either. Therefore, Shelby County requires vendors to provide appropriate insurance against such

risks.

- (2) General insurance coverage requirements for vendors are set out in Addendum No. 3. The originating department should contact the **Insurance Specialist in the Finance Department** for assistance in determining specific insurance coverage requirements for a particular project or job, not specifically addressed in Shelby County's Insurance Requirements and Recommendations Manual.
- (3) Vendors required to provide insurance coverage must provide a certificate of insurance, prepared by the vendor's insurance company, reflecting that the required coverage(s) is in effect. A contract containing insurance coverage requirements will not be approved by Contracts Administration unless the certificate of insurance is provided. (See example certificate of insurance at Addendum No. 3).

- (a) All certificates of insurance must show the additional insured as follows:

Shelby County Government
Attn: Contracts Administration
160 N. Main, Suite 550
Memphis, TN 38103

- (b) All certificates of insurance must provide that the coverages afforded under the insurance policies reflected thereon will not be altered or canceled unless at least thirty (30) days prior written notice of same has been given to Shelby County as additional insured.

B. Shelby County General Liability. Sovereign immunity for Shelby County is waived under the Tennessee Governmental Tort Liability Act ("GTLA") for the matters specified therein. Therefore, Shelby County can be held legally liable for third party losses sustained as a result of the negligent actions or omissions committed by its employees in the scope of their employment. However, Shelby County's liability exposure is

limited under the GTLA. These statutory limits make it possible for the County to self-insure for its projected loss exposure each fiscal year. For this reason Shelby County will not agree to contract provisions that require it to provide liability insurance coverage to/for vendors.

- C. Workers Compensation Insurance. Pursuant to state law, Shelby County has opted out of Tennessee statutory scheme for workers compensation coverage, electing instead to cover all such claims under its On-the-Job Injury ("OJI") program. For this reason Shelby County will not agree to contract provisions that require it to provide workers compensation insurance coverage.
- D. Property Insurance. See Addendum No. 3 for general coverage requirements of vendors. For a specific project not specifically addressed in Shelby County's Insurance Requirements and Recommendations Manual, contact the **Insurance Specialist in the Finance Department** for specific assistance, and for help in determining whether or not Shelby County can provide this insurance coverage.
- E. Bonding Requirements.
 - (1) For acceptable form for a Performance Bond and a Labor and Material Payment Bond see Addendum No. 3.
 - (2) Determination of whether to require bonds, and in what amount is made by the Administrator of Purchasing.

V. **AMENDMENTS AND CHANGE ORDERS**

1. Amendments.

- A. Amendments are used to add, delete or change a provision in a contract. An amendment must be signed by all parties to the contract.
- B. An amendment can be used to renew the expiring term of an existing contract, as long as the existing contract provides for renewals. If no renewal options are provided for in the existing

contract or if all renewal options have been exhausted, then the good/service must be rebid or a new RFP issued. The new request for bids or RFP process should begin as soon as possible in order to complete the contract process by the start of a fiscal year (July 1). Vendors must have a current certificate of insurance for the contract on file with Contracts Administration before an amendment will be approved.

- C. Amendments that increase the contract price to a total amount in excess of \$100,000.00 must be approved by the Board of Commissioners and, therefore, a resolution is required.
- D. A sample form for a contract amendment is provided at Addendum No. 10 or at http://myshelbycounty.shelby.elink/Intranet/dotShoWDoc/Intranet/Purchasing/Content/prch_forms_index.htm . Please note the following:

- (1) The date referred to at the top of the amendment will correspond to the execution date of the amendment. **PLEASE DO NOT DATE.**
- (2) The date referred to at the first "Whereas" clause should correspond to the date of the existing contract.
- (3) The name of the vendor must correspond to the existing contract. If the vendor's name has changed contact Contracts Administration for assistance.
- (4) To change any other provision of an existing contract state "delete paragraph as follows:" and type in the original paragraph. Then state "replace with:" and type in the new paragraph or provision.

2. Change Orders.

- A. Change orders are used to amend construction contracts as follows:

- (1) To increase or decrease the contract price,

- (2) To change the scope of work, or
- (3) To add or delete days for completion of the project.
- B. Change orders should be prepared by the architect and/or engineer for the project.
- C. A change order to increase the contract price requires that funds be available in the contract fund or the contract contingency fund. Otherwise, such a change order will require approval of the Board of Commissioners and, therefore, a resolution will be necessary as set forth in Shelby County Code of Ordinance #388, Change Orders for Capital Construction Projects.
- D. Contractors must have a current certificate of insurance for the project on file with Contracts Administration before a change order for time extension or increase in contract price will be approved.

VI. RESOLUTION PREPARATION

1. Drafting the Resolution.

- A. The Shelby County Board of Commissioners' Permanent Rules of Order, Rule 6 in particular, outlines the content and supplemental documentation requirements for presenting a resolution for consideration. (See Addendum No. 5.) If specific information is routinely requested on certain types of contracts at meetings of the Shelby County Board of Commissioners, it is recommended that future resolutions include this information even if not required by Rule 6.
- B. A resolution should contain one subject, but more than one action may be required. Example: A resolution approving a contract for property management may also require the appropriation of funds and a budget amendment among other things, but should not also approve a contract for food services.

- C. A resolution contains "whereas" clauses and "resolved" clauses. The "whereas" clause(s) tell a story to the reader about what action is sought, why the action is necessary, what legal authority applies if any, and any other information relative for approval. The "resolved" clauses are the legally operative clauses, meaning these clauses direct what action is authorized to be performed in reliance on the particular resolution.
- D. For each action stated in the resolution's caption, there should be a corresponding resolved clause in order for the action to be authorized. Example: A caption that approves a contract, amends the budget, and appropriates funds should contain separate corresponding resolved clauses.
- E. The funds to be appropriated by the resolution must be consistently reflected throughout the resolution, the summary sheet, any supporting documentation, and the routing sheet if one is required.
- F. If a contract contains terms for options to renew, the following language is required for purposes of obtaining prior approval, subject to funding, and eliminating the necessity to obtain approval from the Shelby County Board of Commissioners for each renewal period:

BE IT FURTHER RESOLVED, That said contract contains an option to renew for two additional one-year periods and same are hereby approved subject to adoption of future years operating budgets by the Shelby County Board of Commissioners.

- G. A resolution approving a construction contract must include the following language for contingency funds:

BE IT FURTHER RESOLVED, That contingency funds in the amount of \$_____ be and are hereby appropriated from the FY____ Capital Improvement Project Budget for CIP Project No. _____, _____.

- H. Resolutions become effective on the date they are signed by the Mayor, unless the resolution provides for a later effective date. The last "resolved" clause of each resolution should be the clause that gives effect to the resolution and should read as follows:

BE IT FURTHER RESOLVED, That this resolution shall become effective in accordance with the Shelby County Charter, Article II, § 2.06(B).

VII. ROUTING PROCEDURES

1. Applicable Policy. Shelby County Purchasing Policies and Procedures Nos. CA-040, CA-050 and CA-060 identify the proper routing procedures for contracts and related deadlines (See Addendum No. 1). As noted in VI above, Shelby County Purchasing Policies and Procedures No. CA-030 identifies the criteria to be used to determine whether or not a contract requires approval by the Board of Commissioners, and therefore, the preparation of a resolution.
2. Nuts and Bolts of Routing Contracts That **Do Not Require** Board of Commission Approval.
 - A. Originating Department Responsibilities. The routing process begins with the originating department, where the following requirements must be completed:
 - (1) Fully and accurately complete the C/E Info Sheet (See Addendum No. 4), noting the following:
 - (a) Item No. 9 requires the attachment of (i) the approval letter selecting the vendor in situations where an RFP was issued, (ii) the bid recommendation letter selecting the vendor in situations where a request for bids was issued, or (iii) a written justification if neither of these solicitation processes were followed, or required.
 - (b) Item No. 10 requires, in part, that minority/small business information about the vendor be provided.

- (2) Attach the gratuity disclosure form and the C/E Info Sheet to the four (4) signed originals of the contract.
- (3) **If County funds are being expended, fully and accurately complete the C/E Information Sheet, noting the following:**
 - (a) Item No. 4 on the memo requires an accurate vendor number and EOC No., whereas, item No. 8 requires the account commodity code.
 - (b) **All entries must be complete for proper encumbrance and accounting. Contracts having incomplete forms will be returned to the Department.**
- (4) Attach all bonds, related documents and insurance certificates required by the contract.
- (5) Forward all of the above to Contracts Administration. **NO FAXES** Any omitted information or attachments will result in the documents being returned to the originating department for completion or correction.

B. Receipt by Contracts Administration. Upon receipt by Contracts Administration of a packet of the C/E Info Sheet, four (4) signed original contracts and all related documents, the following routing steps are taken:

- (1) The packet is assigned a contract (tracking) number and logged into a contract tracking system.
- (2) The packet is reviewed by legal staff and either approved for continuation of processing, or returned to the originating department with requested changes.
- (3) If approved, the packet is routed to the County CAO's office for signature by the Mayor.

- (4) Once signed by the Mayor, the Mayor's office returns the packet to Contracts Administration.
- (5) A "Notice to Proceed" memo is prepared and forwarded to the originating department along with three (3) signed originals of the contract: (i) two for filing in the originating department and (ii) one for distribution to the vendor. It is the originating department's responsibility to forward a signed original of the contract to the vendor along with a "Notice to Proceed" letter. Please note the form "Notice to Proceed" memo at Addendum No. 6, and the following:
 - (a) On all correspondence regarding the contract, use the Contract Number assigned to the contract and set out in bold at the "Subject" line in the memo.
 - (b) Note the two paragraphs set out in bold in the "Notice to Proceed" memo. Special conditions and requirements within the contract must be complied with.
- (6) **The vendor must not begin work prior to signature by the Mayor and receipt of the "Notice to Proceed" letter or instructions from the originating department.**
- (7) A signed original of the contract is maintained in Contracts Administration filed under the contract file bearing a file number that is the same as the Contract Number.

3. Nuts and Bolts of Routing Contracts That Do Require Board of Commission Approval.

A. Originating Department Responsibilities. The routing process begins with the originating department, where the following requirements must be completed:

- (1) A Resolution Packet must consist of an Agenda Route Sheet signed by the Department Head, a

Summary Sheet, Original Resolution, Purchasing and E.O.C. documents, if applicable, AND contracts. If required, Resolution Packets shall also include a Child Impact Statement, and/or a Technology Coordination Office ("TCO") Opinion.

- (2) When applicable, Bonds and Insurance Certificates must be attached to the Contracts and Resolution packet.
- (3) County Commission agenda items shall be provided in electronic format and placed into the paperless agenda system.
- (4) The Resolution Packet will be forwarded to Contracts Administration for review and approval. At this point, if any language in the contract is not acceptable the packet will be returned to the originating department for correction. The paperless agenda system will automatically forward the Resolution Packet to the next step (Finance, CAO, and then County Commission) for review and approval, and for placement on the Commission's Agenda.
- (5) Specific deadlines have been established by the Board of Commissioners for consideration of its agenda items. (See Addendum No. 1, Shelby County Purchasing Policies and Procedures No. CA-060). The Board of Commissioners requires that all agenda items be received no later than noon of the Thursday preceding each regular meeting of the standing Committees, so that Commissioners may review items for consideration without time constraints.
- (6) **Contracts Administration is not responsible for meeting a certain agenda date once a deadline has passed.**
- (7) Departments should submit the four (4) original contracts and required supporting documentation to the Contract Administration Department prior to the committee meeting that the Agenda item will be discussed and voted upon by the Commission. The Contract Administration Department shall hold all contracts until the

Board of Commissioners has approved the contract.

- (8) All agenda items approved by the Board of Commissioners are received by the Commission Office the following day. Pursuant to County Charter, the Commission Office has four (4) days to forward the approved items to the Mayor for signature. The Commission Office Minutes Department attests each approved resolution and then forwards all such documents to the Mayor for signature.
- (9) Pursuant to the County Charter, the Mayor has ten (10) working days from the time he receives a resolution to sign it, veto it or return it without signature to the Minutes Department.
- (10) Upon receipt from the Mayor's office, the Minutes Department will forward all resolutions to the Mayor for signature. Once the Resolution is executed, the Commission office will forward a copy of the signed Resolution to the Contract Administration Department.

B. Receipt by Contracts Administration. Upon receipt of the signed Resolution, the following routing steps are taken:

- (1) Contracts Administration will attach a copy of each Resolution to the four (4) signed originals of the corresponding contract and route the entire set of documents to the CAO's Office for signature by the Mayor.
- (2) Once signed by the Mayor, the Mayor's office returns the packet to Contracts Administration.
- (3) A "Notice to Proceed" memo (see Addendum No. 6) is prepared and forwarded to the originating department along with three (3) signed originals of the contract: (i) two for filing in the originating department and (ii) one for distribution to the vendor. It is the originating department's responsibility to forward a signed original of the contract

to forward a signed original of the contract to the vendor along with a "Notice to Proceed" letter. Note:

- (a) On all correspondence regarding the contract, use the Contract Number assigned to the contract and set out in bold at the "Subject" line in the memo.
 - (b) Note the two paragraphs set out in bold in the "Notice to Proceed" memo. Special conditions and requirements within the contract must be complied with.
- (4) **The vendor must not begin work prior to signature by the Mayor, receipt of the "Notice to Proceed" letter from the originating department.**
- (5) A signed original of the contract is maintained in Contracts Administration filed under the contract file bearing the same file number as the Contract Number.

ADDENDUM NO. 1

SHELBY COUNTY
PURCHASING POLICIES AND PROCEDURES

NO. CA-020

NO. CA-030

NO. CA-040

NO. CA-050

NO. CA-060

COUNTY COMMISSION OFFICE
DEADLINES FOR FY _____

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Subject: CONTRACT – PROCEDURES AND RESPONSIBILITIES	Effective Date: February 22, 2010
	Supersedes: 11-01-02

I. PURPOSE:

To clarify the procedures and responsibilities pertaining to the preparation of contracts.

II. SCOPE:

This procedure applies to all Administrative Departments, Elected Offices, Boards and Agencies of the County.

III. PROCEDURES:

A. CONTRACTS

1. All contracts are awarded based on the bid process or request for proposals for professional services.
2. At the time of award of a bid for contracts of a general nature, the Department is responsible for the preparation of Resolution packets (if necessary) and submission of a contract for review by the Contract Administration Department.
3. IF the vendor does not have a contract for submission, please contact the Contract Administration Department for assistance in the preparation of the contract.
4. Specialty contracts or professional services contracts, i.e., Contracts for Construction Projects, Architect/Engineer Services, Professional Services, etc., will be prepared by the Contract Administration Department, upon request.

B. RENEWALS

1. The Contract Administration Department distributes a quarterly report notifying all Administrative Departments, Elected Officials, County Boards and Agencies of all contracts that will expire in the upcoming quarter. However, each department remains responsible for notifying the Contract Administration Department of any contracts that will be renewed for the next fiscal year.

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Subject: CONTRACT – PROCEDURES AND RESPONSIBILITIES	Effective Date: February 22, 2010 Supersedes: 11-01-02
<p>2. Departments should submit to the Contract Administration Department a memorandum notifying Contracts Administration of its decision to renew the contract for the next fiscal year, at least forty-five (45) days prior to the expiration date of the contract.</p> <p>3. In the event that there are no additional renewal periods remaining on the contract, the Department may extend the contract for a period not to exceed ninety (90) days, after the Purchasing Department has determined the appropriate procurement process, and issued written approval to extend the contract. The Purchasing Department will determine the appropriate extension period. All Departments remain responsible for anticipating the need for renewals in a timely manner.</p> <p>4. The memorandum shall state the Company Name, Contract Number and Dollar Amount for the renewal period. A copy of the proposed amendment/renewal contract must accompany the memorandum.</p> <p>5. A Contract and Encumbrance Information Sheet for each contract renewal, signed by both the Department Head and Division Director, shall also be attached to the memorandum and proposed amendment/renewal contract.</p> <p>C. MAINTENANCE AGREEMENTS</p> <p>Contracts for maintenance of computer equipment, copiers, etc. shall originate from the Department in accordance with the Purchasing Policies and Procedures and the maintenance agreement submitted to Contract Administration for processing.</p>	

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Subject: CONTRACTING FOR PROFESSIONAL SERVICES	Effective Date: February 22, 2010 Supersedes: 11-01-02
<p>I. PURPOSE:</p> <p>To establish the procedures involved in contracting for professional services.</p> <p>II. SCOPE:</p> <p>This procedure applies to all Administrative Departments, Elected Offices, Boards and Agencies of the County.</p> <p>III. PROCEDURE:</p> <ol style="list-style-type: none">1. Department Head submits request to the Administrator of Purchasing stating the need for professional services.2. Department Head prepares specifications or scope of work for the services to be provided and submits to the Administrator of Purchasing with a request for services.3. Administrator of Purchasing sends out Request for Proposals to all providers who have requested placement on the Professional Services Providers listing.4. Proposals are generally due a minimum of ten (10) days from issue of Requests for Proposals. In certain situations, this time will be extended.5. Upon receipt of proposals, the Department will be notified and a copy of each proposal will be forwarded to the department for review. (FOR ARCHITECT/ENGINEER SERVICES – PROJECTS OVER \$100,000.00 – EACH MEMBER OF THE CONSULTANTS REVIEW COMMITTEE WILL BE NOTIFIED AND A TIME SET FOR REVIEW OF PROPOSALS.)6. Recommendations from the Consultant Review Committee shall be forwarded to the Mayor for final selection. (FOR ARCHITECT/ENGINEER SERVICES – PROJECTS OVER \$100,000.00 - REVIEW COMMITTEE SHALL SELECT A MINIMUM OF THREE (3) PROVIDERS AND SUCH RECOMMENDATION BY THE REVIEW COMMITTEE WILL BE SUBMITTED TO THE MAYOR FOR FINAL SELECTION.)	

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Subject: CONTRACTING FOR PROFESSIONAL SERVICES	Effective Date: February 22, 2010
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<p style="text-align: center;">Selection shall be on a rotation basis with an effort to match background, experience and size of firm to size and type of project.</p> <ol style="list-style-type: none">7. The Department and Contract Administration Attorneys have the authority to negotiate the contract after selection by the Mayor. If a contract cannot be negotiated with the first provider, the Mayor shall select from the remaining providers on the initial recommendation list.8. After completing contract negotiations, all unsuccessful providers will be notified of the Mayor's selection by the Administrator of Purchasing.9. A contract will be prepared and, if applicable, a resolution packet will be prepared and processed in accordance with Procedures for Contract Routing.	

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Subject: <p style="text-align: center;">CONTRACTS – CRITERIA FOR DETERMINING PROPER ROUTING PROCEDURE</p>	Effective Date: February 22, 2010 Supersedes: 11-01-02
<p>I. PURPOSE:</p> <p>To identify the proper routing procedures for contracts.</p> <p>II. SCOPE:</p> <p>This procedure applies to contracts for all Administrative Departments, Elected Offices, Boards and Agencies of the County.</p> <p>III. REQUIREMENTS:</p> <p>A. Contracts requiring approval by the Shelby County Board of Commissioners.</p> <p>Contracts meeting the following criteria require Board approval:</p> <ol style="list-style-type: none">1. Sale of real property or any interests therein.2. Any contract, etc. requiring expenditure of C.I.P. funds.3. Franchise agreement.4. Contracts for consolidation of duplicated or overlapping services with other Governmental entities (Example: Codes Enforcement).5. Leasing and/or certain encumbrances of County property.6. Lease agreements where the expenditures over the entire term are over \$100,000.00 (subject to Governmental funding).7. Grant contracts when granting authority requires approval of the County Legislative Body.8. Contracts over \$100,000.00.	

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Subject: CONTRACTS – CRITERIA FOR DETERMINING PROPER ROUTING PROCEDURE	Effective Date: February 22, 2010
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9. Contracts that require expenditure of funds in more than one fiscal year.

10. Amendments to contracts that bring total cost over \$100,000.00.

11. Any contracts that require amending the budget.

12. Only contracts requiring expenditure of County funds are subject to the rules governing Commission approval for contracts subject to rule 11 above.

13. Contracts that by law require approval of the Legislative Body.

B. Contracts NOT requiring approval by the Board of Commissioners.

Any contract which does not meet the criteria listed above in section A does not require Board approval.

Contracts up to \$100,000.00 with renewal options do NOT require Commission approval. Renewals are NEW contracts for a new year and remain \$100,000.00 or below. Each year is NOT compounded; however, make sure funds are included in each fiscal year budget for the renewal periods.

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Subject: CONTRACTS – ROUTING PROCEDURES FOR CONTRACTS REQUIRING BOARD OF COMMISSIONERS APPROVAL	Effective Date: February 22, 2010 Supersedes: 11-01-02
<p>I. PURPOSE:</p> <p>To provide routing procedures for contracts <u>requiring</u> Board of Commissioners approval.</p> <p>II. SCOPE:</p> <p>This procedure applies to contracts for all Administrative Departments, Elected Offices, Boards and Agencies of the County.</p> <p>III. GENERAL:</p> <p>The following is an outline of established resolution routing procedures. County Commission agenda items shall be provided to the County Commission in electronic format and placed into the paperless agenda system. If the Department is unable to utilize the paperless agenda system, the below routing procedures also apply to Resolutions that are physically routed for approval. Taking into consideration the Shelby County Board of Commissioners' Permanent Rules of Order, the Contract Administration Department recommends that Departments email a copy of the Resolution Packet to the appropriate attorney for review in a sufficient amount of time that will allow the Department to make any necessary revisions prior to routing the item.</p> <p>If any of the information, documentation or signatures required in the below procedures are not complete, the item will be returned to the originating department for correction.</p> <p>IV. PROCEDURES:</p> <ol style="list-style-type: none">1. Pursuant to the Permanent Rules of Order of the Shelby County Board of Commissioners, as amended, April 4, 2011, a Resolution Packet must consist of an Agenda Route Sheet signed by the Department Head, a Summary Sheet, Original Resolution, Purchasing and E.O.C. documents, if applicable, AND contracts. If required, Resolution Packets shall also include a Child Impact Statement, and/or a Technology Coordination Office (TCO) Opinion.2. Four (4) original contracts signed by the Vendor/Contractor and a fully executed original Gratuity Disclosure Form must be attached to the Resolution. When applicable, an ORIGINAL and four (4) copies of Bonds, Insurance Certificate and Power of Attorney must be attached to the Contracts and Resolutions packet.3. The completed packet must be signed by the Department Head and by the Division Director or Elected Official, if possible, and forwarded to the Contract Administration Department.	

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Subject: CONTRACTS – ROUTING PROCEDURES FOR CONTRACTS REQUIRING BOARD OF COMMISSIONERS APPROVAL	Effective Date: February 22, 2010 Supersedes: 11-01-02
<p>4. The Resolutions and Contracts will be forwarded to Contracts Administration for final review and approval as to form and legality. (At this point, if any language in the contract is not acceptable, negotiations with the Contractor will continue/begin OR the packet will be returned to the originating department for correction.) The paperless agenda system will automatically forward the Resolution Packet to the next step (Finance, CAO, and then County Commission) for review and approval, and for placement on the Commission's Agenda.</p> <p>5. If the Department is unable to utilize the paperless agenda system, the Contract Administration Department will route the Resolution Packet to the Finance Department's Budget Section for verification of funds and approval. Upon approval by the Finance Department, the Packet will be returned to the Contract Administration Department.</p> <p>6. Upon approval by the Finance Department, the packet will be forwarded to the Chief Administrative Officer to obtain approval and forwarded to the Commission Chairman's Office to be placed on the next agenda.</p> <p>7. Departments should submit the four (4) original contracts and required supporting documentation to the Contract Administration Department prior to the committee meeting that the Agenda item will be discussed and voted upon by the Commission. The Contract Administration Department shall hold all contracts until the Board of Commissioners has approved the contract. Once copies of the attested Resolutions have been received, the Contract Administration Department will then forward the contracts to the Chief Administrative Officer for the Mayor's signature.</p> <p>8. Executed contracts will be returned to the Contract Administration Department, processed and distributed to the Originating Department.</p> <p>9. Contracts will be distributed as follows:</p> <ol style="list-style-type: none">1. Contract Administration Master File2. Originating department3. Contractor (through the department for issuance of Notice to Proceed OR directly with Notice to Proceed)	

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Subject: CONTRACTS – ROUTING PROCEDURES FOR CONTRACTS <u>NOT REQUIRING</u> BOARD OF COMMISSIONERS APPROVAL	Effective Date: February 22, 2010 Supersedes: 11-01-02
<p>I. PURPOSE:</p> <p>To provide routing procedures for contracts <u>not requiring</u> Board of Commissioners approval.</p> <p>II. SCOPE:</p> <p>This procedure applies to all contracts for all Administrative Departments, Elected Offices, Boards and Agencies of the County.</p> <p>GENERAL:</p> <p>Once it has been established that specific services and/or materials are required, selection of the contractor shall be made in one of the following ways:</p> <ol style="list-style-type: none">1. Consultant Review Committee2. Bid Process3. Requesting Department (pursuant to special circumstances or requirements) <p>The following requirements must be met to ensure proper execution and handling of contracts. NOTE: If any of the requirements are not complete, the contract will be returned to the originating department for correction.</p> <p>III. PROCEDURES:</p> <ol style="list-style-type: none">1. The originating department shall have four (4) original contracts and a fully executed original Gratuity Disclosure Form prepared and signed by the Vendor/Contractor. (PLEASE NOTE: DO NOT DATE CONTRACT.) If applicable, all bonds, insurance certificates and other required documents must be attached to the contracts.	

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Subject: CONTRACTS – ROUTING PROCEDURES FOR CONTRACTS NOT REQUIRING BOARD OF COMMISSIONERS APPROVAL	Effective Date: February 22, 2010
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2. A Contract and Encumbrance Information Sheet shall be filled out completely (with Vendor Number, Commodity Code and EOC Number), signed by the Department Head and forwarded to the Division Director or Elected Official for his/her review and approval. (Approval indicated by signature on the Contract and Encumbrance Information Sheet.)
3. The Division Director or Elected Official shall forward the contract packet to the Contract Administration Department, and the Contract Administration Department will verify funding through the Purchasing Department by forwarding the Contract and Encumbrance Information sheet to the Purchasing Department for verification of the same. Upon verification of funds, the appropriate Contract Administration attorney will review the Contract for approval as to form and legality. At this point, if any language in the contract is not acceptable, the packet may be returned to the originating department for correction.
4. Upon approval, the packet will be forwarded to the Chief Administrative Officer for the Mayor's signature.
5. Executed contracts will be returned to the Contract Administration Department, processed and distributed as follows:
 1. Contract Administration Master File
 2. Originating Department
 3. Contractor (through the Department for issuance of the Notice to Proceed or directly to Contractor with a Notice to Proceed)

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<p>Subject: RESOLUTIONS – ROUTING POINTS AND TIME DEADLINES FOR PLACING ON COMMISSION AGENDA</p>	<p>Effective Date: February 22, 2010</p> <p>Supersedes: 11-01-02</p>												
<p>I. PURPOSE:</p> <p>To provide requirements regarding routing points and time deadlines that must be met for resolutions to be placed on the Commission Agenda.</p> <p>II. SCOPE:</p> <p>This procedure applies to all resolutions for all departments and offices of the County.</p> <p>III. ROUTING REQUIREMENTS:</p> <p>A. The following outline sets forth routing policy for resolutions to be placed on the Commission Agenda. Please take note that the time deadline shall be NOON unless otherwise stated.</p> <table style="width: 100%; margin-top: 20px;"> <thead> <tr> <th style="text-align: center;"><u>ROUTING POINT</u></th> <th style="text-align: center;"><u>TIME DEADLINE</u></th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">APPROPRIATE DIVISION DIRECTOR OR ELECTED OFFICIAL</td> <td style="padding: 5px;">FRIDAY, week before C.A.O. approval</td> </tr> <tr> <td style="padding: 5px;">CONTRACT ADMINISTRATOR</td> <td style="padding: 5px;">MONDAY, week of C.A.O. approval.</td> </tr> <tr> <td style="padding: 5px;">FINANCE (Budget)</td> <td style="padding: 5px;">TUESDAY, week of C.A.O. approval.</td> </tr> <tr> <td style="padding: 5px;">CHIEF ADMINISTRATIVE OFFICER</td> <td style="padding: 5px;">WEDNESDAY, week prior to Committee meetings.</td> </tr> <tr> <td style="padding: 5px;">COMMISSION OFFICE</td> <td style="padding: 5px;">THURSDAY, week prior to Committee meetings.</td> </tr> </tbody> </table>		<u>ROUTING POINT</u>	<u>TIME DEADLINE</u>	APPROPRIATE DIVISION DIRECTOR OR ELECTED OFFICIAL	FRIDAY, week before C.A.O. approval	CONTRACT ADMINISTRATOR	MONDAY, week of C.A.O. approval.	FINANCE (Budget)	TUESDAY, week of C.A.O. approval.	CHIEF ADMINISTRATIVE OFFICER	WEDNESDAY, week prior to Committee meetings.	COMMISSION OFFICE	THURSDAY, week prior to Committee meetings.
<u>ROUTING POINT</u>	<u>TIME DEADLINE</u>												
APPROPRIATE DIVISION DIRECTOR OR ELECTED OFFICIAL	FRIDAY, week before C.A.O. approval												
CONTRACT ADMINISTRATOR	MONDAY, week of C.A.O. approval.												
FINANCE (Budget)	TUESDAY, week of C.A.O. approval.												
CHIEF ADMINISTRATIVE OFFICER	WEDNESDAY, week prior to Committee meetings.												
COMMISSION OFFICE	THURSDAY, week prior to Committee meetings.												

SHELBY COUNTY GOVERNMENT
PURCHASING
RULES AND REGULATIONS

Policy No. CA-060
Page No. 2 of 2

Subject: RESOLUTIONS – ROUTING POINTS AND TIME DEADLINES FOR PLACING ON COMMISSION AGENDA	Effective Date: February 22, 2010
	Supersedes: 11-01-02

Please be advised that these are absolute deadlines that will be strictly enforced.

B. Resolution items received in the C.A.O.'S office after the established deadline will be placed on the next meeting agenda of the County Commission.

NO EXCEPTIONS TO THIS POLICY WILL BE CONSIDERED BY THE C.A.O.'S OFFICE UNLESS A WRITTEN EXPLANATION IS ATTACHED TO THE RESOLUTION WHICH DETAILS WHY THE DEADLINE WAS MISSED AND THE NEED FOR ADDING TO THAT COMMISSION AGENDA.

The request for an exception must contain the signature of the appropriate Division Director, which indicates that he/she agrees with the request.

SHELBY COUNTY GOVERNMENT
PURCHASING
RULES AND REGULATIONS

Policy No. CA-070
Page No. 1 of 1

Subject: CONTRACTS-CHANGE ORDER POLICY	Effective Date: February 22, 2010 Supersedes: 11-01-02
CHANGE ORDERS FOR CAPITAL CONSTRUCTION PROJECTS	
<p>(a) For the purposes of this section:</p> <p>(1) <i>Scope of the project</i> means the construction and services that were approved by the board of county commissioners, whether completed in whole or in part, and includes all labor, materials, equipment, and services required to fulfill the contractor's obligations under the contract and the project plans and specifications available and/or referenced by the request for sealed bid.</p> <p>(2) <i>Minor change</i> means a change in the scope of the project which does not involve an adjustment in the total contract price, an extension of time to complete contract performance, or a change that is inconsistent with the intent of the contract or the project plans and specifications available and/or referenced by the request for sealed bid.</p> <p>(b) All change orders for capital construction projects shall be approved by the board of county commissioners for:</p> <p>(1) Any change that exceeds the contingency amount originally approved by the board of county commissioners; or</p> <p>(2) Any change that is inconsistent with, or differs from, the original intent and/or scope of the project.</p> <p>(c) The designated county construction project manager shall review and recommend all change orders and shall have the authority to order minor changes.</p> <p>(d) The designated county construction project manager may recommend an allowance for capital construction project change orders as follows:</p>	

- (1) An allowance of up to ten percent of the contract amount for contracts in an amount up to \$500,000.00;
 - (2) An allowance of up to seven percent of the contract amount for contracts in the amount of \$500,000.00 up to \$10,000,000.00; and
 - (3) An allowance of up to five percent of the contract amount for contracts in an amount over \$10,000,000.00.
- (e) The board of county commissioners may approve a change order allowance greater than that authorized by subsection (d) of this section.
-
-

ADDENDUM NO. 2

SHELBY COUNTY
GENERAL CONTRACT PROVISIONS

III. GENERAL CONDITIONS

The parties further agree as follows:

1. CONTROL

All Services by the CONSULTANT will be performed in a manner satisfactory to the COUNTY, and in accordance with the generally accepted business practices and procedures of the COUNTY.

2. CONSULTANT'S PERSONNEL

The CONSULTANT certifies that it presently has adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be supervised by the CONSULTANT. The CONSULTANT further certifies that all of its employees assigned to serve the COUNTY have such knowledge and experience as required to perform the duties assigned to them. Any employee of the CONSULTANT who, in the opinion of the COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

3. INDEPENDENT STATUS

a. Nothing in this Contract shall be deemed to represent that the CONSULTANT, or any of the CONSULTANT's employees or agents, are the agents, representatives, or employees of the COUNTY. The CONSULTANT will be an independent CONSULTANT over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the COUNTY the right to direct the CONSULTANT as to the details of the performance of the Services under this Contract or to exercise a measure of control over the CONSULTANT is solely for purposes of compliance with local, state and federal regulations and means that the CONSULTANT will follow the desires of the COUNTY only as to the intended results of the scope of this Contract.

b. It is further expressly agreed and understood by CONSULTANT that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that CONSULTANT has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by CONSULTANT for the Services

CONSULTANT for the Services performed shall be on the CONSULTANT's letterhead.

4. REPORTS

CONSULTANT shall prepare and submit quarterly reports of its activities, funded under this Contract, to the originating department and the Contract Administration Department of the COUNTY. The reports shall include an itemization of the use of COUNTY's funds, pertinent information pursuant to the applicable Living Wage Ordinance, and shall be inclusive of specific Services delivered. Any such reports provided to the COUNTY shall be prepared with the understanding that the COUNTY may make such reports available to the public. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Contract may be subject to audit by the Director of the Division of Administration and Finance of the COUNTY. The COUNTY shall have the right to withhold future disbursement of funds under this Contract and any future Contracts until this provision has been met.

5. TERMINATION OR ABANDONMENT

- a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
- i) Either the CONSULTANT or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
 - ii) CONSULTANT has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or
 - iii) CONSULTANT has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of CONSULTANT assets.

- b. The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the CONSULTANT for CONSULTANT's failure to provide the Services specified under this Contract.
- c. This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination (the "Termination Date"). In the event of such termination, the CONSULTANT shall be paid for all Services rendered prior to the Termination Date, provided the CONSULTANT shall have delivered to COUNTY such statements, accounts, reports and other materials as required under this Contract; however, CONSULTANT shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by CONSULTANT prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.
- d. Notwithstanding the above or any section herein to the contrary, CONSULTANT shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Contract by CONSULTANT and the COUNTY may withhold any payments to CONSULTANT for the purpose of setoff until such time as the exact amount of damages due the COUNTY from CONSULTANT is determined.

6. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to CONSULTANT pursuant to this Contract for any CONSULTANT's Services performed by the CONSULTANT in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the CONSULTANT to properly fulfill any of his obligations as set forth in this Contract.

7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

- a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the CONSULTANT from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the CONSULTANT's obligations to its transferors or subcontractors.

b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

8. CONFLICT OF INTEREST

The CONSULTANT covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The CONSULTANT warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the CONSULTANT in connection with any work contemplated or performed relative to this Contract.

9. CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

10. EMPLOYMENT OF COUNTY WORKERS

The CONSULTANT will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

11. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, CONSULTANT agrees to permit duly authorized agents and employees of the COUNTY to enter CONSULTANT's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The CONSULTANT will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at

their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request.

12. ARBITRATION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the CONSULTANT and the COUNTY will be referred to the Shelby County Contract Administrator or its duly authorized representative, whose decision regarding same will be final.

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- a. CONSULTANT shall indemnify, defend, save and hold harmless the COUNTY, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by the CONSULTANT its subcontractors, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.
- b. CONSULTANT expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the CONSULTANT shall in no way limit the responsibility to indemnify, defend, save and hold harmless the COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.
- c. The COUNTY has no obligation to provide legal counsel or defense to CONSULTANT or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against CONSULTANT as a result of or relating to performance of the Services under this Contract.
- d. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the

settlement of any claims against CONSULTANT as a result of or relating to performance of the Services under this Contract.

- e. CONSULTANT shall immediately notify the COUNTY of any claim or suit made or filed against CONSULTANT or its subcontractors regarding any matter resulting from or relating to CONSULTANT's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

14. GENERAL COMPLIANCE WITH LAWS

- a. The CONSULTANT certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.
- b. The CONSULTANT is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).
- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the CONSULTANT agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

15. NON-DISCRIMINATION

The CONSULTANT hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act

Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the CONSULTANT on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CONSULTANT shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

16. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

17. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

18. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

19. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document

in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

20. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

21. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

22. TRAVEL EXPENSES

All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the County.

23. PERFORMANCE AND LABOR AND MATERIALS BONDS

CONSULTANT will provide COUNTY within ten (10) days from inception date of this Contract a Performance and Labor and Materials Bond each in the amount of 100% of the Contract price for each year that this contract is in effect. Said Bonds may be pro-rated for the initial year in the event that this period of time is less than a full twelve (12) month period.

24. NON-LIABILITY FOR CONSULTANT EMPLOYEE TAXES

Neither CONSULTANT nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide CONSULTANT's personnel with any benefits and shall have no liability for the

the following:

- a. Withholding FICA (Social Security) from CONSULTANT's payments;
- b. Making state or federal unemployment insurance contributions on behalf of CONSULTANT or its personnel;
- c. Withholding state and federal income tax from payment to CONSULTANT;
- d. Making disability insurance contributions on behalf of CONSULTANT;
- e. Obtaining workers' compensation insurance on behalf of CONSULTANT or CONSULTANT's personnel.

25. INCORPORATION OF OTHER DOCUMENTS

- a. CONSULTANT shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for Proposals/Bids as well as the Response of CONSULTANT thereto, all of which are maintained on file within the Shelby County Purchasing Department and incorporated herein by reference.
- b. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

26. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

The CONSULTANT shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the COUNTY are utilized when possible as sources of supplies and equipment, construction and services.

27. LIVING WAGE ORDINANCE AND PREVAILING WAGE ORDINANCE

Living Wage -In accordance with Ordinance Number 328, commonly referred to as the Living Wage Ordinance, all persons/entities engaged in service contracts with the COUNTY, including but not limited to both prime and sub-contractors, shall pay a Living Wage to employees for all work performed on said service

service contract, as defined in the Living Wage Ordinance. Proof of such compensation must be evidenced as required in the Living Wage Ordinance.

Prevailing Wage-Any firm, individual, partnership or corporation awarded a contract by the COUNTY for the construction of, improvement, enlargement, alteration or replacement of a public work or project in excess of \$500,000 and any subcontractors of such public work or project in excess of \$100,000 ("Recipient") shall be required to pay local prevailing wages and benefits for laborers, mechanics, or other listed classifications as defined by the Tennessee Department of Labor. The prevailing wage rate shall be the most current State of Tennessee prevailing wage established by the Tennessee Department of Labor For Region 1 (Shelby County). The benefit rates shall be the most current rates described in the published schedule by the Memphis and West Tennessee Building and Construction Trades Council, except as otherwise provided in the Shelby County Code of Ordinances. The applicable rate shall be determined at the time the project is awarded. In instances where Prevailing Wage applies, Prevailing Wage will override the Living Wage requirement.

28. RIGHT TO REQUEST REMOVAL OF CONSULTANT'S EMPLOYEES

The COUNTY may interview the personnel CONSULTANT assigns to COUNTY's work. COUNTY shall have the right, at any time, to request removal of any employee(s) of CONSULTANT, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, CONSULTANT shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

29. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

30. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CONSULTANT, CONSULTANT understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by CONSULTANT due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

31. CONFIDENTIAL INFORMATION (If needed add)

- a. CONSULTANT acknowledges that, in dealing with individuals in the provision of the Services for COUNTY, any information gathered for the provision of the Services is confidential information. CONSULTANT agrees to hold all confidential information in strict confidence, and except as expressly set forth herein, will not disclose such confidential information to any third party(s), including but not limited to any corporation, company, group, partnership, agency or individual. CONSULTANT shall:
- i) use the confidential information only in connection with the provision of the Services;
 - ii) disclose the confidential information only to its officers, directors, and employees who need to know the confidential information to accomplish the preparation of the audits and/or auditing process; and
 - iii) safeguard the confidential information with the same or greater degree of care to avoid unauthorized disclosure as the CONSULTANT uses to protect its own confidential information.
- b. In the event that the CONSULTANT or anyone to whom it transmits confidential information becomes legally compelled to disclose any of the confidential information, the CONSULTANT will provide the COUNTY with prompt written notice before such confidential information is disclosed so that the COUNTY can seek a protective order or other appropriate remedy. Unauthorized disclosure of confidential information by the CONSULTANT shall result in immediate termination of the Contract.

32. ORGANIZATION STATUS AND AUTHORITY

- a. CONSULTANT represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.
- b. The execution, delivery and performance of this Contract by the CONSULTANT has been duly authorized by all requisite

requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of CONSULTANT, any provision of any indenture, agreement or other instrument to which CONSULTANT is a party, or by which CONSULTANT's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

33. INSURANCE REQUIREMENTS

- a. The CONSULTANT shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from claims which may arise out of or result from the CONSULTANT's operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the CONSULTANT or subcontractor may be liable.
- b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be named as additional insured. All policies will provide for thirty (30) days written notice to COUNTY of cancellation or material change in coverage provided. The CONSULTANT will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements:
 - i) Professional Liability Insurance - \$1,000,000.00 per claim/\$3,000,000.00 annual aggregate, indicating if coverage is on occurrence basis or claims-made.
 - ii) Commercial General Liability Insurance - \$1,000,000.00 limit per occurrence bodily injury and property damage/\$1,000,000.00 personal and advertising injury/\$2,000,000.00 General Aggregate/\$2,000,000.00 Products-completed Operations Aggregate, indicating the coverage is provided on a claims-made or on an occurrence basis. The insurance shall include coverage for the following:

- a. Premises/Operation;
- b. X,C, & U;
- c. Products/Completed Operations;
- d. Contractual;
- e. Independent Contractors;
- f. Broad Form Property Coverage;
- g. Personal Injury.

iii) Workers Compensation and Employers' Liability Insurance - Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for \$1,000,000.00 per accident.

iv) Business Automobile Liability Insurance - \$1,000,000.00 each accident for property damage and personal injury. Coverage is to be provided on all owned/leased autos, non-owned autos and hired autos.

- c. CONSULTANT shall provide County with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

Shelby County Government
Purchasing Department
160 N. Main, Suite 550
Memphis, TN 38103

- d. Upon termination or cancellation of insurance currently in effect under this Contract, the CONSULTANT shall purchase an extended reporting endorsement and furnish evidence of same to the County.

34. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County _____

Memphis, Tennessee _____
Attn.:

and

Shelby County Government
Contract Administration
160 N. Main St., Suite 550
Memphis, Tennessee 38103

VENDOR: _____
Attn: _____

35. HIPAA (if health related)

CONSULTANT warrants to the COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract. CONSULTANT warrants that it will cooperate with the COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. CONSULTANT will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements.

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

APPROVED:

SHELBY COUNTY GOVERNMENT

Contract Administration
Assistant County Attorney

Mark H. Luttrell, Jr., Mayor

NAME OF COMPANY

BY: _____

TITLE: _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the _____, the within named bargainer, a corporation, and that he as such _____, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as _____.

WITNESS my hand and official seal at office this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

ADDENDUM NO. 3

GENERAL INSURANCE AND BOND REQUIREMENTS

SAMPLE CERTIFICATE OF INSURANCE

SAMPLE PERFORMANCE BOND

SAMPLE LABOR AND MATERIAL PAYMENT BOND

SHELBY COUNTY
INSURANCE REQUIREMENTS
AND RECOMMENDATIONS
MANUAL

FINANCE DEPARTMENT AND CONTRACT ADMINISTRATION
March 2006

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INSURANCE REQUIREMENTS/RECOMMENDATIONS

Distribution

This set of instructions should be distributed to personnel who:

- 1) Draft, negotiate and review County contracts, leases, agreements, requests for proposal/bids, and purchase orders;
- 2) Require certificates of insurance and follow-up to ensure current certificates of insurance are in force for ongoing projects.

Purpose

The County requires suppliers, contractors, lessees, consultants and permittees (the other party to a County contract) to maintain insurance covering them against claims or judgments arising from their products or activities for the County. The insurance is to be extended to protect Shelby County, its elected officials, appointees, employees, volunteers and members of its boards, commissions and agencies.

The County also requires the responsible party to defend, indemnify and hold harmless the County for losses arising out of the activities, services or products of its suppliers, contractors, lessees, consultants and permittees. This indemnification is a second source of protection, in addition to insurance purchased by the other party.

To provide adequate protection, the required liability insurance must:

- 1) Cover the specific exposures to loss arising out of the services required by the contract;
- 2) Contain limits high enough to cover potentially adverse judgments.

Departments should not feel that these requirements impose a heavy burden on the contractor. These requirements are reasonable as the other party is the active party whose operations, services or products are the cause of the claim. In most cases, the contractor will already have the required insurance. If not, the contractor, the public and the County will be better protected when the required coverage is obtained.

The County's standard contracts should contain a description of the required insurance and contain a hold harmless and indemnification clause. This clause automatically takes effect when the contract is signed by both parties, but the required insurance does not take effect automatically. It comes into existence only when the other party's insurance company or their broker issues the required insurance policies/certificates or endorses existing policies to conform to the County's requirements.

Because required insurance coverage is not automatic, the County must have proof that the insurance is in effect before the contract is accepted and signed by the County. Therefore, the County should not sign a contract until insurance certificates and endorsements (when appropriate) are received evidencing the required coverage and approved by the County's Contract Administrator and Insurance Specialist. The Insurance Specialist and Contract Administrator have prepared this manual for your use in preparing contracts, proposals, leases, agreements, etc. for compliance with the County's insurance requirements.

THE INCLUSION AND ENFORCEMENT OF THE COUNTY'S INSURANCE PROVISIONS IN ALL CONTRACTS, PROFESSIONAL SERVICE AGREEMENTS, PERMITS, ETC. ARE THE RESPONSIBILITY OF THE INDIVIDUAL DEPARTMENT GENERATING THE PARTICULAR ACTIVITY.

It is critical that departments or divisions which have operations requiring the enforcement of the County's insurance provisions designate an appropriate member of their staff to be responsible for ensuring that all insurance coverage requirements are met and are enforced during the specified time period. Certificates of Insurance and Endorsements are to be maintained by all of the departments/divisions with their file. All original documents related to Bids/RFPs are maintained with the Bid/RFP file retained by the Purchasing Department. When received and PRIOR to execution or release, the insurance certificates along with a copy of the applicable contract/proposal/agreement should be routed to the Contract Administrator and Insurance Specialist for review and approval. The process flows smoother when these departments are brought into the process early when needed, rather than trying to add/approve something at the last minute.

The responsibility for following the procedures outlined in this manual is not limited to the specialized operations cited above; it is incumbent on *every County department* who enters into a contract or agreement to follow the procedures outlined in this manual and to ensure that all required insurance coverages are enforced and appropriate records of certificates of insurance are kept. Insurance specifications for all Bids/RFPs shall be reviewed and approved by the Insurance Specialist prior to delivery to the Purchasing Department.

Like most documents which set forth a guideline or a standard, not all possible situations will be directly addressed in the following pages. Some situations may involve unusual risks or complex issues where the standard insurance requirements are not appropriate. For those situations, or any other insurance-related question, please contact the County's Insurance Specialist.

GENERAL INFORMATION

The County purchases a significant amount of goods and services under contract each year. These contracts range from complete construction of new buildings, major remodeling of existing structures, small building maintenance agreements, professional service agreements, lease or purchase of equipment or property, etc. The dollar amount and duration of the contract is very seldom a precise indicator of the amount of bodily injury or property damage claims that could result from activities under the contract. Consequently, contract size and duration alone will generate few exceptions to the standard insurance requirements. In situations involving major public works or other large contracts or if there is just some question regarding the appropriateness of particular requirements, the County's Insurance Specialist should be consulted to determine if higher liability limits should be required.

There are several basic steps which should be followed in administering the insurance provisions in contracts where the other party is required to provide insurance to protect Shelby County, its elected officials, appointees, employees, volunteers and members of its boards, commissions and agencies.

A. *Develop Correct Insurance Specifications*

The first step in the process is to develop a clear set of specifications describing the insurance to be provided by the other party. These specifications should be included in the contract between the County and the other party. This manual contains a sample set of insurance requirements/specifications which should be utilized in most contracts, bid packages or RFPs, purchase orders (involving services), professional service agreements, leases and a variety of permits. **HOWEVER, THIS SAMPLE SET OF REQUIREMENTS/SPECIFICATIONS DOES NOT FIT ALL SITUATIONS.** If you must deal with an unusual situation or are not certain that the samples are appropriate, ask the Insurance Specialist for assistance.

A later section of this manual is devoted to a glossary of insurance terms you may encounter.

B. *Inform Bidders of and Incorporate the Insurance Requirements Early in the Bid or RFP Process*

By providing all insurance requirements up front in the Bid/RFP process, potential contractors will be able to solve any potential problems they may have in meeting our requirements. This will enhance the number of Bid/RFP responses and eliminate most last minute problems regarding insurance.

C. *Monitoring Existing Policies/Endorsements*

Normally as proof of insurance, a vendor/contractor will have their insurance agent or broker provide what is referred to as a certificate of insurance. This is typically a standardized form identifying the vendor/contractor, their insurance agent/broker, insurance carrier(s), and types, limits and expiration dates for the applicable coverages. It will also include any specific information pertaining to the agreement, include a cancellation notice and is signed by their licensed insurance agent/broker. Note the expiration date of the policies. If any policies will expire during the term of the contract or project, the department administrator or manager should note on it their calendar for at least 30 days prior to the expiration of the insurance. At that time, if you have not received proof of renewal or replacement coverage, you should send a letter to the other party stating that the County requires receipt of new certificates of insurance and endorsements before the existing coverage expires. If notice of insurance policy cancellation is

received and coverage lapses without any written renewal or replacement of coverage confirmation prior to the date of the cancellation or lapse in coverage, you should immediately notify the Insurance Specialist. The Insurance Specialist will consult with the Contract Administrator as to whether a stop-work notice should be issued.

D. *Save the Signed Forms for at Least Five (5) Years*

After the contract has expired or the job is completed, save the endorsements and certificate forms for at least five (5) years and preferably longer. Claims may be presented many years after work is completed. The certificate and endorsement forms may be the County's only proof of coverage.

STANDARD INSURANCE PROVISIONS CONTRACTS AND SERVICES

Prior to commencing work, the contractor shall procure and maintain at contractor's own cost and expense for the duration of the contract and any extensions the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in Contractor's bid:

A1. CONSTRUCTION OR INSTALLATION PROJECT LESS THAN \$1,000,000

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- 1) *Commercial General Liability Insurance* - \$1,000,000 limit per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The service provider should indicate in its bid whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) Products/Completed Operations
 - c) Personal Injury
 - d) XCU coverage, where applicable
 - e) Contractual Liability
 - f) Independent Contractors
 - g) Broad Form Property Damage
- 2) *Business Automobile Liability Insurance* - \$1,000,000 each accident for bodily injury and property damage. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability coverage for \$500,000 per accident.
- 4) *Builders Risk Insurance or Installation Floater (as applicable)* - All risk coverage in the amount of the structure/equipment which is to be built or installed. Consult Insurance Specialist.

A2. CONSTRUCTION OR INSTALLATION PROJECT GREATER THAN \$1,000,000; LESS THAN \$5,000,000

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- 1) *Commercial General Liability Insurance* - \$1,000,000 limit per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The service

provider should indicate in its bid whether the coverage is provided on a claims-made or, preferably, on an occurrence basis. The insurance shall include coverage for the following:

- a) Premises/Operations
- b) Products/Completed Operations
- c) Personal Injury
- d) XCU coverage, where applicable
- e) Contractual Liability
- f) Independent Contractors
- g) Broad Form Property Damage

2) *Umbrella* - \$2,000,000 limit.

3) *Business Automobile Liability Insurance* - \$1,000,000 each accident for property damage and personal injury. Coverage is to be provided on all:

- a) Owned/Leased Autos
- b) Non-owned Autos
- c) Hired Autos

4) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee Law. This policy should include Employers Liability Coverage for \$1,000,000 per accident.

5) *Builders Risk Insurance* or Installation Floater (as applicable) – All risk coverage in the amount of the structure/equipment which is to be built or installed. Consult Insurance Specialist.

A3. Construction and Installation Projects Greater Than \$5,000,000

Minimum Limits of Insurance

Contact Insurance Specialist. Generally, the previous section insurance requirements would apply, but limits could be higher.

Long Term Completed Operations Coverage. The owner of a completed construction project should require the general contractor to have completed operations coverage in place for a stated number of years following completion of the project.

A more realistic but less secure approach to this problem is to require that the contractor maintain CGL coverage as required in the contract for a minimum period of years following completion of the project. For example, the contract might require the contractor to purchase products-completed operations coverage for at least five (5) years following completion of the project. Since most contractors will purchase this coverage for their own protection anyway, as well as to comply with requirements imposed by owners on future projects, this should not be burdensome to them. Consult the Contract Administrator and the Insurance Specialist for each particular construction project.

Owner Controlled Wrap-Up – Consider use of a wrap up if project is large enough. Contact Insurance Specialist.

A4. PROFESSIONAL SERVICES/CONSULTANT PROJECTS LESS THAN \$1,000,000

Minimum Limits of Insurance

Consultant/provider shall maintain coverage with limits of no less than:

- 1) *Commercial General Liability Insurance* \$1,000,000 limit per occurrence bodily injury and property damage/\$1,000,000 personal and advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The consultant/provider should indicate in its bid whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) X, C, & U
 - c) Products/Completed Operations
 - d) Contractual
 - e) Independent Contractors
 - f) Broad Form Property Coverage
 - g) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 each accident for property damage and personal injury. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for \$1,000,000 per accident.
- 4) *Professional Liability Insurance* - \$1,000,000 per claim/\$3,000,000 annual aggregate. Indicate if coverage is on occurrence basis or claims-made.

A5. PROFESSIONAL SERVICES/CONSULTANT PROJECTS GREATER THAN \$1,000,000

Minimum Limits of Insurance

Consultant/provider shall maintain coverage with limits of no less than:

- 1) *Commercial General Liability Insurance* - Consult Insurance Specialist.
- 2) *Business Automobile Liability Insurance* - Consult Insurance Specialist.
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Workers Compensation statutory limits as required by Tennessee law. This policy should also include Employers' Liability Coverage for \$1,000,000.
- 4) *Umbrella Liability* - Consult Insurance Specialist.
- 5) *Professional Liability Insurance* - Consult Insurance Specialist.

A6. ENVIRONMENTALLY SENSITIVE PROJECTS

Minimum Limits of Insurance

Service Provider shall maintain limits no less than:

- 1) *Commercial General Liability Insurance* - \$1,000,000 limit per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The service provider should indicate in its bid whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
 - c) Products/Completed Operations
 - d) Contractual
 - e) Independent Contractors
 - f) Broad Form Property Damage
 - g) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 each accident for property damage and personal injury. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
- 3) *WorkersWorkers Compensation and Employers' Liability Insurance* - WorkersWorkers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability coverage for \$1,000,000 per accident.
- 4) *Professional Liability Insurance* - Dependent on specific project. Consult Insurance Specialist.
- 5) *Environmental Liability Insurance – Pollution Coverage* - This should significantly cover the clean-up, disposal and transportation of solid or other hazardous waste material. It should also cover bodily injury and property damage resulting from solid and hazardous waste material. Limit of coverage to be dependent on specific project, but no less than \$1,000,000 per occurrence.
- 6) Umbrella Liability - \$2,000,000 per occurrence.

NOTE: It is also recommended that the Insurance Specialist be consulted on these types of projects/agreements on a specific case by case basis to ensure that the County is adequately protected against exposures to loss.

A7. LEASE ON BUILDING STRUCTURE (COUNTY OWNED FACILITY)

Minimum Limits of Insurance:

Leasee shall maintain limits no less than:

- 1) *Commercial General Liability Insurance* - \$1,000,000 limit per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$100,000 damage to rented premises/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The Leasee should indicate in its bid whether the coverage is provided on a claims-made or, preferably, on an occurrence basis. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
 - c) Products/Completed Operations
 - d) Contractual
 - e) Independent Contractors
 - f) Broad Form Property Damage
 - g) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 each accident for property damage and personal injury. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
- 3) *Workers Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability coverage for \$1,000,000 per accident.
- 4) *All-Risk Property Coverage* - Coverage should be on all risk, replacement cost basis value of building/structure/property. Shelby County Government is to be named on the policy as loss payee.

A8. TRANSPORTATION AND/OR DISPOSAL (ABATEMENT) OF HAZARDOUS MATERIALS

Minimum Limits of Insurance

Provider shall maintain limits no less than:

- 1) *Commercial General Liability Insurance* - \$1,000,000 limit per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$100,000 damage to rented premises/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The Leasee should indicate in its bid whether the coverage is provided on a claims-made or, preferably, on an occurrence basis. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
 - c) Products/Completed Operations

- d) Contractual
 - e) Independent Contractors
 - f) Broad Form Property Damage
 - g) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 limit per accident for property damage and personal injury. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
 - 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability coverage for \$1,000,000 per accident.
 - 4) *Environmental Liability* - \$5,000,000 per occurrence. This should cover the clean-up, disposal, and transportation of solid and hazardous waste material. It should also cover bodily injury and property damage resulting from solid and hazardous waste material.
 - 5) \$5,000,000 Umbrella Liability.

NOTE: It is also recommended that Insurance Specialist be consulted on these types of projects in a specific case by case basis to ensure that the County is adequately protected against exposures to loss.

A9. TRANSPORTATION SERVICE PROVIDER

Minimum Limits of Insurance

Provider shall maintain limits no less than:

- 1) *Commercial General Liability Insurance* -- \$1,000,000 limit per occurrence for bodily injury and property damage/\$1,000,000 personal and advertising injury/\$100,000 damage to rented premises/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The Leasee should indicate in its bid whether the coverage is provided on a claims-made or, preferably, on an occurrence basis. The insurance shall include coverage for the following:
 - a) Premises/Operations
 - b) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
 - c) Products/Completed Operations
 - d) Contractual
 - e) Independent Contractors
 - f) Broad Form Property Damage
 - g) Personal Injury
- 2) *Business Automobile Liability Insurance* - \$1,000,000 limit per accident for bodily injury and property damage. Coverage is to be provided on all:
 - a) Owned/Leased Autos

- b) Non-owned Autos
- c) Hired Autos
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability coverage for \$1,000,000 per accident.
- 4) *Umbrella Liability* - \$2,000,000

A10. VEHICLE TOWING CONTRACTS

Minimum Limits of Insurance

- 1) Coverage as required by Shelby County Code Section 7-535.
- 2) *Business Automobile Liability Insurance* - \$1,000,000 per occurrence for property damage and bodily injury. Coverage is to be provided on all:
 - a) Owned/Leased Autos
 - b) Non-owned Autos
 - c) Hired Autos
- 3) *Workers Compensation and Employers' Liability Insurance* - Workers Compensation statutory limits as required by Tennessee law. This policy should include Employers' Liability Coverage of at least \$500,000.

A11. Waterfront Exposures

Consult with Insurance Specialist.

A12. SPECIAL EVENTS, FESTIVALS, ETC.

Minimum Limits of Insurance

- 1) *Sponsor* shall procure at its expense a *Special Events Policy* with a minimum liability limit \$1,000,000 per occurrence. This limit of liability will vary depending on the type, size and location of the event to be held and as determined adequate by the County's Insurance Specialist. The County should be listed as an additional insured on this policy.
 - 2) *Employees/Contractors/Subcontractors* of sponsor shall provide evidence of Workers Compensation coverage as required by Tennessee law. This policy should include Employers' Liability Coverage for \$1,000,000 per accident. Coverage is to be included for volunteers.
 - 3) *Umbrella or excess liability may be required.*
- Events involving aircraft of any sort, explosives, animals, or festival seating or sale of any type of alcoholic beverage may require additional coverages.

- THESE EVENTS SHOULD BE REVIEWED BY THE INSURANCE SPECIALIST IN THE EARLY PLANNING STAGES OF SUCH EVENTS TO ENSURE THAT ADEQUATE COVERAGE IS REQUIRED AND OBTAINED BY THE SPONSOR OF THESE EVENTS.

Other Insurance Provisions

- 1) *Commercial General Liability and Automobile Liability Coverages*
 - a) Shelby County Government, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor or premises on which Contractor is performing services on behalf of the County. The coverage shall contain no special limitations on the scope of protection afforded to Shelby County Government, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees.
 - b) The Contractor's insurance coverage shall be primary insurance as respects the County, its elected officials, appointees, employees, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees. Any insurance or self-insurance maintained by the County, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees shall be excess of Contractor's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Shelby County its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees.
 - d) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 2) *Workers Compensation and Employers' Liability and Property Coverages*

The insurer shall agree to waive all rights of subrogation against Shelby County Government, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees for losses arising from activities and operations of Contractor in the performance of services under this Agreement.
- 3) *All Coverages*
 - a) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given (add user department and specify specific individual and title) to the County, except 10 days notice for non-payment of premium.
 - b) If Contractor, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. County, at its sole option, may terminate this Agreement and obtain damages from the Contractor resulting from said breach.

Alternatively, County may purchase such required insurance coverage (but has no special obligation to do so), and without further notice to Contractor, County may deduct from sums due to Contractor any premium costs advanced by County for such insurance.

4) *Aggregate Limits*

- a) *Per-Project General Aggregate Limit.* The standard Commercial General Liability policy has a general aggregate limit that places an annual cap on the amount of coverage available for all claims, other than products-completed operations claims, covered by the policy. A standard endorsement to the CGL policy allows a contractor to specify the application of a *separate* general aggregate limit to individual construction projects. This endorsement (CG 25 03) is readily available to most contractors in the current marketplace. It should generally be required in construction contracts. The endorsement guarantees that whatever amount of insurance the contractor is required to maintain according to the provisions of the construction contract will be available to pay claims arising from the project – without those limits being depleted by claims against the contractor arising from other projects.
- b) *Per-Location General Aggregate Limit.* The standard Commercial General Liability policy has a general aggregate limit that places an annual cap on the amount of coverage available for all claims, other than products-completed operations claims, covered by the policy. A standard endorsement to the CGL policy allows the named insured to specify the application of a *separate* general aggregate limit to any or each of its locations. This endorsement (CG 25 04) is readily available to most businesses in the current marketplace. It should generally be required in premises leases if the lessee has multiple locations.
- c) *Each-Occurrence Limit.* There are a number of approaches that may be taken to specify the limits required of the indemnitor. One approach is to specify a dollar amount for each of the primary coverages (i.e., CGL, employers liability, and auto liability), but this can cause problems as discussed under the “Common Errors and Problems” heading below. Probably the best approach is to specify that the occurrence and aggregate limits of the primary policy(ies) will meet the requirements imposed under the indemnitor’s umbrella policy. A minimum limit required for the indemnitor’s overall liability program can then be specified. This allows the indemnitor the flexibility for structuring a layered liability program in whatever manner makes the most business sense while affording the protection required under the contract.

5) *Deductibles and Self-Insured Retentions*

Any self-insurance, self-insured retentions or deductibles must be declared to and approved by the County. At the option of the County, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Shelby County, or the Contractor shall procure a bond guaranteeing payment of losses, related investigation, claim administration and defense expenses.

6) *Acceptability of Insurers*

Insurance is to be placed with Tennessee admitted insurers rated A X or better by *A.M. Best's* rating service or as approved by Shelby County’s Insurance Specialist.

7) *Verification of Coverage*

Contractor shall furnish the County with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the County before work commences. Shelby County may at its discretion, request a certified copy of any insurance policy required under any contract or agreement.

8) Subcontractors

Contractor shall include each of its subcontractors as insureds under the policies of insurance required herein or ensure that their subcontractors meet the minimum requirements for insurance specified herein.

9) Defense, Indemnification and Hold Harmless Agreement (Contracts for Services)

Contractor shall indemnify, defend, save and hold harmless Shelby County Government, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by the Contractor its subcontractors, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, defend, save and hold harmless Shelby County or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

Shelby County has no obligation to provide legal counsel or defense to Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against Contractor as a result of or relating to performance of the Services under this Contract.

Except as expressly provided herein, Shelby County has no obligation for the payment of any judgment or the settlement of any claims against Contractor as a result of or relating to performance of the Services under this Contract.

Contractor shall immediately notify Shelby County of any claim or suit made or filed against Contractor or its subcontractors regarding any matter resulting from or relating to Contractor's performance of the Services under this Contract and will cooperate, assist and consult with Shelby County in the defense or investigation thereof.

INSURANCE COVERAGES AND GLOSSARY OF TERMS

This section defines certain commonly used insurance terms and describes key types of coverages.

Discussion

A. "Claims-Made" and "Occurrence" - Based Coverages

Most liability insurance policies sold by the commercial insurance market have traditionally been written on an "*occurrence*" basis, meaning that they insure accidents or events that happen during the policy term, even if the claimant does not make a formal claim until months or years later. For example, a child injured in an accident may, under certain circumstances, be allowed to make a formal claim for damages after reaching age eighteen (18). The insured (e.g., the Contractor or the County) would be protected against this claim by the policy in effect at the time of the accident. Thus, it is important to maintain, on a long-term basis, records of such coverage even after the policies expire.

In recent years, some insurers have developed a new type of general liability coverage which imposes strict deadlines regarding timing of claims by plaintiffs and reporting of accidents and claims to the insurer. This type of coverage is called "*claims-made*" coverage. Although not widely used, it is common enough that you can expect to encounter some of the County's contractors' and vendors' insurance written on these forms.

In its most fundamental form, "*claims-made*" coverage responds to claims made during the policy term, regardless of when the triggering accident or event happened. Using the example of the injured child, the policy that would respond would be the policy in effect at the time that the child made a formal claim, even if years after the event.

While the restrictions may vary somewhat from insurer to insurer, and the forms allow some exceptions, one common version of "*claims-made*" coverage applies only to claims that are submitted to the insurer during the policy term or within sixty (60) days thereafter. Therefore, if the County's protection is to be preserved under this policy form, claims made against the County, either orally or in writing, must be reported immediately to the insurer at the address on the endorsement form. If the coverage has expired, or is about to do so, send notice by the fastest possible means, to reduce the possibility of missing a deadline.

This most common version also makes an exception for claims made within five (5) years after the policy term arising out of incidents that have been reported to the insurer during the policy term or within sixty (60) days thereafter. In other words, if an incident is reported to the insurer that may generate a future claim, coverage is "*locked in*" for five (5) years. If the incident is not reported (e.g., if you don't know about it), then if the claim is submitted after the policy term, the policy does not cover it. Therefore, you should also report incidents to the insurer immediately.

Clearly, when the County arranges to be protected under a contractor's liability insurance for claims arising out of a particular project, "*occurrence*" coverage is preferred, as the needed coverage can be arranged and the full cost known in advance of the project.

Professional liability risks are almost always written on a "*claims-made*" basis, especially professional liability of architects, engineers, medical professionals and consultants. Also,

hazardous products or activities, such as asbestos removal contracting, may be written on a "claims-made" form. However, most types of commercial business are usually written on an "occurrence" form.

B. Commonly Encountered Insurance Coverages

1) *Comprehensive General Liability Insurance and Broad Form Comprehensive General Liability*

Comprehensive general liability coverage provides protection against bodily injury and property damage claims arising from the operations of a contractor or tenant. This type of policy provides coverage for: premises and operations, use of independent contractors and products and completed operations. Major exclusions include liability arising out of the ownership, maintenance or use of watercraft, aircraft and automobiles. These exposures are normally covered by other insurance policies.

The County should require a Comprehensive General Liability insurance policy from all contractors and tenants. This form usually has an annual aggregate limit for products and completed operations losses.

The Broad Form Comprehensive General Liability endorsement is a composite endorsement which includes thirteen (13) "add-on" items that expand the coverage of the Comprehensive General Liability Coverage. Add-ons include personal injury, contractual liability and broad form property damage.

2) *Commercial General Liability Insurance*

Commercial General Liability coverage was introduced in 1986. This form combines the two (2) forms described in #1 above. However, it limits all loss payments to two (2) aggregate limits, one (1) for products and completed operations and one (1) for all other loss. This form can be written on either a "claims-made" or an "occurrence" basis. The name of this form is similar to that of the older form used above, so care must be used in distinguishing the names of these forms.

3) *Business Automobile Liability Insurance*

This coverage insures against liability claims arising out of the contractor's use of automobiles. The scope of coverage is defined by the symbol used in the policy. Below are descriptions of automobile designation symbols quoted from standard language used by insurers. Generally, you should require "Code 1", which is the broadest code.

Codes Used in Business Auto Policies

1) Any Auto.

2) Owned Autos Only.

Only those autos owned by the Named Insured (and, for liability coverage, any non-owned trailers while attached to power units owned by the Named Insured). This includes autos acquired after the policy begins.

3) Owned Private Passenger Autos Only.

Only the private passenger autos owned by the Named Insured. This includes those private passenger autos acquired after the policy begins.

- 4) **Owned Autos Other Than Private Passenger Autos.**
Only those autos owned by the Named Insured which are not of the private passenger type (and, for liability coverage, any non-owned trailers while attached to owned power units). This includes autos, not of the private passenger type, acquired after the policy begins.
- 5) **Owned Autos Subject To No-Fault.**
Only those autos owned by the Named Insured which are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes autos whose ownership entitles the Named Insured to have No-Fault benefits in the state where they are licensed or principally garaged.
- 6) **Owned Autos Subject To A Compulsory Uninsured Motorists Law.**
Only those autos owned by the Named Insured which, because of the law in the state where they are licensed or principally garaged, are required to have and cannot reject uninsured motorists insurance. This includes autos acquired after the policy begins, provided they are subject to the same state uninsured motorists requirement.
- 7) **Specifically Described Autos.**
Only those autos described in the policy for which a premium charge is shown (and, for liability coverage, any non-owned trailers while attached to those described power units).
- 8) **Hired Autos Only.**
Only those autos leased, hired, rented or borrowed by the Name Insured. This does not include any auto leased, hired, rented or borrowed from employees or members of their households.
- 9) **Non-Owned Autos Only.**
Only those autos owned, leased, hired or borrowed by the Name Insured which are used in connection with business. This includes autos owned by the Named Insured's employees or members of their households, but only while used in the Named Insured's business.

Automobile coverage requirements should be waived only when the other party's work clearly does not involve the use of an automobile. Should any doubt exist, this coverage should be required.

- 4) ***Workers Compensation and Employer's Liability Insurance***
Workers Compensation insurance provides statutory protection against bodily injury, sickness or disease sustained by employees of the other party in the scope of their employment. It should be required of any other party performing work for the County.

Employers' Liability coverage is usually included in Workers Compensation policies. It insures common law claims of injured employees made in lieu of or in addition to a Workers compensation claim.

C. Other Terms and Types of Insurance

- 1) ***Liquor Liability for the Sale of Liquor***

If the tenant is not in the liquor-selling business, but is serving liquor for an event such as a Christmas party, Comprehensive General Liability or Commercial General Liability insurance is appropriate. If the tenant is in the business of manufacturing, distributing, selling, serving or giving alcoholic beverages to the public or is a landlord of such a business, special liquor liability coverage would be required.

The County should require liquor liability coverage from every tenant that sells or serves alcoholic beverages on County property.

2) *Aircraft Liability and Watercraft Liability Insurance*

These coverages protect contractors against liability for injury to other people and their property arising out of the ownership or use of aircraft or of watercraft.

This coverage should be required of any contractors using aircraft. Aircraft liability coverage should be extended to include passenger liability.

3) *Property Insurance*

This type of insurance protects against financial loss resulting from destruction of property by insured perils such as fire. This is a different type of coverage than property damage liability insurance, which covers the insured's legal liability for damage to others' property.

Property insurance should be required when the County has a financial interest in property leased to others. Generally, the County should purchase the property insurance when it owns the building, rather than requiring the tenant to purchase coverage on behalf of the County. The advantages of the County purchasing the property insurance are:

- a) Assurance that adequate coverage is afforded; and
- b) Assurance that premiums will be paid, thus avoiding cancellation for non-payment of premium.

If the tenant owns the building (on land owned by the County), the County may wish to have the tenant purchase the insurance and name the County as a loss payee. Also, the tenant's policy should:

- a) Provide coverage against at least fire and the extended coverage perils (defined in insurance policies as windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles and smoke); and
- b) Insure the building to at least 90% of its replacement cost.

4) *X, C, U Hazards*

"X" = explosion

"C" = collapse

"U" = damage to underground property

Comprehensive General Liability and Commercial General Liability policies usually automatically insure liability for these risks, as defined in the policy. However, certain contractors must pay additional premiums to obtain these coverages or the underwriter will issue the policy excluding X, C and U perils. Therefore, these coverages should be specifically listed

and required in the Bid/RFP and evidenced on the certificate of insurance by the contractor.

5) *Waiver of Subrogation*

Waiver of subrogation means the relinquishment of a right to seek reimbursement for a loss from the responsible party. For example, the County often requires that a waiver of subrogation be added to a contractor's Workers compensation policy, to prevent the insurer from paying the claim of an injured employee, then seeking reimbursement from the County if a defect in the County's premises caused the injury.

6) *Loss Payable Clause*

Property insurance provision authorizing the insurer to pay any loss to the insured or to others identified in the policy as their interests in future losses may appear at the time of those losses.

7) *Endorsement*

Document attached to a policy which modifies the policy's original terms.

8) *Occurrence*

Means an accident, incident, etc. including continuous or repeated exposure to substantially the same general harmful conditions.

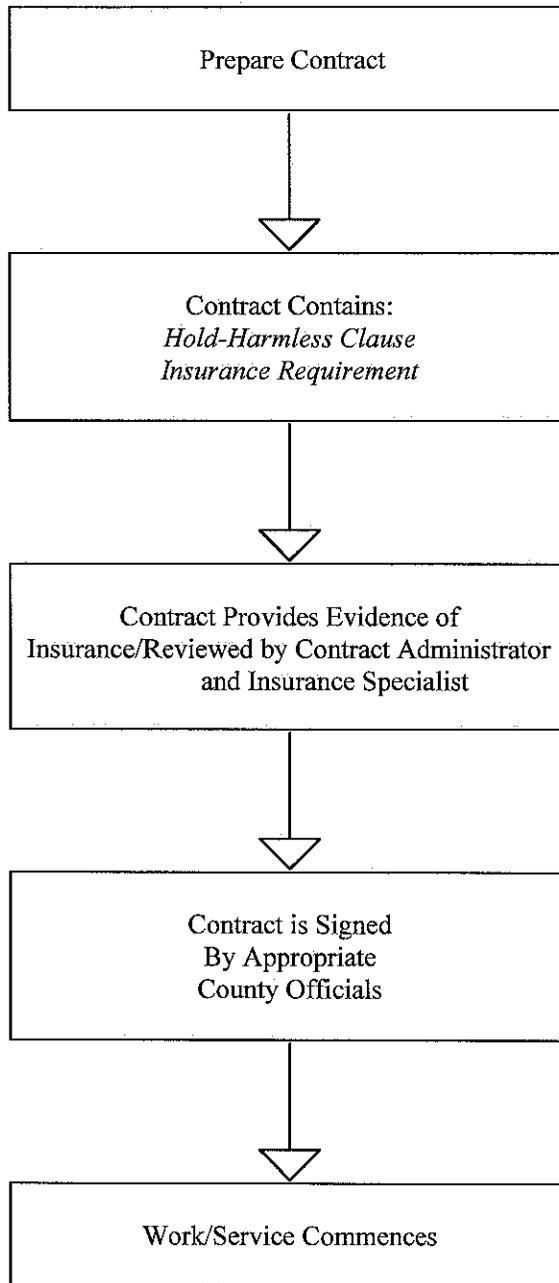
9) *Automatic additional insured*

Policy contains an endorsement which automatically includes as additional insured any entity which contracts with the insured and requires additional insured status.

10) *Additional Insured Status*

Additional insured status can be provided to another organization (e.g., an indemnitee under a contract) by endorsement to the commercial general liability policy. While such grants of additional insured status are subject to approval of the underwriter, most underwriters are amenable to these requests when there is a valid business reason for them. One of the primary reasons for requiring additional insured status is that it serves as a backup to the indemnity provision between the Contractor (the named insured) and the additional insured. If the risk transfer in the indemnity agreement is declared invalid, as sometimes happens, there will be no legal obligation to indemnify and the contractual liability coverage provided by the Commercial General Liability insurance policy thus will not be triggered. However, as an additional insured, the indemnitee has direct access to the indemnitor's insurance for claims falling within the scope of coverage provided in the additional insured endorsement. While indemnification and additional insured status are intended to function together as complementary risk transfer mechanisms, they should be treated within the contract itself as separate provisions – not combined within the same section of the contract, or linked in any way that would suggest that the enforceability of one is dependent on the enforceability of the other.

**Overview of Process for Using
Hold-Harmless and Insurance Clauses**



March 7, 2006

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/14/2010

PRODUCER _____ FAX _____

INSURED _____

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Travelers Insurance Co	
INSURER B: Amerisure Partners Insurance Co	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY		01/01/2010	01/01/2011	EACH OCCURRENCE	\$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000
		<input checked="" type="checkbox"/> Contractual Liab				PERSONAL & ADV INJURY	\$ 1,000,000
		<input checked="" type="checkbox"/> XCU Coverage				GENERAL AGGREGATE	\$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMPIOP AGG	\$ 2,000,000
		<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
A		AUTOMOBILE LIABILITY		01/01/2010	01/01/2011	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
		<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		<input checked="" type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		<input checked="" type="checkbox"/> NON-OWNED AUTOS				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
A		GARAGE LIABILITY		01/01/2010	01/01/2011	EACH OCCURRENCE	\$ 10,000,000
		<input type="checkbox"/> ANY AUTO				AGGREGATE	\$ 10,000,000
							\$
						\$	
						\$	
A		EXCESS/UMBRELLA LIABILITY		01/01/2010	01/01/2011		\$
		<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE					\$
		<input type="checkbox"/> DEDUCTIBLE					\$
		<input checked="" type="checkbox"/> RETENTION \$ 10,000					\$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		04/01/2010	04/01/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$ 500,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 500,000
						E.L. DISEASE - POLICY LIMIT	\$ 500,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

Shelby County Government
6449 Haley Road
Memphis, TN 38134

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Joseph Madden III/HUNTT

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond Number 1000850275

AIA Document A312

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address): **Shelby County Government**
160 N. Main
Memphis TN 38101

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond:

None

See Page 3

CONTRACTOR AS PRINCIPAL
Company:

(Corporate Seal)

SURETY
Company:

(Corporate Seal)

Signature:
Name and Title:

(Any additional signatures appear on page 3)

Signature: _____
Name and Title: _____

(FOR INFORMATION ONLY - Name, Address and Telephone)
AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or
other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall, promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if not liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by

the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: _____ (Corporate Seal)

SURETY
Company: _____ (Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:



THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A311

Labor and Material Payment Bond

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS: that
legal title or contractor)

(Here insert full name and address or

as Principal, hereinafter called Principal, and,
and address or legal title of Surety)

(Here insert full name

as Surety, hereinafter called Surety, are held and firmly bound unto
legal title of Owner)

(Here insert full name and address or

as Obligee, hereinafter called Owner, for the use and benefit of
claimants as hereinbelow defined, in the

amount of

(Here insert a sum equal to at least one-half of the contract price)

Dollars (\$

for the payment whereof Principal and Surety bind themselves, their
heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated 19. entered into a contract with Owner
(Here insert full name, address and description of project)

in accordance with Drawings and Specifications prepared by

re insert full name and address or
legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

LABOR AND MATERIAL PAYMENT BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimants work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial

Signed and sealed this

.. (W i (nc-s)
(V Vilnss)

day of

accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a

public officer.

b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

	19
(Principal)	
(TiIt)	
(Surt'ty)	(Seal)

ADDENDUM NO. 4

CONTRACT AND ENCUMBRANCE INFORMATION SHEET

CONTRACT NO. CA [REDACTED]

CONTRACT AND ENCUMBRANCE INFORMATION SHEET

AN ORIGINAL AND 1 COPY OF THIS FORM MUST BE SUBMITTED

THIS SHEET MUST BE COMPLETED, SIGNED BY THE DEPARTMENT HEAD AND DIVISION DIRECTOR AND ATTACHED TO ALL CONTRACT AND RESOLUTION PACKETS BEFORE ANY ACTION WILL BE TAKEN.

1. Department Requesting Services: [REDACTED]

2. Preparer's Name, Telephone #, and E-Mail Address: [REDACTED]

3. DESCRIPTION OF ITEM TO BE PURCHASED, BUILT, OR SERVICE TO BE PROVIDED: [REDACTED]

4. NAME, ADDRESS, VENDOR NUMBER, AND EOC NUMBER OF VENDOR/CONSULTANT/AGENCY WITH WHICH SHELBY COUNTY WILL BE CONTRACTING:

[REDACTED]

VENDOR NO. [REDACTED]

EOC NO. [REDACTED]

5. COST OF ITEM OR SERVICE REQUESTED: [REDACTED]

6. TERM OF PROPOSED CONTRACT/AGREEMENT: [REDACTED]

7. FUND, ORG, AND ACCOUNT NUMBER (13 DIGITS) **FOR MULTIPLE ACCOUNTS, PLEASE SPECIFY DOLLAR AMOUNT FOR EACH**

[REDACTED]

8. COMMODITY CODE: [REDACTED]

9. VENDOR/CONSULTANT/AGENCY SELECTED BY (CHECK ONE):

PLEASE ATTACH APPROVAL DOCUMENTS

a. Bid/RFP Process - # & Date [REDACTED]

b. Emergency/Sole Source

10. LOSB/MBE INFORMATION: Please check the appropriate description

MBE (MINORITY OWNED BUSINESS ENTERPRISE)

MALE FEMALE

WBE (WOMEN OWNED BUSINESS ENTERPRISE)

LOSB (LOCALLY OWNED SMALL BUSINESS)
ANNUAL SALES DOES NOT EXCEED \$3 MILLION

N/A

11. SPECIAL INSTRUCTIONS (ROUTING, FUNDING, BUDGET TRANSFER IN PROCESS)

[REDACTED]

REVIEWED AND APPROVED BY:

DEPARTMENT HEAD DATE

ELECTED OFFICIAL

DIVISION DIRECTOR DATE

ADDENDUM NO. 5

SHELBY COUNTY
RESOLUTION AND ORDINANCE PACKET PROCEDURES

**SHELBY COUNTY BOARD OF COMMISSIONERS
AGENDA ROUTE SHEET**

Referred to Commission Committee (name) _____

For Commission Action on (date) _____

DESCRIPTION OF ITEM:

Please note* route sheet and resolution heading must match exactly

CHECK ALL THAT APPLY BELOW:

_____ This Action does NOT require expenditure of funds.

_____ This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: \$ _____ : County CIP Funds: \$ _____

State Grant Funds: \$ _____ : State Gas Tax Funds: \$ _____

Federal Grant Funds: \$ _____

Other funds (Specify source and amount): \$ _____

Other pass-thru funds (Specify source and amount): \$ _____

Originating Department: _____

APPROVAL:

Dept. Head: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

Elected Official: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

Division Director: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

CIP – A&F Director: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

Finance Dept.: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

County Attorney: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

CAO/Mayor: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

SUMMARY

I. Description of Item

[REDACTED]

II. Source and Amount of Funding

[REDACTED]

III. Contract Items

A. Type of Contract - [REDACTED]

B. Terms - [REDACTED]

IV. Additional Information Relevant to Approval of this Item

The Administration recommends approval of this Resolution.

[REDACTED]

ITEM # _____

PREPARED BY: _____

APPROVED BY: _____

A RESOLUTION APPROVING A CONTRACT WITH _____ IN THE AMOUNT OF \$ _____ FOR _____ AND THIS ITEM REQUIRES EXPENDITURES OF COUNTY GENERAL FUNDS IN THE AMOUNT OF \$ _____.

SPONSORED BY COMMISSIONER _____

WHEREAS, Shelby County _____ desires to _____; and

WHEREAS, The Purchasing Department requested and received sealed bid # _____ on _____ for said project, a copy of which is on file in the Purchasing Department; and

WHEREAS, _____ submitted the Guaranteed Maximum price of \$ _____ for _____ which is deemed to be reasonable and just; and

WHEREAS, Funds in the amount of \$ _____ plus \$ _____ for project contingencies are available in _____ Line Item # _____.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the Contract with _____ is hereby approved.

BE IT FURTHER RESOLVED, That the amount of \$ _____ is hereby appropriated from _____, _____, for said project.

BE IT FURTHER RESOLVED, That the County Mayor is hereby authorized to execute the aforementioned contract on behalf of Shelby County Government, an executed copy of which is to be placed on file in Contracts Administration.

BE IT FURTHER RESOLVED, That the Shelby County Mayor and the Director of Administration and Finance are hereby authorized to issue their warrant or warrants in an amount not to exceed _____ to _____ and \$ _____ as necessary on contingencies as approved by the project director for said services.

SHELBY COUNTY GOVERNMENT

Mark H. Luttrell, Jr., County Mayor

Date: _____

ATTEST: _____
Clerk of County Commission

ADOPTED: _____

Shelby County Board of Commissioners
Permanent Rules of Order (as last amended April 4, 2011)

Rule 6. ORDINANCES, RESOLUTIONS AND OTHER ITEMS

(a) Ordinances and Resolutions. All ordinances and resolutions ("Items") shall be referred to the appropriate committee by the Chief Administrator with the approval of the Chair.

(b) Timely Submission of Ordinances and Resolutions or Other Items and Requirements Pertaining Thereto. All Items, except congratulatory or memorial Resolutions, shall be filed with the County Commission, with all other required documents, in a timely fashion, *no later than noon of the Thursday preceding each regular meeting of the standing committees*, unless permitted by leave of the Chair of the County Commission, prior to initial publication or distribution of the agenda and Items to the Commissioners, or following that date by suspension of these Rules in accordance with Rule 27, and the agenda shall be published the Friday following the filing deadline established by this Rule.

- (i) If the filing deadline established by this Rule falls on a Thursday that is a County holiday, the deadline shall be noon on the Tuesday preceding said holiday and the agenda shall be published the day after the deadline.
- (ii) If the deadline for publishing the agenda established by this Rule falls on a Friday that is a County holiday, the filing deadline shall be noon on the Wednesday preceding said holiday and the agenda shall be published the day after the deadline.
- (iii) A committee may allow an Item to be added on to the agenda of the committee, however, such Item shall be designated as an add-on Item as provided in these Rules, and upon objection during the County Commission session by any Commissioner any such add-on Item shall require suspension of these Rules in accordance with Rule 27.

(c) Required Accompanying Material. All Items filed for introduction with the County Commission shall be accompanied by a concise written summary of the substance of the Item. If the Item proposes acceptance or expenditure of a grant or other expenditure, the summary shall describe in detail the services, products, or equipment for which the grant or other expenditure will be spent with corresponding amounts. In the event that the Item amends any previously adopted Item, or proposes to change any prior policy or procedure or provision of law, such summary shall also contain a short statement of the changes.

- (i) All such Items shall also be accompanied by appropriate explanatory material and if such Item is based upon the actions or recommendations of any other body, then a copy of the resolution or other statement recommending approval as well as any act or charter provision relevant thereto shall be attached. Such acts or charter provisions may be redacted for brevity.

- (ii) All Items and supporting material submitted by any County official, land use case applicant, or board, commission, authority or agency of County government, shall be provided to the County Commission in electronic format and placed into the paperless agenda system prior to the meeting at which such Items will be presented for consideration. Only handouts presented at a meeting by a citizen will be dated and scanned into the paperless agenda system by County Commission staff.
- (iii) A Child Impact Statement shall be submitted to the County Commission with all Items presented for approval that deal with education, health, land use, and any other issue effecting juvenile justice that could reasonably impact children in any substantial way.
- (iv) All contracts presented to the County Commission for approval shall also be accompanied by a list containing the following information for all bidders, where applicable: name of bidder, bid amount, equal employment opportunity rating, locally owned small business status, and total amount any locally owned small business will receive pursuant to the contract.
- (v) The Chief Administrator, or his designee, shall remove all Items from the agenda for all committee meetings, prior to publication, that do not meet all of the requirements set forth in these Rules, except for Items initiated by a Commissioner, land use cases, appeals or other matters required by law to be considered by the County Commission. In the event that approval of an Item is time-sensitive, the Chief Administrator, or his designee, may allow such Item to remain on the committee agenda and shall include the following statement on the agenda: "Item does not meet requirements of Permanent Rules."
- (vi) The opinion of the Technology Coordination Office or a recommendation from the IT Steering Committee shall be submitted to the County Commission with all Items presented for approval that involve technology-related expenditures of \$50,000 or more.
- (vii) A Construction Justification Statement, attached as Exhibit "D" to these Rules and incorporated herein by reference, shall be submitted to the County Commission with all construction/renovation Items presented for approval with an appropriation request that exceeds \$100,000.

(d) Route Sheet Required. No Item which originates with a person or entity other than a Commissioner shall be filed for introduction unless accompanied by a fully completed and executed Route Sheet in the form attached as Exhibit "A" to these Rules. If any Item is filed without a properly completed and fully executed Route Sheet, such Item shall be deferred until the next filing deadline for submission of Items to the County Commission, unless approved by approval of two-thirds of the Commissioners present and voting.

(e) Caption of Items. All Items shall include a caption which shall contain:

- (i) A concise caption identifying such Item as a Resolution or Ordinance and describing the action/approval sought by such Item without repeating dollar amounts required by subsection (e)(iii) of this Rule;
- (ii) The following statement: "Sponsored by Commissioner _____"; unless exempted under Rule 6(f); and
- (iii) For those Items which authorize the expenditure of funds, a statement describing the source of the funds, such statement to be in such form and substance as shall be approved by the Chief Administrator of the County Commission from time to time.
- (iv) Blanks for the name of the mover and seconder shall be filled in by the Minutes Clerk after approval of each Item.

(f) Agenda and Sponsorship of Items.

- (i) The agenda for meetings shall be approved by the Chair. Staff shall promptly notify a committee Chair when an Item is added to the agenda. At the discretion of the committee Chair, an Item, except for land use cases, appeals or other matters required by law to be considered by the County Commission, may be deferred until the next committee meeting, subject to a majority vote to the contrary of those Commissioners present and voting. Such discretionary deferral by the committee Chair shall be limited to two deferrals for any particular Item.
- (ii) All Items shall be submitted to the County Attorney for approval as to form prior to being placed on the agenda.
- (iii) No Item shall be placed on the agenda unless sponsored individually by a Commissioner, or as the Chair of the appropriate committee, except for land use cases, appeals or other matters required by law to be considered by the County Commission. If a Commissioner withdraws sponsorship, another Commission may be substituted as sponsor prior to final approval, but no Item shall fail for lack of a sponsor.

(g) Designation of Add-On Items; Proposals in Sire.

- (i) In the preparation of the agenda for any meeting of the County Commission, any Item which was added on the agenda after the initial publication and distribution of the initial agenda to Commissioners shall be marked on all subsequent versions of the agenda prepared for that Commission session as an "add-on Item" and the Parliamentarian shall announce that this is an add-on Item before the Item is considered in County Commission session.

- (ii) If a proposal to amend an Item or to present a substitute resolution is placed in Sire in advance of a committee meeting or meeting of the County Commission at which such proposal will be considered, the proposal shall be labeled as follows: "Proposal for consideration on (date)."

(h) Assistance by the Chair. The Chair shall assist the County Commission by requesting such technical, legal, accounting and other necessary assistance as may be required by the County Commission collectively or individually to be able to reach any conclusions regarding Items presented to the County Commission.

(i) Information from Elected Officials. The Chair and such appropriate members of the Executive Branch of County Government and the elected officials of County Government shall at all times forward information to the County Commission and to individual Commissioners so that the Commission at all times shall have full access to all proposals, recommendations, projects and suggestions which may affect the individual Commissioners' districts, constituency, or the County as a whole and have appropriate information to furnish to the Commissioners as members of a committee, board, commission, agency or authority. All responses to requests for proposals which are under negotiation shall be exempted from the foregoing.

(j) Information from Agencies Funded by County Government. All agencies, authorities and elected officials shall provide such information concerning the expenditure of public funds as shall be requested by the County Commission from time to time.

(k) Contracts. All contracts presented to the County Commission for final approval shall be reviewed by a member of the County Attorney's staff and there shall be a certification by such staff member that the contract has been reviewed and approved as to legal form.

(l) Ordinances. All ordinances that are amended on third reading shall be deferred after the amendments are adopted by the County Commission so that the final version of the ordinance is on file for public viewing prior to final adoption.

(m) Withdrawal of Items. At the request of the originating office or the sponsor, any Item may be withdrawn in a committee meeting or, if without objection, in meetings of the County Commission.

ADDENDUM NO. 6

SHELBY COUNTY
CONTRACTS ADMINISTRATION FORM FOR
NOTICE TO PROCEED MEMO

**SHELBY COUNTY GOVERNMENT
CONTRACT ADMINISTRATION
160 N. MAIN, SUITE 550
MEMPHIS, TN 38103
(901) 545-4466
(901) 545-5739 FAX**

DEPARTMENTAL COMMUNICATION

TO: Originating Department

FROM: Contract Administration Department

DATE:

SUBJECT: Contract –
Contract Number:

Attached please find fully executed copies of the above-referenced contract. Please retain a copy for your files and forward a copy to _____, along with a “Notice to Proceed” for the described services of the contract.

Generally, contracts contain many terms and conditions and, in a number of instances, have provisions that impose duties and conditions on the County which if not followed or violated, will result in a monetary loss or other penalty being imposed on the County. Please insure that the appropriate individual within your department, who is responsible for monitoring and compliance of this agreement, is fully aware of its entire terms and conditions and of any requirements contained therein. If there are any questions that arise as a result of the contents of the attached, please contact Contracts Administration immediately.

Also, on occasion, one contract will affect how another contract is administered. Normally this situation involves either Federal or State grants which require that the funds received be spent under separate contract in a specific manner. Coordination of both contracts is mandatory. If there are any questions that arise as a result of the contents of the attached, please contact Contracts Administration immediately.

Please make sure that the above referenced contract number is shown on all invoices and correspondence pertaining to this contract.

Attachment

ADDENDUM NO. 7

SHELBY COUNTY
FORM FOR
OWNER/ARCHITECT CONTRACT

OWNER-ARCHITECT AGREEMENT

AGREEMENT MADE AND ENTERED INTO as of _____ day of _____, 20____, by and between SHELBY COUNTY ASSOCIATES (hereinafter referred to as "Owner") and T_____ (hereinafter referred to as "Architect") for the project described on Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter referred to as the "Project") and made a part of the terms and conditions of this agreement.

The address of Owner is: Shelby County Government, 160 N. Main, Memphis, Tennessee 38103

The address of Architect is: _____

The project is: _____

FOR AND IN CONSIDERATION OF the covenants and conditions herein contained, the receipt and sufficiency of which is hereby acknowledged by and between the parties hereto, Architect and Owner agree as follows:

ARTICLE I

BASIC AGREEMENTS

- 1.1 Architect's Services. The Architect is experienced in the design and preparation of construction documents and the administration of the entire process of development of same as they apply to the Project. The Architect will prepare plans, specifications and drawings for the Project. The Architect shall perform its duties in conjunction and harmony with the Contractor and any Owner's Representative employed by Owner (hereinafter referred to respectively as "Contractor and any Owner's Representative") and shall provide all professional services for the Project in accordance with the terms and conditions of this Agreement.

- 1.2 Compensation. The Owner shall compensate the Architect for the services to be performed in accordance with the terms and conditions of this Agreement as follows:
 - A. For basic services, as described in Section 2.1 through 2.6 inclusive hereof, the sum of _____ and ___/100 (\$ _____) DOLLARS. In no event shall the fee for such basic services described in Section 2.1 through 2.6 exceed the sum of \$ _____. This is a fixed fee based on the established scope and budget. The fee is subject to change only upon negotiations and written agreement of the parties.

 - B. For services described in Section 2.7 hereof, and for such additional services as Owner elects Architect to perform as indicated in Section 2.8 hereof,

compensation shall be computed at rates and for the duration reflected in Exhibit "B", which is incorporated herein by reference.

1.3 Reimbursable Expenses. The Owner shall, in addition to the amounts described in Paragraphs A and B of Section 1.2 reimburse the Architect for the following and only the following costs and only the following costs and expenses as set forth in Paragraph A of this Section 1.3 in an amount not to exceed _____ AND ___/100 (\$_____) DOLLARS. All other costs, expenses or charges, including, but not limited to, all compensation and benefits paid to Architect's employees, incurred by the Architect in connection with the Project, shall be paid by the Architect without reimbursement from the Owner. Reimbursable expenses are defined as follows:

A. Reimbursable Expenses are in addition to the compensation for Basic and Additional Services and include reasonable actual expenditures made by the Architect and the ARCHITECT'S EMPLOYEES AND CONSULTANTS IN FURTHERANCE OF THE Project and are as follows:

1. Expense of data processing, Computer aided design, and drafting (CAD) and photographic production techniques when used in connection with Additional Services.
2. Expense of reproductions, postage and handling of working drawings and specifications. Expenses of printing services shall be reimbursable by Owner only in the event Owner has specifically authorized same in advance.
3. Expense of renderings, models and/or work-ups requested by the Owner, for the Owner's use.
4. Other expenses specifically authorized in writing by Owner in advance of any such expenditure.

Records of all reimbursable expenses and for all services performed on the basis of flat rates as herein provided shall be kept on a generally recognized accounting basis and shall be available to the Owner or its authorized representative during business hours at Architect's office, and copies thereof shall be made and presented to Owner at its request. Except for invoices submitted for payment, Owner shall pay a reasonable charge for additional copies of records for reimbursable expenses requested by Owner. Architect shall be entitled to a ten percent (10%) mark-up on expenses subject to this Paragraph 1.3.

1.4 Payment. Payment of the compensation set forth herein shall be made to Architect as follows:

A. Payments of the compensation set forth in Section 1.2A hereof shall be made monthly in proportion to services performed so that the accumulated total compensation at the completion of each phase, excluding compensation paid for additional services, or reimbursable, expenses, shall equal the following amounts:

Schematic Design Phase	(___%)
Design Development Phase	(___%)
Construction Documents Phase	(___%)
Bidding Phase	(___%)
Construction Administration Phase	(___%)
	(100%)

B. All payments for services of the Architect shall be made monthly upon presentation of the Architect's statement of services rendered with sufficient supporting data acceptable to Owner.

C. Invoices shall be submitted by the twenty-fifth (25th) day of each month and will be paid by the fifteen (15th) day of the following month.

1.5 Budget. The Owner and Architect agree in accordance with the Terms and Conditions of this Agreement that:

A. The construction budget for this project is a total of _____ and ____/100 (\$ _____) DOLLARS (hereinafter referred to as "Budget Amount") which is to include all hard costs and expenses of any nature required directly or indirectly to furnish the project to the Owner complete and sufficient for Owner to operate the facility for the use and in the manner intended but excludes costs of financing, furniture, fixtures and equipment. Owner's administrative expenses, legal and accounting fees of Owner, the Fees payable to Architect hereunder advertising costs, costs of consultants retained by Owner, and Owner's overhead and management expenses. The Budget Amount is contained on the attached Exhibit "C", which is incorporated herein by reference.

B. Architect and its consultants shall use their best efforts to control the design and drawing development so as to achieve compliance within the Budget Amount upon the initial design configuration and without subsequent need for substantial revision, and/or rebidding of the working drawings. The Owner agrees to provide to the Architect timely information regarding the amount of the budget and the Owner's design criteria.

1.6 Consultants. The Architect shall retain, as a part of its basic services, at his sole expense, full service professional consultants who will be considered the agents of the CONSULTANT for the purposes of Section 5.1 hereinafter set forth for the following services:

<u>Professional Category</u>	<u>Firm to be Retained</u>
A. Mechanical Engineering	
B. Electrical Engineering	
C. Structural Engineering	
D. Landscape Architect	
E. Interior Design of Public Space	

The retention of the aforesaid consultants shall not diminish or reduce the obligations and duties of the Architect hereunder.

- 1.7. Supervisor. An officer of the Architect will represent his firm in all matters of coordination, decision and policy pertaining to Architect's Work under this Agreement. It is acknowledged that said individual shall not be removed from the Project without prior written notification from ARCHITECT to OWNER, and the OWNER'S consent to said removal shall not be unreasonably withheld provided said individual may be removed from the Project and replaced at the written request of Owner. Any replacement of said individual shall be subject to Owner's prior written approval and Owner shall be permitted to terminate this Agreement in the event a satisfactory replacement is not immediately available without penalty.
- 1.8. Time. The Architect shall complete each phase of its work required by this Agreement in a timely fashion and Architect agree that time is of the essence in the performance of this agreement.

ARTICLE II

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

- 2.1 Basic Services
- A. The Architect's Basic Services consists of the services described herein or logically inferable from the Agreement, the Engineering and other services described in Section 1.6 hereof and any other services normally performed by an Architect employed to design and administer a Project of this nature.
- B. The scope of Architect's basic services are to also include those services not described that are reasonable consistent with and are necessary for a facility of

this nature which is complete and functioning. All of Architect's services and documents shall fully embrace the restrictions and requirements of all governmental and quasi-governmental authorities, utility companies, fire underwriters, public authority and other agencies and organizations having jurisdiction over this Project in force as of the date that the building permit for the Project is issued known to Architect or which in the exercise of Architect's best professional judgement should have been known to Architect.

- C. Furnish Owner such copies as Owner reasonably requests of the documents prepared pursuant to this Section 2.2.

2.2 Schematic Design Phase. During the Schematic Design Phase, the Architect shall:

- A. Review the project plan furnished by the Owner and upon architectural and engineering analysis of Owner's requirements as to access, zoning, building code requirements, physical characteristics of the Site, traffic and utility requirements and other information and applicable laws, statutes, ordinances and regulations in order to ascertain the requirements of the Project and confirm such requirements to Owner.
- B. Based on the mutually agreed upon program and Budget Amount, prepare a preliminary study and report illustrating the scale and relationship of all components of the Project and possible future development of the Site, and outline the nature of the structure, exterior and basic building systems which shall consist of suitable schematic drawings layouts, concept drawings, preliminary site plans and floor plans.
- C. Furnish Owner such copies as Owner reasonably requests of the documents prepared pursuant to this Section 2.2.

2.3 Design Development Phase. Upon receipt of Owner's written authorization to implement the documents presented in the Schematic Design Phase and to proceed with the Design Development Phase, the Architect shall :

- A. Prepare from the approved Schematic Design Studies, the Design Development Documents consisting of design criteria, drawings, outline specifications and other documents to establish, and describe size and character of the Project described by this Agreement as well as the structural, mechanical and electrical systems project materials, landscaping and such other essentials as may be appropriate and submit these documents for approval by Owner. The Design Development Documents shall be prepared for consultation with Owner. Owner's Representative, and such consultants retained by Owner for the Project regarding furniture, fixture, equipment, lighting and acoustics, and such other components of the Project as requested by Owner.

- B. Cooperate with the Owner and its consultants to develop and update Budget Breakdown to indicate compliance with the Budget. Amount through completion of the Design Development Finance.
- C. Furnish Owner such copies as the Owner reasonably requests of the documents prepared pursuant to this Section 2.3.

2.4 Construction Documents Phase. Upon receipt of Owner's written authorization to implement the documents presented by the Design Development Phase and to proceed with the Construction Document Phase, the Architect shall:

- A. Prepare, from the approved Design Development Documents, drawings and specifications in collaboration with the Owner's Representative setting forth in detail, the requirements for the construction of the entire Project including drawings, technical specifications and necessary bidding information, and submit those documents for approval by Owner. Architect shall cooperate with the Owner and the Owner's Representative in the preparation of bidding forms, Instructions to Bidders, and all Conditions of the Contract so as to design the Project to meet the goals herein set forth and take advantage of all reasonable cost-saving suggestions.
- B. Along with the Construction Documents, revise and review a final updated budget breakdown to show continued compliance with the Budget Amount. The Architect shall certify to Owner that in its best professional judgement, the design documents will result in a responsive bid that is within the Budget Amount.
- C. The Architect shall assist the Owner in the filing of the required documents for the approval of governmental authorities having jurisdiction over the Project and shall be responsible for revising the drawings if necessary for such approval. All costs resulting from any such required revision are to be within the amount as set forth in Section 1.2 hereof.
- D. Furnish the Owner such copies as Owner reasonably requests of the documents prepared pursuant to this Section 2.4.
- E. Prior to the commencement of construction, Architect shall certify to the best of his knowledge to Owner that all plans, specifications and drawings conform to all applicable governmental regulations, statutes and ordinances and the improvements when built in accordance therewith.
- F. Architect shall be responsible for insuring that all project drawings and specifications coordinate with the plans and specifications for all consultants.

2.5 Bidding or Negotiation Phase. The Architect, following the Owner's approval of the Construction Documents, the latest updated budget breakdown and the list bidders, shall assist the Owner in analyzing bids and bid proposals.

2.6 Construction Phase – Administration of the Construction Contract. Upon the award of the Construction Contract, the Construction Phase of this Agreement will commence.

- A. The Architect, as a representative of the Owner during the Construction Phase, shall advise and consult with the Owner and Contractor. The Architect shall provide administration of the contract for construction as set forth herein and in the Shelby County General Conditions of the contract for construction, a copy of same being attached hereto as Exhibit D and incorporated herein by reference as if same were set forth verbatim.
- B. The Architect shall make periodic visits to the Site and/or as directed by Owner, to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations as an Architect, he shall endeavor to guard the Owner against defects and deficiencies in the Work and shall notify Owner and Contractor in writing if any portion of Work is found not be in conformity with the requirements of the Construction Documents and make recommendations to the Owner for the Corrections. Architect and his consultants shall be available and consult with Owner and Contractor on any occasion during the course of the construction which would make such consolation necessary.
- C. The Architect shall issue to Owner a Certificate upon receipt from Contractor for Payment each month. The approval of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's reasonable professional judgement that the Work has progressed to the point indicated; that the quality of the Work is in accordance with the Contract Documents and that the Contractor is entitled to payment to the amount certified.
- D. The Architect shall advise Owner to reject Work observed by the Architect which does not conform to the Contract Documents. Whenever reasonable judgement would indicate a probability of a non-conforming or adverse circumstance, and in order to insure the proper implementation of the intent of the Contract Documents, Architect will advise Owner to require special inspection or testing of any Work in accordance with the provision of the Contract Documents whether or not such Work has been then fabricated, installed or completed.
- E. The Architect shall review and approve within a reasonable time a after submittal to Architect, all shop drawings, samples and submissions of the Contractor for conformance with the design concept of the Project, for compliance with the information given in the Contract Documents, for compatibility with adjacent and contiguous work, systems and services with limitations of space, weight and services.
- F. The Architect shall prepare change orders for Owner's approval, if authorized by Owner.

- G. The Architect shall conduct visits to the site to determine the completion of the Work and shall receive and review written guarantees, manufacturer's manuals, parts lists and all documents assembled by the Contractor for the Project. Upon request of Owner, but not before, Architect shall issue a Certificate of Substantial Completion.
- H. If the lowest reasonable bid amount received by the Owner exceeds the Budget Amount by more than ten percent (10%), Architect shall revise the Construction Documents, at the Architect's sole expense, and perform all other services again as necessary to finally result in a Project Cost that is within the Budget Amount. The Owner may select to proceed with construction at the bid price. If Owner elects to proceed at price over the Budget Amount, the Architect fee will not be increased.
- I. Architect shall assist Owner, as requested, in selection of finish materials and colors, excluding tenant spaces.
- J. Architect will give full and prompt attention to any claims or controversies which arise during the course of construction of the Project. In the event of any proceeding to resolve any claim which involved any act or omission of the Architect, the Architect shall be present and shall participate in such proceedings.
- K. Architect will give timely notice to Owner for any meetings Architect feels necessary in connection with this Project with utility companies or city, state or other regulatory agencies. Scheduling of such meetings is to be done by the Owner. In general, all contracts with such parties will be maintained by the Owner.
- L. The Architect shall cooperate with any consultant employed by the Owner in connection with the Project. Architect shall be entitled to rely on the completeness, accuracy and appropriateness of the Work of Owner's consultants.
- M. Architect shall assist Owner in any negotiations with governing authorities necessary to obtain temporary and permanent.
- N. Architect and its Consultants shall develop punch lists and participate with Owner in interim and final acceptance procedures.
- O. Upon completion of all construction, Architect shall deliver to Owner one (1) copy of the plans and specifications, revised to reflect all changes made during that progress of the Project and depicting the Project in "as built" condition. The cost of printing the documents referred to in this Provision is a reimbursable expense.

2.7 Project Representation Beyond Basic Services.

If Owner requests, the Architect shall provide one or more full-time project representatives to assist the Architect. Such full-time project representative shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as mutually agreed between the Owner and the Architect, at such time as such services are requested. The duties, responsibilities and limitations of authority of such full-time project representatives shall be agreed to between Owner and Architect.

2.8 Additional Services. The following services, unless required to be performed by Architect hereunder, shall be provided when authorized as additional services by Owner in advance and in writing and shall be paid for by the Owner as hereinabove provided.

- A. Providing financial feasibility or other special studies.
- B. Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites.
- C. Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.
- D. Providing interior design services required for or in connection with the selection of furniture and furnishings.
- E. Making investigations involving detailed appraisals and evaluations of existing facilities. Conduct surveys or inventories required in connection with construction performed by the Owner.
- F. Providing consultation concerning replacement of any work damaged by fire and other cause during construction.
- G. Providing services of professional consultants for other than those described in Section 1.6 of this Article II.
- H. Providing such other services as are authorized by Owner in writing and are not otherwise within the purview of Article II.
- I. Preparing documents of alternate, separate or sequential bids or providing extra services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase, when requested by the Owner.
- J. Making major or excessive revisions to drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given or are required by the enactment of revision of codes, laws or regulations subsequent to the preparation of such documents.

ARTICLE III

THE OWNER'S RESPONSIBILITIES.

- 3.1 Information. The Owner shall provide full information, including a complete program, regarding its requirements for the Project. The Owner shall furnish to Architect such structural, mechanical, chemical, soils and other reports and studies and results of field and laboratory tests and inspections made for or on behalf of Owner pursuant to the Contract Documents with reasonable promptness to avoid delay in the progress of the work.
- 3.2 Owner's Representative. The Owner's Representative shall act on behalf of the Owner with respect to the Project. The Owner's Representative shall not perform any design services or other services performed by an architect or engineer. The Owner's Representative shall not perform any design services or other services performed by an architect or engineer. The Owner shall examine documents, at each phase of the Work, submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect's services. Any approvals given by Owner shall not relieve Architect of any of its obligations.
- 3.3 Legal and Accounting. The Owner shall furnish its own legal, accounting and insurance counseling services as may be necessary for Owner's interest in the Project and such auditing services as it may require to ascertain how or for what purposes the Contractor has used the monies paid by Owner under the Construction Contract.
- 3.4 Secrecy. Architect will retain all information belonging to Owner in strictest confidence and will neither use it or disclose it to anyone without the express written consent of Owner. Architect shall not release any information relative to the Project for publication, advertising or any other purpose without the prior written consent of Owner, which consent shall not be unreasonably withheld.

ARTICLE IV

RIGHTS AND REMEDIES

- 4.1 Default by Architect. In the event (i) Architect fails to expeditiously perform the services required to be performed thereby delaying the progress of the Project, or (ii) Architect or any employee or agent of Architect, shall wrongfully file or record a lien against the Site or any property of Owner, or (iii) Architect is declared to be bankrupt or insolvent, an assignment for the benefit of creditors is made by Architect, the Architect shall file a voluntary petition to bankruptcy or insolvency or a receiver shall be appointed for Architect and such appointment or bankruptcy or insolvency proceeding, petition, declaration or assignment is not set aside within thirty days, or (iv) default shall be made in the observance or performance of any covenant, agreement or condition contained in agreement or condition contained in the Agreement required to be kept, performed or observed by Architect, or (v) there has been a material adverse change in the financial

condition of Architect which effects the ability of the Architect to perform its duties hereunder, or (vi) Architect, or any principal or officer or Architect, shall be indicted with the commission of a felonious crime, or (vii) Architect violates any laws, ordinances, rules, regulations or orders of any public authority in the performance of its duties hereunder; then provided the event as describe above is not cured within seven (7) days after written notice from Owner to Architect, Owner may declare Architect to be in default hereunder and exercise any remedies available to it.

- 4.2 Default by Owner. In the event Owner shall fail to perform its obligations pursuant to this Agreement after fifteen (15) days written notice from Architect to Owner, Architect may declare Owner to be in default hereunder and exercise any remedies available to it.
- 4.3 Termination by Owner due to Architect's Default. If Architect unreasonably fails to conform to the progress schedule or to supply enough properly-skilled professionals or proper materials, or if Architect violates any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is in default under the provision of this Agreement pursuant to Section 4.1 hereof, Owner may, without prejudice to any right or remedy and after giving Architect the written notice prescribed in Section 4.1 hereof, terminate the employment and take possession of all plans, specifications, drawings and other data therefore, prepared by Architect with respect to the Project by whatever method Owner may deem expedient. In such case, Architect shall not be entitle to receive any further payment until the Project is completed and Owner shall apply all sums not theretofore paid to Architect pursuant to the provisions of this Agreement toward such completion. Additionally, Owner may pursue any action available to it to obtain relief for actual damages suffered by reason of defaults, failures or breaches of Architect hereunder.
- 4.4 Termination by Architect. Should Owner default in its obligations hereunder and should it fail to cure same within the time period provided in Section 4.2 hereof. Architect may, as its sole exclusive remedy hereunder, terminate this Agreement. Upon such a termination, Architect may recover from owner full payment for all reimbursable amounts, and all other losses or damages incurred by Architect as a consequence of such default but, in no event shall said recovery be for any sum greater than that amount specified Section 1.2A hereinabove.
- 4.5 Termination by Owner without fault of Architect. Upon fifteen (15) days' written notice, Owner shall have the right to cancel and terminate this Agreement at any time whether or not a default exists hereunder, and Owner shall incur no liability to Architect or any other person by reason of such cancellation, except that if the cancellation is for no fault of Architect, Owner shall pay to Architect all sums then due to it hereunder.
- 4.6 Transfers on Termination. In the event of any termination of this Agreement, by Owner due to default, Architect shall forthwith return to the Owner all papers, materials and other properties held by the Architect for purposes of execution of the Agreement. In addition, each party will assist the other party in an orderly termination of this Agreement

and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the order, non-disruptive business continuation of each party.

ARTICLE V

INDEMNIFICATION

- 5.1 Indemnification. To the extent permitted by law, Architect, on behalf of itself and its agents (all of said parties are herein sometimes collectively referred to as the "Indemnitors"), shall fully indemnify, save and hold Owner, all entities related to Owner, all principals of Owner or its related entities, and anyone else acting for or on behalf of any of them (all of said parties are herein collectively referred to as "Indemnitees") harmless from and against all liability, damage, loss, claims, demands, actions and expenses of any nature whatsoever incurred in good faith, including, but not limited to reasonable attorney's fees which arise out of or are connected with, or are claimed to arise out of or be connected with: (i) any negligent act or omission or any willful misconduct by an Indemnitor in the by an Indemnitor in the performance of work to be performed hereunder; or (ii) the failure to comply with the laws, statutes, ordinances or regulations of any governmental or quasi-governmental authority; or (iii) the breach of any term or condition of this Agreement by Architect.

Without limiting the generality of the foregoing, the indemnity hereinabove set forth shall include all liability, damages, loss, claims, demands and actions on account of personal injury, death or property loss to any Indemnitee, any of Indemnitee's employees, agents, licensees or invitees or to any other persons, whether based upon or claimed to be based upon statutory, contractual, tort, the infringement of personal or property rights, copy right, patents, trademarks of other "intangible" property right or other liability of any. Indemnities or any other persons. The provisions of this indemnification article shall not be construed to indemnify any Indemnitee for any loss or damage attributable to the acts or omissions of such Indemnitee. The liability of the Architect hereunder shall not extend to the liability of Contractor or any Separate Contractor or subcontractor, their agents or employees arising pursuant to the Contract Documents.

The indemnity set forth in this Article V shall survive any termination of this Agreement, provided, however, this indemnity shall not apply to services rendered for any portion of a phase which are incomplete as of the date of termination of this Agreement.

ARTICLE VI

MISCELLANEOUS

- 6.1 Owner's Approval. Whenever provision is made herein or in the Contract Documents for the approval or consent of Owner, or that any matter be to Owner's satisfaction, unless specifically stated to the contrary, such approval or consent shall be made by Owner in its sole discretion and determination.

- 6.2 Singular, Plural, etc. Whenever in this Agreement the context so requires, the singular number shall include the plural number and vice versa, and any gender herein used shall be deemed to include the feminine, masculine or neuter gender, as the context so requires.
- 6.3 Personal Service Contract. This Agreement is entered into solely to provide for the design of the Project and administration of the Construction Contract and to define the rights, obligations and liabilities of the parties hereto. This Agreement, and any documents or agreement entered into in connection herewith, shall not be deemed to create any other relationship between Architect and Owner other than as expressly provided herein. Architect acknowledges that Owner is not a partner or joint venturer of Architect and that Architect is not an employee or agent of Owner.
- 6.4 Prohibition on Assignment. Architect may not transfer, hypothecate or in any way or alienate or assign its interest in this Agreement or delegate any duties to be performed by it hereunder without the advance written consent of Owner. Owner may assign its interest in this Agreement at any time, provided, however, that absent express consent in writing by Architect, such assignment, shall not release Owner from its obligation to Architect hereunder for payment of all amounts due Architect pursuant to this agreement.
- 6.5 Time. Time is of the essence of this Agreement, it being understood that any reasonable delays by the Architect in the performance of its duties hereunder may cause substantial damages to the Owner.
- 6.6 Notices. Notices, requests or demands by either party shall be in writing and shall be personally served, forwarded by expedited messenger service, or be given by registered or certified mail return receipt requested, postage prepaid, and addressed to the parties at the address heretofore set forth. All notices, requests and demands shall be deemed received upon the expiration of forty-eight (48) hours from the time of deposit in a United States post office.
- 6.7 Waiver. No waiver of any default hereunder shall be construed as a waiver of any subsequent breach or default.
- 6.8 Ownership of Documents. All drawings, specifications, surveys, results, models, plans, computer programs and data base and other work product prepared by Architect or anyone employed by Architect hereunder are and shall be the property of the Owner including all copyrights, right of reproduction and reuse and other interests relating thereto. Upon final payment to the Architect for its services pursuant to this Agreement, the Architect's name and seal and the name(s) and seal(s) of any consultants retained by Architect shall be removed from the plans and specifications and neither Architect nor its consultants shall have any responsibility for Owner's use of such plans and specifications thereafter.

The Owner and any entity affiliated with Owner may reuse all such documents and data for future work in connection with the Project and for future Projects provided the Owner shall not refer to the Architect without its consent in connection with such other projects.

- 6.9 Successors and Assigns. The Owner and the Architect each binds himself his partners, successors, assigns and legal representative to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.
- 6.10 Captions. The captions herein are for convenience only and are not construed as part of this Agreement, nor shall the same to be construed as defining or limiting in any way the scope or intent of the provisions hereof.
- 6.11 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Tennessee. Any disrupt arising from or out of this Agreement shall be resolved in a state court of competent jurisdiction.
- 6.12 General Compliance with Laws. The ARCHITECT is assumed to be familiar with and agree that at all times he agrees to observe and comply with all Federal, State and local laws, ordinances, and regulations in any manner affecting the conduct of the work and all instructions and prohibitive orders regarding the project.
- 6.13 Conflict of Interest. ARCHITECT covenants that he has no public or private interest, and shall not acquire directly or indirectly any interest which would conflict in any manner with the performance of his services. The ARCHITECT warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to an office or employee of the Government as wages, compensation, or gifts in exchange for setting as officer, agent, employee, subcontractor or consultant to the ARCHITECT in connection with any work contemplated or performed relative to this contract.
- 6.14 Covenant Against Contingent Fees. ARCHITECT warrants that he has not employed or retained any company or person other that a bona fide employee working solely for ARCHITECT, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for ARCHITECT any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For breach of violation of this warranty, COUNTY shall have the right to annul this Contract without liability, or at its discretion, to deduct from the Contract price or otherwise recover, the full amount of such fee, commission percentage, brokerage fee, gift or other consideration.
- 6.15 Employment of County Workers. ARCHITECT shall not engage, on a full, part-time or other basis during the period of this Contract, any professional or technical personnel who are to have been at any time during the period of the Contract in the employ of the COUNY.

- 6.16 Access to Records. The ARCHITECT and his subcontractors shall maintain all books, documents, papers accounting records, and other evidence pertaining to cost incurred under this Contract and make such materials and copies thereof available at their offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract for inspection by the COUNTY or by any other government entity or agency participating in the funding of this Contract, or any authorized agents thereof, copies of said records to be furnished if requested.
- 6.17 Full Agreement. Each party acknowledges its full understanding of this Agreement and that there are no verbal promises, undertaking or agreements in connection herewith and that this Agreement may be modified only by a written agreement signed by all parties hereto. All previous negotiations and agreements between the parties hereto, with respect to the transaction set forth herein, are merged in this instrument which fully and completely express the parties rights and obligations, and the covenants herein shall be binding upon and inure to the benefits of the parties hereto and their respective heirs, legal representatives, successors and assigns.
- 6.18 Partial Invalidity. If any term or provision of the Contract Documents shall be found to be illegal, unenforceable or in violation of the laws, statutes, ordinances or regulations or any public authority having jurisdiction thereof by a court of competent jurisdiction, then, notwithstanding such term or provision, the Contract Documents shall be and remain in full force and effect and such term shall be deemed stricken, provided, however, the Contract Documents shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.
- 6.19 Non-Discrimination. ARCHITECT warrants that no person on the grounds of handicapped, age, race, color, region, sex, or national origin shall be excluded from participation in, or be denied benefits of or be otherwise subjected to discrimination in the performance of this contract, or in the employment practices of the ARCHITECTS. The ARCHITECT shall upon request show proof of such non-discrimination, and shall post in conspicuous places available to all employees and applicants notified.
- 6.20 Survival. The terms, provisions, representations and certification contained in this Agreement, or inferable therefrom, shall survive the completion of the Project and the payment of the remuneration hereinabove provided.
- 6.21 Errors & Omissions Insurance. Architect, prior to the execution of this Contract, shall furnish to Owner proof of its Professional Liability and Insurance policy Architect shall carry a minimum of Two Hundred Fifty Thousand and no/100 (\$250,000.00) Dollars of Professional Liability Insurance.

THE ORIGINATING DEPARTMENT SHOULD CONTACT THE *INSURANCE*
SPECIALIST IN THE FINANCE DEPARTMENT FOR ASSISTANCE IN
DETERMINING THE SPECIFIC INSURANCE COVERAGE REQUIREMENTS FOR
THE PROJECT OR JOB.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

OWNER:

SHELBY COUNTY GOVERNMENT

BY: _____
Mark H. Luttrell, Jr., MAYOR

ARCHITECT:

BY: _____
Architect

APPROVED AS TO FORM
& LEGALITY:

Contract Administration
Assistant County Attorney

ADDENDUM NO. 8

SHELBY COUNTY
FORM FOR
PROFESSIONAL SERVICES CONTRACT

CONTRACT

This contract (the "Contract") entered into this _____ day of _____, 20__, and between SHELBY COUNTY GOVERNMENT, hereinafter referred to as "COUNTY" and _____, hereinafter referred to as "PROVIDER/CONSULTANT".

WITNESSETH

WHEREAS, the COUNTY has the need for the provision of professional services to _____; and

WHEREAS, the COUNTY issued a Request for Proposals ("RFP") Number _____ on _____, 20__, and PROVIDER/CONSULTANT responded to said RFP on _____, 20__; and

WHEREAS, the PROVIDER/CONSULTANT has the knowledge and expertise to provide such services; and

WHEREAS, the COUNTY awarded the RFP to PROVIDER/CONSULTANT on _____, 20__; and

WHEREAS, the parties are desirous of entering into a contract setting forth the terms and conditions under which the PROVIDER/CONSULTANT will provide said services.

NOW THEREFORE, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

I. SCOPE OF WORK

1. The PROVIDER/CONSULTANT shall provide the services as outlined within the COUNTY's RFP # _____ and PROVIDER/CONSULTANT's response thereto which is attached hereto as Exhibit "A" and incorporated herein by reference as if stated verbatim (the "Services").

II. TERM AND COMPENSATION

1. The term of this Contract (the "Term") will commence upon the execution of this Contract and continue through _____, 20__.

2. The COUNTY agrees to compensate the PROVIDER/CONSULTANT for the provision of the Services the sum total not to exceed _____ AND 00/100(\$_____.00) Dollars (the "Fee") during the term of this Contract which shall include all reimbursable expenses.
3. The Fee shall be paid in accordance with the cost proposal on the attached Exhibit A.
4. The PROVIDER/CONSULTANT shall submit invoices to the COUNTY on a monthly basis for Services performed during the preceding month. Invoices shall be submitted in duplicate to the address set forth in Paragraph 33 of this Contract to the attention of _____. The COUNTY shall pay such invoices within thirty (30) days of its receipt and approval of said invoices. The COUNTY is not obligated to pay, and will withhold from payment, any amounts the COUNTY has in dispute with the PROVIDER/CONSULTANT based on PROVIDER/CONSULTANT'S non-performance or negligent performance of any of the Services under this Contract.
5. PROVIDER/CONSULTANT shall not be permitted or authorized to incur costs beyond the extent that purchase orders have been issued on approved contracts and/or purchases prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of County contracts or purchases without prior, expressly written, appropriate authorization pursuant to County purchasing procedures and rules and regulations. County is not obligated to pay nor shall PROVIDER/CONSULTANT be entitled to receive payments for contract fees and expenses incurred in violation of this provision

III. GENERAL CONDITIONS

The parties further agree as follows:

1. CONTROL

All Services by the PROVIDER/CONSULTANT will be performed in a manner satisfactory to the COUNTY, and in accordance with the generally accepted business practices and procedures of the COUNTY.

2. PROVIDER/CONSULTANT'S PERSONNEL

The PROVIDER/CONSULTANT certifies that it presently has adequate qualified personnel to perform all Services required

under this Contract. All work performed during the Term of this Contract will be supervised by the PROVIDER/CONSULTANT. The PROVIDER/CONSULTANT further certifies that all of its employees assigned to serve the COUNTY have such knowledge and experience as required to perform the duties assigned to them. Any employee of the PROVIDER/CONSULTANT who, in the opinion of the COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

3. INDEPENDENT STATUS

- a. Nothing in this Contract shall be deemed to represent that the PROVIDER/CONSULTANT, or any of the PROVIDER/CONSULTANT's employees or agents, are the agents, representatives, or employees of the COUNTY. The PROVIDER/CONSULTANT will be an independent PROVIDER/CONSULTANT over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the COUNTY the right to direct the PROVIDER/CONSULTANT as to the details of the performance of the Services under this Contract or to exercise a measure of control over the PROVIDER/CONSULTANT is solely for purposes of compliance with local, state and federal regulations and means that the PROVIDER/CONSULTANT will follow the desires of the COUNTY only as to the intended results of the scope of this Contract.
- b. It is further expressly agreed and understood by PROVIDER/CONSULTANT that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that PROVIDER/CONSULTANT has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by PROVIDER/CONSULTANT for the Services performed shall be on the PROVIDER/CONSULTANT's letterhead.

4. REPORTS

CONSULTANT shall prepare and submit quarterly reports of its activities, funded under this Contract, to the originating department and the Contract Administration Department of the COUNTY. The reports shall include an itemization of the use of COUNTY's funds, pertinent information pursuant to the applicable Living Wage Ordinance, and shall be inclusive of specific Services delivered. Any such reports provided to the COUNTY shall be prepared with the understanding that the

COUNTY may make such reports available to the public. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Contract may be subject to audit by the Director of the Division of Administration and Finance of the COUNTY. The COUNTY shall have the right to withhold future disbursement of funds under this Contract and any future Contracts until this provision has been met.

5. TERMINATION OR ABANDONMENT

- a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
 - i) Either the PROVIDER/CONSULTANT or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
 - ii) PROVIDER/CONSULTANT has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or
 - iii) PROVIDER/CONSULTANT has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of PROVIDER/CONSULTANT assets.
- b. The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the PROVIDER/CONSULTANT for PROVIDER/CONSULTANT's failure to provide the Services specified under this Contract.
- c. This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination (the "Termination Date"). In the event of such termination, the PROVIDER/CONSULTANT shall be paid for all Services rendered prior to the Termination Date, provided the PROVIDER/CONSULTANT shall have delivered to COUNTY such statements, accounts,

reports and other materials as required under this Contract; however, PROVIDER/CONSULTANT shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by PROVIDER/CONSULTANT prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.

- d. Notwithstanding the above or any section herein to the contrary, PROVIDER/CONSULTANT shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Contract by PROVIDER/CONSULTANT and the COUNTY may withhold any payments to PROVIDER/CONSULTANT for the purpose of setoff until such time as the exact amount of damages due the COUNTY from PROVIDER/CONSULTANT is determined.

6. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to PROVIDER/CONSULTANT pursuant to this Contract for any PROVIDER/CONSULTANT's Services performed by the PROVIDER/CONSULTANT in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the PROVIDER/CONSULTANT to properly fulfill any of his obligations as set forth in this Contract.

7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

- a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the PROVIDER/CONSULTANT from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the PROVIDER/CONSULTANT's obligations to its transferors or subcontractors.
- b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

8. CONFLICT OF INTEREST

The PROVIDER/CONSULTANT covenants that it has no public or private interest, and will not acquire directly or indirectly

any interest which would conflict in any manner with the performance of the Services. The PROVIDER/CONSULTANT warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the PROVIDER/CONSULTANT in connection with any work contemplated or performed relative to this Contract.

9. CONTINGENT FEES

The PROVIDER/CONSULTANT warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the PROVIDER/CONSULTANT, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the PROVIDER/CONSULTANT any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

10. EMPLOYMENT OF COUNTY WORKERS

The PROVIDER/CONSULTANT will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

11. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, PROVIDER/CONSULTANT agrees to permit duly authorized agents and employees of the COUNTY to enter PROVIDER/CONSULTANT's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The PROVIDER/CONSULTANT will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request.

12. ARBITRATION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the PROVIDER/CONSULTANT and the COUNTY will be referred to the Shelby County Contract Administrator or its duly authorized representative, whose decision regarding same will be final.

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- a. PROVIDER/CONSULTANT shall indemnify, defend, save and hold harmless the COUNTY, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by the PROVIDER/CONSULTANT its subcontractors, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.
- b. PROVIDER/CONSULTANT expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the PROVIDER/CONSULTANT shall in no way limit the responsibility to indemnify, defend, save and hold harmless the COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.
- c. The COUNTY has no obligation to provide legal counsel or defense to PROVIDER/CONSULTANT or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against PROVIDER/CONSULTANT as a result of or relating to performance of the Services under this Contract.
- d. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against PROVIDER/CONSULTANT as a result of or relating to performance of the Services under this Contract.
- e. PROVIDER/CONSULTANT shall immediately notify the COUNTY of any claim or suit made or filed against PROVIDER/CONSULTANT or its subcontractors regarding any

matter resulting from or relating to PROVIDER/CONSULTANT's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

14. GENERAL COMPLIANCE WITH LAWS

- a. The PROVIDER/CONSULTANT certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.
- b. The PROVIDER/CONSULTANT is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).
- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the PROVIDER/CONSULTANT agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

15. NON-DISCRIMINATION

The PROVIDER/CONSULTANT hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the PROVIDER/CONSULTANT on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin,

or any other classification protected by federal, Tennessee State Constitutional or statutory law. The PROVIDER/CONSULTANT shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

16. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

17. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

18. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

19. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

20. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

21. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the PROVIDER/CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

22. TRAVEL EXPENSES

FOLLOWING PARAGRAPH (TO BE USED IF THE INTENT OF COUNTY IS THAT THE COUNTY WILL REIMBURSE TRAVEL EXPENSES IN ADDITION TO OTHER FEES OR AMOUNTS IN THE CONTRACT.)

All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the County.

23. PERFORMANCE AND LABOR AND MATERIALS BONDS

PROVIDER/CONSULTANT will provide COUNTY within ten (10) days from inception date of this Contract a Performance and Labor and Materials Bond each in the amount of 100% of the Contract price for each year that this contract is in effect. Said Bonds may be pro-rated for the initial year in the event that this period of time is less than a full twelve (12) month period.

24. NON-LIABILITY FOR PROVIDER/CONSULTANT EMPLOYEE TAXES

Neither PROVIDER/CONSULTANT nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide PROVIDER/CONSULTANT's personnel with any benefits and shall have no liability for the following:

- a. Withholding FICA (Social Security) from PROVIDER/CONSULTANT's payments;
- b. Making state or federal unemployment insurance contributions on behalf of PROVIDER/CONSULTANT or its personnel;
- c. Withholding state and federal income tax from payment to PROVIDER/CONSULTANT;
- d. Making disability insurance contributions on behalf of PROVIDER/CONSULTANT;
- e. Obtaining workers' compensation insurance on behalf of PROVIDER/CONSULTANT or PROVIDER/CONSULTANT's personnel.

25. INCORPORATION OF OTHER DOCUMENTS

- a. PROVIDER/CONSULTANT shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for Proposals/Bids as well as the Response of PROVIDER/CONSULTANT thereto, all of which are maintained on file within the Shelby County Purchasing Department and incorporated herein by reference.
- b. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

26. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

The PROVIDER/CONSULTANT shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the COUNTY are utilized when possible as sources of supplies and equipment, construction and services.

27. LIVING WAGE ORDINANCE AND PREVAILING WAGE ORDINANCE

Living Wage - In accordance with Ordinance Number 328, commonly referred to as the Living Wage Ordinance, all persons/entities engaged in service contracts with the County, including but not limited to both prime and subcontractors, shall pay a Living Wage to employees for all work performed on said service contract, as defined in the Living Wage

Ordinance. Proof of such compensation must be evidenced as required in the Living Wage Ordinance.

Prevailing Wage - Any firm, individual, partnership or corporation awarded a contract by the COUNTY for the construction of, improvement, enlargement, alteration or replacement of a public work or project in excess of \$500,000 and any subcontractors of such public work or project in excess of \$100,000 ("Recipient") shall be required to pay local prevailing wages and benefits for laborers, mechanics, or other listed classifications as defined by the Tennessee Department of Labor. The prevailing wage rate shall be the most current State of Tennessee prevailing wage established by the Tennessee Department of Labor For Region 1 (Shelby County). The benefit rates shall be the most current rates described in the published schedule by the Memphis and West Tennessee Building and Construction Trades Council, except as otherwise provided in the Shelby County Code of Ordinances. The applicable rate shall be determined at the time that the project is awarded. In instances where Prevailing wage applies, Prevailing Wage will override the Living Wage requirement.

28. RIGHT TO REQUEST REMOVAL OF PROVIDER/CONSULTANT'S EMPLOYEES

The COUNTY may interview the personnel PROVIDER/CONSULTANT assigns to COUNTY's work. COUNTY shall have the right, at any time, to request removal of any employee(s) of PROVIDER/CONSULTANT, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, PROVIDER/CONSULTANT shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

29. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

30. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by PROVIDER/CONSULTANT, PROVIDER/CONSULTANT understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by PROVIDER/CONSULTANT due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

31. ORGANIZATION STATUS AND AUTHORITY

- a. PROVIDER/CONSULTANT represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.
- b. The execution, delivery and performance of this Contract by the PROVIDER/CONSULTANT has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of PROVIDER/CONSULTANT, any provision of any indenture, agreement or other instrument to which PROVIDER/CONSULTANT is a party, or by which PROVIDER/CONSULTANT's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

32. INSURANCE REQUIREMENTS (for projects less than \$1,000,000.00)

- a. The PROVIDER/CONSULTANT shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from claims which may arise out of or result from the PROVIDER/CONSULTANT's operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the PROVIDER/CONSULTANT or subcontractor may be liable.
- b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be named as additional insured. All policies will provide for thirty (30) days written notice to COUNTY of cancellation or material change in coverage provided. The PROVIDER/CONSULTANT will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements:

i) Professional Liability Insurance - \$1,000,000.00 per claim/\$3,000,000.00 annual aggregate, indicating if coverage is on occurrence basis or claims-made.

ii) Commercial General Liability Insurance - \$1,000,000.00 limit per occurrence bodily injury and property damage/\$1,000,000.00 personal and advertising injury/\$2,000,000.00 General Aggregate/\$2,000,000.00 Products-completed Operations Aggregate, indicating the coverage is provided on a claims-made or on an occurrence basis. The insurance shall include coverage for the following:

- a. Premises/Operation;
- b. XCU coverage, where applicable;
- c. Products/Completed Operations;
- d. Contractual Liability;
- e. Independent Contractors;
- f. Broad Form Property Coverage;
- g. Personal Injury.

iii) Workers Compensation and Employers' Liability Insurance - Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for \$1,000,000.00 per accident.

Business Automobile Liability Insurance - \$1,000,000.00 each accident for property damage and personal injury. Coverage is to be provided on all owned/leased autos, non-owned autos and hired autos.

c. PROVIDER/CONSULTANT shall provide County with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

Shelby County Government
Contracts Administration
160 N. Main, Suite 550
Memphis, TN 38103

d. Upon termination or cancellation of insurance currently in effect under this Contract, the PROVIDER/CONSULTANT shall purchase an extended reporting endorsement and

furnish evidence of same to the County.

33. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County (*Dept. name*)
160 N. Main Street
Memphis, Tennessee 38103
Attn.: (Contact person)

and

Shelby County Government
Contract Administration
160 N. Main St., Suite 550
Memphis, Tennessee 38103

VENDOR: *Name of Vendor*
Contact Person/Attn.:
Address
City/State/Zip

34. HIPAA

PROVIDER/CONSULTANT warrants to the COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract. PROVIDER/CONSULTANT warrants that it will cooperate with the COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. PROVIDER/CONSULTANT will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements.

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

APPROVED AS TO FORM:
AND LEGALITY:

SHELBY COUNTY GOVERNMENT

Contract Administration/
Assistant County Attorney

Mark H. Luttrell, Jr., Mayor

(INSERT NAME OF PROVIDER/CONSULTANT/VENDOR)

BY: _____

TITLE: _____

CORPORATE ACKNOWLEDGMENT

(NOTE: To be used if the contracting party is a Corporation and is to be placed after the signature lines.)

STATE OF _____
COUNTY OF _____

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the _____, the within named bargainer, a corporation, and that he as such _____, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as _____.

WITNESS my hand and official seal at office this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

Address
City/State/Zip

33. HIPAA (If Health related)

CONTRACTOR warrants to the COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract. CONTRACTOR warrants that it will cooperate with the COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements.

34. ORDER OF APPLICATION OF CONTRACT AND SUPPORTING EXHIBITS

In the event of a discrepancy or conflict between the terms of this Contract, the Request for Proposal (Exhibit A) and/or the Response to the Proposal (Exhibit B), the terms of this Contract shall control followed by the Request for Proposal (Exhibit A) and, lastly the Response to the Proposal (Exhibit B).

It is agreed that the following documents are made a part of an incorporated fully into this construction Contract:

- A. Performance Bond
- B. Labor and Material Bond
- C. Insurance Certificate
- D. Bid Specifications (RFP#10-003-58, Exhibit "A")
- E. Contractor's Bid/Proposal (Exhibit "B")
- F. List of subcontractors who will be performing work on project with attached required information (Exhibit "C")
- G. Exhibit "D", Construction Justification Statement (**Only If Projects Are Over \$100,000**)

35. PERFORMANCE AND LABOR AND MATERIALS BONDS

CONTRACTOR will provide COUNTY within ten (10) days from inception date of this Contract a Performance and Labor Materials Bond each in the amount of 100% of the Contract price for each year that this contract is in effect. Said Bonds may be pro-rated for the initial year in the event that

this period of time is less than full twelve (12) month period.

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

APPROVED AS TO FORM AND LEGALITY:

SHELBY COUNTY GOVERNMENT

Contract Administration
Assistant County Attorney

Mark H. Luttrell, Jr. Mayor

(INSERT NAME OF CONTRACTOR/VENDOR)

BY: _____

TITLE: _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the _____, the within named bargainer, a corporation, and that he as such _____, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as _____.

WITNESS my hand and official seal at office this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

ADDENDUM NO. 9

SHELBY COUNTY
FORM FOR
COUNTY/CONTRACTOR AGREEMENT

with

EXHIBIT "A", CONTRACTOR'S BID/PROPOSAL

EXHIBIT "B", GENERAL CONDITIONS

EXHIBIT "C", LIST OF SUBCONTRACTORS

EXHIBIT "D", CONSTRUCTION JUSTIFICATION
STATEMENT

(ONLY IF PROJECTS ARE OVER \$100,000)

CONTRACT

This contract (the "Contract") entered into this _____ day of _____, 20__, and between SHELBY COUNTY GOVERNMENT, hereinafter referred to as "COUNTY" and _____, hereinafter referred to as "CONTRACTOR".

WITNESSETH

WHEREAS, the COUNTY issued Request for Proposal # _____ for Shelby County Government - _____, hereinafter in this Contract referred to as "PROJECT"; and

WHEREAS, the CONTRACTOR submitted a bid/proposal in accordance with bid specifications, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference, of which said bid was accepted by COUNTY.

NOW THEREFORE, for and in consideration of mutual promises and covenants herein contained, CONTRACTOR agrees and undertakes the PROJECT in accordance with the Bid Specifications which are on file in the Shelby County Purchasing Department and which are incorporated herein by reference at the price quoted for said PROJECT by CONTRACTOR.

I. SCOPE OF WORK

1. The CONTRACTOR shall provide the services as outlined within the County's Request for Proposal # _____ for Shelby County Government-_____ and CONTRACTOR'S response thereto which are attached hereto as Exhibits "A" and "B" respectively and incorporated herein by reference as if stated verbatim (the "Services").
2. CONTRACTOR shall coordinate all work with COUNTY through the Shelby County Engineering Department. Work shall be completed within one hundred eighty (180) days of the date noted on the notice to proceed from Shelby County Government. It is expected that Phase ____ and/or ____ will be authorized after approval of the budget for the _____ fiscal year starting July 1, ____, however; if funds are not allocated to fund one or more of the additional phases, they shall be deducted from this contract.

3. The CONTRACTOR shall give a Performance Bond and Labor and Material Bond, each equal to one-hundred percent (100%) of the amount of the Contract, with surety to be approved by the COUNTY, conditioned upon the full and faithful performance of all the terms and conditions of the Contract with special reference to paying in full in lawful money of the Untied States, all just and valid claims for material and labor entered into for the said work covered by this Contract. That further, this Contract shall not take effect until these Bonds have been executed and approved by the County.
4. All work by CONTRACTOR is to be performed in a manner satisfactory to COUNTY, and in accordance with the established customs, practices and procedures of COUNTY, CONTRACTOR is to periodically request sufficient conferences to insure that the work is being done by CONTRACTOR in a satisfactory manner in accordance with the specifications as set forth in Exhibit A and as directed by the County Engineer.

II. TERM AND COMPENSATION

1. The term of this Contract (the "Term") will commence upon the execution of this Contract and continue for a period of one hundred eighty (180) days. If authorization for the work is given its phases term shall extend to one hundred eighty (180) days from the last authorized phase, but shall not extend past a period of twenty four (24) months.
2. The COUNTY agrees to compensate the CONTRACTOR for the provision of the Services in accordance with Cost and Fees section of the Response to Request for bid, attached hereto as Exhibit "B" and incorporated herein by reference.

In any event, the sum total of the total for the services provided by CONTRACTOR shall not to exceed

(\$ _____)
 ("the fee") during any term of this Contract which shall include all reimbursable expenses. It is the duty of the CONTRACTOR to monitor such fees, costs, and expenses to ensure the CONTRACTOR does not exceed this total dollar amount. The COUNTY expressly reserves the right to deny payment of any amount billed in excess of (\$ _____).

3. The CONTRACTOR shall submit invoices to the COUNTY on a monthly basis. Invoices shall be submitted in duplicate to the address set forth in the NOTICE section of this Contract to the attention of _____. The COUNTY shall pay such invoices within forty five (45) days of its receipt and

approval of said invoices. The COUNTY is not obligated to pay, and will withhold from payment, any amounts the COUNTY has in dispute with the CONTRACTOR based on CONTRACTOR'S non-performance or negligent performance of any of the Services under this Contract.

4. CONTRACTOR shall not be permitted or authorized to incur costs beyond the extent that purchase orders have been issued on approved contracts and/or purchases prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of County contracts or purchases without prior, expressly written, appropriate authorization pursuant to County purchasing procedures and rules and regulations. County is not obligated to pay nor shall CONTRACTOR be entitled to receive payments for contract fees and expenses incurred in violation of this provision.

III. GENERAL CONDITIONS

The parties further agree as follows:

1. CONTROL

All Services by the CONTRACTOR will be performed in a manner satisfactory to the COUNTY, and in accordance with the generally accepted business practices and procedures of the COUNTY.

2. CONTRACTOR'S PERSONNEL

The CONTRACTOR certifies that it presently has adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be supervised by the CONTRACTOR. The CONTRACTOR further certifies that all of its employees assigned to serve the COUNTY have such knowledge and experience as required to perform the duties assigned to them. Any employee of the CONTRACTOR who, in the opinion of the COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

3. INDEPENDENT STATUS

- a. Nothing in this Contract shall be deemed to represent that the CONTRACTOR, or any of the CONTRACTOR's employees or agents, are the agents, representatives, or employees of the COUNTY. The CONTRACTOR will be an independent CONTRACTOR over the details and means for performing the Services under this Contract. Anything in this Contract

which may appear to give the COUNTY the right to direct the CONTRACTOR as to the details of the performance of the Services under this Contract or to exercise a measure of control over the CONTRACTOR is solely for purposes of compliance with local, state and federal regulations and means that the CONTRACTOR will follow the desires of the COUNTY only as to the intended results of the scope of this Contract.

- b. It is further expressly agreed and understood by CONTRACTOR that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that CONTRACTOR has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by CONTRACTOR for the Services performed shall be on the CONTRACTOR's letterhead.

4. REPORTS

CONTRACTOR shall prepare and submit quarterly reports of its activities, funded under this Contract, to the originating department and the Contract Administration Department of the COUNTY. The reports shall include an itemization of the use of COUNTY's funds, pertinent information pursuant to the applicable Living Wage Ordinance, and shall be inclusive of specific Services delivered. Any such reports provided to the COUNTY shall be prepared with the understanding that the COUNTY may make such reports available to the public. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Contract may be subject to audit by the Director of the Division of Administration and Finance of the COUNTY. The COUNTY shall have the right to withhold future disbursement of funds under this Contract and any future Contracts until this provision has been met.

5. TERMINATION OR ABANDONMENT

- a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
 - i) Either the CONTRACTOR or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal,

involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or

- ii) CONTRACTOR has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or
 - iii) CONTRACTOR has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of CONTRACTOR assets.
- b. The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the CONTRACTOR for CONTRACTOR's failure to provide the Services specified under this Contract.
 - c. This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination (the "Termination Date"). In the event of such termination, the CONTRACTOR shall be paid for all Services rendered prior to the Termination Date, provided the CONTRACTOR shall have delivered to COUNTY such statements, accounts, reports and other materials as required under this Contract; however, CONTRACTOR shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by CONTRACTOR prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.
 - d. Notwithstanding the above or any section herein to the contrary, CONTRACTOR shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Contract by CONTRACTOR and the COUNTY may withhold any payments to CONTRACTOR for the purpose of setoff until such time as the exact amount of damages due the COUNTY from CONTRACTOR is determined.
 - e. The COUNTY has the option to cancel the Agreement and/or any Renewals if the County is put on notice of legal problems with CONTRACTOR or any of its principals, partners, corporate officers, or agents, involving

allegations of dishonesty, improper business conduct, or criminal activity. Cancellation under this provision shall be immediate and effective upon notice. The COUNTY reserves the right to exercise this provision at its discretion and any decision rendered by the COUNTY under this provision constitutes a final determination of the matter the public welfare requiring it.

6. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to CONTRACTOR pursuant to this Contract for any CONTRACTOR's Services performed by the CONTRACTOR in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the CONTRACTOR to properly fulfill any of his obligations as set forth in this Contract.

7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

- a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the CONTRACTOR from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the CONTRACTOR's obligations to its transferors or subcontractors.
- b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

8. CONFLICT OF INTEREST

The CONTRACTOR covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The CONTRACTOR warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or contractor to the CONTRACTOR in connection with any work contemplated or performed relative to this Contract.

9. CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained

any company or person other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

10. EMPLOYMENT OF COUNTY WORKERS

The CONTRACTOR will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

11. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, CONTRACTOR agrees to permit duly authorized agents and employees of the COUNTY to enter CONTRACTOR's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The CONTRACTOR will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request.

12. ARBITRATION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the CONTRACTOR and the COUNTY will be referred to the Shelby County Contract Administrator or its duly authorized representative, whose decision regarding same will be final.

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

a. CONTRACTOR shall indemnify, defend, save and hold harmless the COUNTY, and its elected officials, officers, employees, agents, assigns, and instrumentalities from

and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by the CONTRACTOR its subcontractors, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

- b. CONTRACTOR expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, defend, save and hold harmless the COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.
- c. The COUNTY has no obligation to provide legal counsel or defense to CONTRACTOR or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against CONTRACTOR as a result of or relating to performance of the Services under this Contract.
- d. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against CONTRACTOR as a result of or relating to performance of the Services under this Contract.
- e. CONTRACTOR shall immediately notify the COUNTY of any claim or suit made or filed against CONTRACTOR or its subcontractors regarding any matter resulting from or relating to CONTRACTOR's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

14. GENERAL COMPLIANCE WITH LAWS

- a. The CONTRACTOR certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services

under this Contract.

- b. The CONTRACTOR is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).
- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the CONTRACTOR agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

15. NON-DISCRIMINATION

The CONTRACTOR hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the CONTRACTOR on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CONTRACTOR shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

16. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

17. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

18. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

19. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

20. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

21. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by

the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

22. TRAVEL EXPENSES

FOLLOWING PARAGRAPH (TO BE USED IF THE INTENT OF COUNTY IS THAT THE COUNTY WILL REIMBURSE TRAVEL EXPENSES IN ADDITION TO OTHER FEES OR AMOUNTS IN THE CONTRACT.)

All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the County.

23. NON-LIABILITY FOR CONTRACTOR EMPLOYEE TAXES

Neither CONTRACTOR nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide CONTRACTOR's personnel with any benefits and shall have no liability for the following:

- a. Withholding FICA (Social Security) from CONTRACTOR's payments;
- b. Making state or federal unemployment insurance contributions on behalf of CONTRACTOR or its personnel;
- c. Withholding state and federal income tax from payment to CONTRACTOR;
- d. Making disability insurance contributions on behalf of CONTRACTOR;
- e. Obtaining workers' compensation insurance on behalf of CONTRACTOR or CONTRACTOR's personnel.

24. INCORPORATION OF OTHER DOCUMENTS

- a. CONTRACTOR shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for Proposals/Bids as well as the Response of CONTRACTOR thereto, all of which are maintained on file within the Shelby County

Purchasing Department and incorporated herein by reference.

- b. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

25. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

The CONTRACTOR shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the COUNTY are utilized when possible as sources of supplies and equipment, construction and services.

26. LIVING WAGE ORDINANCE AND PREVAILING WAGE ORDINANCE

Living Wage - In accordance with Ordinance Number 328, commonly referred to as the Living Wage Ordinance, all persons/entities engaged in service contracts with the County, including but not limited to both prime and subcontractors, shall pay a Living Wage to employees for all work performed on said service contract, as defined in the Living Wage Ordinance. Proof of such compensation must be evidenced as required in the Living Wage Ordinance.

Prevailing Wage - Any firm, individual, partnership or corporation awarded a contract by the COUNTY for the construction of, improvement, enlargement, alteration or replacement of a public work or project in excess of \$500,000 and any subcontractors of such public work or project in excess of \$100,000 ("Recipient") shall be required to pay local prevailing wages and benefits for laborers, mechanics, or other listed classifications as defined by the Tennessee Department of Labor. The prevailing wage rate shall be the most current State of Tennessee prevailing wage established by the Tennessee Department of Labor For Region 1 (Shelby County). The benefit rates shall be the most current rates described in the published schedule by the Memphis and West Tennessee Building and Construction Trades Council, except as otherwise provided in the Shelby County Code of Ordinances. The applicable rate shall be determined at the time that the project is awarded. In instances where Prevailing wage applies, Prevailing Wage will override the Living Wage requirement.

27. RIGHT TO REQUEST REMOVAL OF CONTRACTOR'S EMPLOYEES

The COUNTY may interview the personnel CONTRACTOR assigns to COUNTY's work. COUNTY shall have the right, at any time, to request removal of any employee(s) of CONTRACTOR, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, CONTRACTOR shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

28. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

29. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CONTRACTOR, CONTRACTOR understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by CONTRACTOR due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

30. ORGANIZATION STATUS AND AUTHORITY

- a. CONTRACTOR represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.
- b. The execution, delivery and performance of this Contract by the CONTRACTOR has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of CONTRACTOR, any provision of any indenture, agreement or other instrument to which CONTRACTOR is a party, or by which CONTRACTOR's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever

upon any of the properties or assets.

31. INSURANCE REQUIREMENTS

- a. The CONTRACTOR shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from claims which may arise out of or result from the CONTRACTOR's operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the CONTRACTOR or subcontractor may be liable.
- b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be named as additional insured. All policies will provide for thirty (30) days written notice to COUNTY of cancellation or material change in coverage provided. The CONTRACTOR will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements:
 - i) Errors and Omissions/or Professional Liability coverage with limits of \$1,000,000.00 per occurrence/\$3,000,000.00 annual aggregate, indicating if coverage is on occurrence basis or claims made.
 - ii) Commercial General Liability coverage with minimum limits of \$1,000,000.00 per occurrence bodily injury and property damage/ \$1,000,000.00 personal and advertising injury/\$2,000,000.00 general aggregate coverage, \$2,000,000.00 annual aggregate products/completed operations, indicating whether coverage provided on a claims-made or on an occurrence basis. The insurance shall include coverage for the following:
 - a. Premises/Operation;
 - b. XCU coverage, where applicable
 - c. Products/Completed Operations;
 - d. Contractual Liability;
 - e. Independent Contractors;
 - f. Broad Form Property Coverage;
 - g. Personal Injury.

- iii) Workers Compensation and Employers' Liability Insurance - Workers' compensation statutory limits as required by Tennessee. This policy should include Employers' Liability coverage for \$1,000,000.00 per accident.
 - iv) Business Automobile Liability Insurance - minimum limit of \$1,000,000.00 each accident for property damage and personal injury. Coverage is to be provided on all owned/leased, hired and non-owned autos.
- c. CONTRACTOR shall provide County with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:
- Shelby County Government
Contract Administration
160 N. Main, Suite 550
Memphis, TN 38103
- d. Upon termination or cancellation of insurance currently in effect under this Contract, the CONTRACTOR shall purchase an extended reporting endorsement and furnish evidence of same to the County.

32. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County (*Dept. name*)
160 N. Main Street
Memphis, Tennessee 38103
Attn.: (*Contact person*)

and

Shelby County Government
Contract Administration
160 N. Main St., Suite 550
Memphis, Tennessee 38103

VENDOR: *Name of Vendor*
Contact Person/Attn:

EXHIBIT
"B"

GENERAL
CONDITIONS

EXHIBIT B

**SHELBY COUNTY GENERAL CONDITIONS OF THE
CONTRACT FOR CONSTRUCTION**

**GENERAL CONDITIONS OF THE
CONTRACT FOR CONSTRUCTION**

**ARTICLE I
CONTRACT DOCUMENTS**

1.1 Definitions

1.1.1 The Contract Documents

The Contract Documents consist of the County/Contractor Agreement, the conditions of the Contract (General, Supplementary and other conditions), the Drawings, the Specifications, and all Addenda issued prior to and all modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Engineer pursuant to Subparagraph 2.2.8, or (4) a written order for a minor change in the Work issued by the Engineer pursuant to Paragraph 12.3. The Contract Documents include Bidding Documents such as the Advertisement or invitation to Bid, the Instructions to Bidders, sample forms, the Contractors Bid or portions of Addenda relating to any of these, and other documents specifically enumerated in the County/Contractor Agreement.

1.1.2 The Contract

The Contract Documents, and all documents incorporated therein, form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Engineer and the Contractor, but the Engineer shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the County or the Engineer or any Subcontractor or sub-subcontractor.

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1.1.3 The Work

The Work comprises the completed construction required by the contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 The Project

The Project is the total construction of which the Work performed under these Contract Documents may be the whole or a part.

1.2 Execution Correlation and Intent

1.2.1 The Contract Documents shall be signed in not less than four originals by the County and Contractor. If either County or Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Engineer shall identify such Documents.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not specifically set forth in the Contract Documents will not be required unless it is consistent with work that is specifically set forth in the Contract Documents or is reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words and abbreviations, which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections, and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Sub-contractors or in establishing the extent of Work to be performed by any trade.

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1.3 Ownership and Use of Documents

1.3.1 All Drawings, Specifications and copies thereof furnished by the Engineer are the property of the County. They are to be used only with respect to this Project and are not to be used on any other project. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Engineer on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Engineer's common law copyright or other reserved rights. The Engineer will furnish, free of charge, to the Contractor sufficient sets of Contract Documents to execute the Work not to exceed ten (10) days. The Contractor may purchase additional sets by paying reproduction costs.

ARTICLE II ENGINEER

2.1 Definition

2.1.1 The Engineer is the person lawfully licensed to practice engineering, or any entity lawfully practicing engineering identified as such in the County/Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Engineer means the Engineer or his authorized representative.

2.2 Administration of the Contract

2.2.1 The Engineer will provide administration of the Contract as hereinafter described.

2.2.2 The Engineer will be the County's representative during construction and until final payment is due. The Engineer will advise and consult with the County. The County's instructions to the Contract shall be forwarded through the Engineer. The Engineer will have authority to act on behalf of the County only to the extent provided in the Contract Documents, unless otherwise modified by written instrument signed by the County.

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2.2.3 The Engineer will visit the site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations as an Engineer, he will keep the County informed of the progress of the Work, and will endeavor to guard the County against defects and deficiencies in the Work of the Contractor.

2.2.4 The Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Engineer will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

2.2.5 The Engineer shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Engineer may perform his functions under the contract documents.

2.2.6 Based on the Engineer's observations and an evaluation of the Contractor's Applications for Payment, the Engineer will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts as provided in Paragraph 9.4.

2.2.7 The Engineer will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon so as to cause no delay of the Project. Either party to the Contract may make written request to the Engineer for such interpretations.

2.2.8 All interpretations and decisions of the Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

2.2.9 The Engineer's decision in matters relating to artistic effect will be final if consistent with the intent of the Contract

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Documents. The Engineer shall rule on all claims and disputes that relate to the interpretation of the Contract Documents.

2.2.10 The Engineer will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work be then fabricated, installed or completed. In the event the Engineer determines that any Work deleted by the Contractor should have been performed by the Contractor under the Contract Documents, he shall issue a final determination that the Contractor shall proceed with the Work as directed by the Engineer, and the Contractor shall proceed with the Work even if he is in disagreement with the decision of the Engineer.

2.2.11 The Engineer will review and approve or take other appropriate action under Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.2.12 The Engineer will prepare Change Orders in accordance with Article 12 and will have the authority to order minor changes in the Work as provided in Subparagraph 12.3.

2.2.13 The Engineer will conduct inspections to determine the dates of Substantial Completion and final completion, will receive and forward to the County, for the County's review, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a Final Certificate for Payment upon compliance with the requirements of Paragraph 9.8.

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ARTICLE III
COUNTY

3.1 Definition

3.1.1 The County is the person or entity identified as such in the County/Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term County means the County, or his authorized representative.

3.2 Information and Services Required of the County

3.2.1 The County or Engineer shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

3.2.2 Except as provided in Subparagraph 4.7.1, the County shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.2.3 Information or services under the County's control shall be furnished by the County with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

3.2.5 The foregoing are in addition to other duties and responsibilities of the County enumerated herein and especially those in respect to Work by County or by Separate Contractors, Payments and Completion and Insurance in Article 6, 9 and 11, respectively.

3.3 County's Right to Stop the Work

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2 or persistently fails to carry out the Work in accordance with the Contract Documents, the County may

Initial _____

order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the County to stop the Work shall not give rise to any duty on the part of the County to exercise this right for the benefit of the Contractor or any other person or entity. Any such order to the Contractor shall be in writing.

3.4 County's Right to Carry Out the Work

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within two (2) days after receipt of written notice from the County to commence and continue correction of such default or neglect with diligence and promptness, the County may, without prejudice to any other remedy it may have, make good and correct such deficiencies with its own forces or with the forces of another contractor. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Engineer's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the County.

3.4.2 The County shall have access to the Project at all times.

ARTICLE IV **CONTRACTOR**

4.1 Definition

4.1.1 The Contractor is the person or entity identified as such in the County/Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

4.2 Review of Contract Documents

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Engineer any error, inconsistency or omission he may discover.

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4.3 Supervision and Construction Procedures

4.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.3.2 The Contractor shall be responsible to the County for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.

4.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Engineer in his administration of the Contract, or by inspection, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.

4.4 Labor and Materials

4.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

4.4.3 When a material, equipment or system is specified or approved in an addendum, by the name of one or more manufacturers, such material, equipment, or system shall form the basis of the contract. If Contractor desires to use another material, equipment or system in lieu thereof, he shall request approval in writing and shall submit samples and data as required for the Engineer's consideration. The Engineer and County will be the final judge for

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the acceptance or the substitution. No Substitution shall be made without authority in writing from the Engineer.

4.4.4 By making requests for substitutions based on Subparagraph 4.4.3 above, the Contractor:

- .1 represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that he will provide the same warranty for the substitute that is required by the Contract Documents for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs and excludes the Engineer's redesign costs, and waives all claims for additional costs related to the substitution which subsequently became apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes at no additional cost to County as may be required for the Work to be complete in all respects.

4.4.5 The Contractor shall disclose the existence and extent of financial interests, whether direct or indirect, he has in subcontractors and material suppliers which he may propose for this Project.

4.5 **Warranty**

4.5.1 The Contractor warrants to the County and the Engineer that all materials and equipment furnished under this Contract will be new unless otherwise specified, and all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Engineer, the Contractor shall furnish satisfactory evidence. This warranty is not limited by the provisions of Paragraph 13.2.

4.6 **Taxes**

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4.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

4.7 Permits, Fees and Notices

4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution of the Contract.

4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4.7.3 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.8 Allowances and County Furnished Equipment, Fixtures or Labor

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the County may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

4.8.2 Unless otherwise provided in the Contract Documents:

- .1 these allowances shall cover the cost to the Contractor, less any applicable trade discount of the materials and equipment required by the allowance delivered at the site, and applicable taxes;
- .2 the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the

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original allowance shall be included in the Contract Sum and not in the allowance;

- .3 whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

4.8.3 The County may directly furnish any or all of the equipment, fixtures or labor required for the Project. In the event the County elects to do so, the Contract Price for such equipment, fixtures or labor will be reduced by the amount for equipment of labor being furnished by County. A Change Order reducing the Contract Price for that item of work shall be executed by the County and the Contractor to reflect a reduction in the Contract Price for that item, equipment, fixtures or work that the County is to furnish. The Contractor shall assume responsibility for and be fully responsible for the care, custody and control of all County furnished equipment and/or fixtures once said equipment or fixtures arrive on the job site or in any approved off site storage facility.

4.9 **Superintendent**

4.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor and shall be confirmed in writing.

4.10 **Documents and Samples at the Site**

4.10.1 The Contractor shall maintain at the site for the County, one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction and approved Shop Drawings, Product Data and Samples. These shall be available to the Engineer and shall be delivered to him for the County upon completion of the Work.

4.11 **Shop Drawings, Product Data and Samples**

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4.11.1 Shop Drawings are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

4.11.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.11.4 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the County or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

4.11.5 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and the Contract Documents.

4.11.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.11, unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submission and the Engineer has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Engineer's approval thereof.

4.11.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Engineer on previous submittals.

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4.11.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Engineer as provided in Subparagraph 2.2.11. All such portions of the Work shall be in accordance with approved submittals.

4.12 **Use of Site**

4.12.1 The Contractor shall confine operations at the site to areas permitted by law, ordinance, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

4.13 **Cutting and Patching of Work**

4.13.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.13.2 The Contractor shall not damage or endanger any portion of the Work or the work of the County or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the County or any separate contractor except with the written consent of the County. The Contractor shall not unreasonably withhold from the County his consent to cutting or otherwise altering the Work.

4.14 **Cleaning Up**

4.14.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the project as well as all his tools, construction equipment, machinery and surplus materials.

4.14.2 If the Contractor fails to clean up at the completion of the Work, the County may do so as provided in Paragraph 3.4 and the cost thereof will be charged to the Contractor.

4.15 **Royalties, Patents and Records**

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4.15.1 The Contractor shall pay all royalties and license fees. He shall defend all suits and claims for infringement of any patent rights and shall save County and Engineer harmless from loss on account thereof.

4.15.2 The Contractor shall not discriminate against any subcontractor, employee or applicant for employment on the grounds of race, color, national origin or sex.

4.15.3 The Contractor and all subcontractors under the general contract shall maintain copies of every sub-payroll period for the life of the construction contract and for a period of three (3) years after final release and payment is made by the County to the Contractor.

4.15.4 Each Contractor's request for payment, including final payment and each partial payment, if permitted by the contract, shall contain a certification by the Contractor that performance by the Contractor and his subcontractor for the period of work covered by the payment request has been in accordance with the contract clauses and requirements with respect to nondiscrimination.

4.15.5 Representatives of Shelby County, as designated by the Mayor, shall have the right to inspect the Contractor's facilities and payroll records during the term of the construction contract and for a period of three (3) years after final release and final payment by the County for the purposes of verifying nondiscrimination in employment.

4.15.6 The Contractor shall incorporate the same requirements set forth in Subparagraph 5.3.1 in all Subcontracts awarded by him with the further requirement that each Subcontract include identical requirements to be included in any lower tier Subcontracts together with the requirement to include it in any further subcontracts that might be made.

4.16 **Indemnification**

4.16.1 a. The Contractor shall indemnify, defend, save and hold harmless the COUNTY, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions;

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whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the Work hereunder, whether performed by the Contractor, its subcontractors, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

b. The Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, defend, save and hold harmless the COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

c. The COUNTY has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this Contract against the Contractor as a result of or relating to performance of the Work under this Contract.

d. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against the Contractor as a result of or relating to performance of the Work under this Contract.

e. The Contractor shall immediately notify the COUNTY, c/o Shelby County Government, Contracts Administration, 160 N. Main Street, Suite 550, Memphis, TN 38103, of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's performance of the Work under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

4.16.2 Labor Indemnity

4.16.2.1 The Contractor shall indemnify, defend and hold harmless the County from any and all administrative and judicial actions (including reasonable attorney's fees related to any such action) incurred by the County in connection with any labor related activity arising from the performance of the Work of the Contractor. As used in this Contract, "labor related activity" includes, but is not limited to strikes, walk-outs, informational or organizational picketing, use of placards, distribution of hand-outs or leaflets in the vicinity of any facility where the County conducts business. The County shall advise the Contractor if any

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labor related activity occurs and the Contractor shall arrange for the legal representation necessary to protect the County, provided such representation is previously approved by the County.

4.16.3 Attorney's Fees

4.16.3.1 In the event it becomes necessary for County to employ an attorney to enforce any provision of this Contract, then the Contractor shall be liable for all attorney's fees and litigation expense of County.

4.17 Progress Schedule

4.17.1 The Contractor shall, within five (5) days from receipt of the Notice to Proceed, prepare and submit for the County and Engineer an estimated project schedule for the Work. The Progress Schedule shall be updated each month to reflect actual progress made and to forecast future progress of the Work. The Progress Schedule shall be related to the entire Project as provided by the contract Documents and shall provide for expeditious and practicable execution of the Work. The County reserves the right to reasonably reschedule the Work or the sequence of activities of the contractor for no additional compensation should it deem rescheduling to be in its best interest.

ARTICLE V SUBCONTRACTORS

5.1 Definition

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any separate contractor or his subcontractor.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and

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masculine in gender and means a Sub-subcontractor or an authorized representative thereof.

5.2. Award of Subcontracts and Other Contracts for Portions of the Work

5.2.1 Unless otherwise required by the Contract Documents or Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the County and the Engineer in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Engineer will promptly reply to the Contractor in writing stating whether or not the County or the Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the County or Engineer to reply promptly shall constitute notice of no reasonable objection. No work shall be commenced until approval of all such Subcontractors has been given in writing by the County. If required, the Contractor shall furnish evidence satisfactory to the County, showing each proposed Subcontractor is competent to execute the Work covered by the Subcontract.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the County or the Engineer has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.2.3 If the County or the Engineer has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the County or the Engineer has no reasonable objection. Such substitution shall in no way affect the Contract Sum.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the County or Engineer makes reasonable objection to such substitution.

5.2.5 The Contractor shall submit a status report with regard to Subcontractors identified on Exhibit C, which forms a part of the Contract Documents, as to any change in the subcontractors identified thereon and the reasons for same, the dollars paid to the prior subcontractor and the amount of the new subcontract.

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THIS REPORT SHALL BE SUBMITTED TO CONTRACTS ADMINISTRATION OF SHELBY COUNTY GOVERNMENT, 160 N. Main St., Suite 550, Memphis, Tennessee, 38103.

5.2.6 The Contractor shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by Shelby County Government are utilized when possible as sources of supplies, equipment, construction and services.

5.3 **Subcontractual Relations**

5.3.1 By an appropriate agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the County and the Engineer. Said agreement shall preserve and protect the rights of the County and the Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the County. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by the Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to any Sub-subcontractors.

ARTICLE VI

WORK BY COUNTY OR BY SEPARATE CONTRACTORS

6.1 **County's Right to Perform Work and to Award Separate Contracts**

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6.1.1 The County reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate County/Contractor Agreement.

6.2 Mutual Responsibility

6.2.1 The Contractor shall afford the County and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends on proper execution or results in the work of the County or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Engineer any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acceptance of the County's or separate contractor's work as fit and proper to receive his Work.

6.2.3 Should the Contractor wrongfully cause damage to the work or property of the County, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.4 Should the Contractor wrongfully cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise, to resolve the dispute. If such separate contractor sues the County on account of any damage alleged to have been caused by the Contractor, the County shall notify the Contractor who shall defend such proceedings, and if any judgment or award against County arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the County for all Attorney's fees and Court costs which the County has incurred.

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6.3 County's Right to Clean Up

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.14, the County may clean up and charge the cost thereof to the contractors responsible therefor as the County shall determine to be just.

ARTICLE VII
MISCELLANEOUS PROVISIONS

7.1 GENERAL COMPLIANCE WITH LAWS

7.1.1 If required, the Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

7.1.2 The Contractor is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).

7.1.3 This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this contract the Contractor agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

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7.2 Successors and Assigns

7.2.1 This Contract (including without limitation, all obligations imposed by the Contract Documents) shall be binding upon and shall inure to the benefit of the parties' successors, assigns and legal representative. The Contract shall not be assigned or sublet in whole or in part by the Contractor without the written consent of the County, nor shall the Contractor assign any monies due or to become due to him hereunder, without the previous written consent of the County.

7.3 Written Notice

7.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm, entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

7.4 Claims for Damages

7.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party, or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

7.5 Performance Bond and Labor and Material Payment Bond

7.5.1 The Contractor shall furnish and keep in force throughout the performance of the Work a separate performance bond and separate labor and material payment bond, each in the amount of the total of the Contract (as the same may be modified from time to time) conditioned upon the faithful performance of the Work by the Contractor and payment of all obligations arising in connection with the Work by the Contractor. Said bonds shall also guarantee to the County that the Work shall be free of all liens upon the property of the County. The bonds shall name the County as obligee and shall be with such Surety authorized to do business in the State of Tennessee and in such form and manner as approved by the County. Said Bond shall be subject to final approval of the Shelby County Risk Management Department. Said bonds shall be furnished

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to the County prior to the commencement of the Work, or upon written request by County to Contractor after the Work has commenced.

7.6 Rights and Remedies

7.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

7.6.2 No action or failure to act by the County, Engineer or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.6.3 No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

7.7 Tests

7.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Engineer timely notice of its readiness so the Engineer may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the County shall bear all costs of other inspections or tests.

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7.7.2 If the Engineer determines that any Work requires special inspection, testing or approval which Subparagraph 7.7.1 does not include, he will, upon written authorization from the County, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Engineer's additional services and/or correction of the defective Work made necessary by such a failure; otherwise, the County shall bear such costs, and an appropriate Change Order shall be issued.

7.7.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Engineer.

7.7.4 If the Engineer is to observe the inspection, tests or approvals required by the Contract Documents, he will do so promptly where practicable, at the source of supply.

ARTICLE VIII
TIME

8.1 **Definitions**

8.1.1 Unless otherwise provided, the Contract time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the Work is the date established in a notice to proceed. No work should begin on this project until an official "Notice to Proceed", along with a fully executed copy of the contract documents are received by the Contractor.

8.1.3 The date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Engineer when construction is sufficiently complete, in accordance with the contract Documents, so the County can occupy or utilize the Work or designated portion thereof for the use for which it is intended.

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8.1.4 The term day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

8.2 Progress and Completion

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 Delays and Extensions of Time

8.3.1 The Contractor shall proceed with each and every part of this Contract in a prompt and diligent manner. The Contractor, without additional compensation, shall perform the Work at such times, in such order and in such manner as the County may direct. The Contractor shall commence, continue and complete its performance of the Project so as not to delay the County or other separate contractors of the County or subcontractors' completion of the Work or any portions thereof, and so as to insure completion as directed by the County. Any time specified for the completion of the Work, or portion thereof, is a material provision of this Contract, and time is of the essence. The Contractor shall furnish sufficient forces to assure proper performance of its Work in strict compliance with all performance or progress schedules for the Project.

8.3.2 The Contractor shall, from time to time, on written demand of County, give adequate evidence to County to substantiate the planned performance and progress of the Work and the various parts thereof. The Contractor shall promptly increase its work force, accelerate its performance, work overtime, work Saturdays, Sundays and holidays, all without additional compensation, if, in the opinion of the County, such work is necessary to maintain proper progress. The Contractor will fully cooperate and coordinate its work with any other separate contractors of the County or subcontractors at the Project. The Contractor shall bear the costs of all damages done to other separate contractors of County or subcontractors and shall be responsible for any damages

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caused by or resulting from acts or omissions of the Contractor in failing to make proper progress. The liability of the Contractor shall not be deemed waived by any assent or acquiescence by County to the Contractor's late performance. County shall be entitled to terminate this Contract due to late or threatened late performance, upon not less than seven (7) days after the County has given the Contractor a notice to proceed, and Contractor has failed to do so.

8.3.3 In the event any subcontractor should damage the Contractor, the Contractor shall neither seek nor be entitled to any compensation from County, but will seek its damages directly from such subcontractor. Should the Contractor's performance, in whole or part, be disrupted, interfered with or delayed, or be suspended in the commencement, prosecution or completion, for reasons beyond the Contractor's control and without its fault or negligence, the Contractor shall be entitled to an extension of time in which to complete its Work; but only if it shall have notified the County, in writing, of the cause of delay within five (5) days of the occurrence of the event. The Contractor and County agree that the Contractor shall not be entitled to any money damages regardless of fault as a result of any delay, acceleration, disruption, interference, suspension or other event affecting the Contractor or the Contractor's performance.

ARTICLE IX

PAYMENTS AND COMPLETION

9.1 Contract Sum

9.1.1 The Contract Sum is stated in the County/Contractor Contract and, including authorized adjustments thereto, is the total amount payable by the County to the Contractor for the performance of the Work under the Contract Documents.

9.2 Schedule of Values

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Engineer a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used only as a basis for the Contractor's Applications for Payment.

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9.3 Applications for Payment

9.3.1 At least ten (10) days before the date of each progress payment established in the County/Contractor Contract, the Contractor shall submit to the Engineer an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the County or the Engineer may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. The Contractor shall indicate on each Application for Payment the dollar amount and percentage due Subcontractors.

Progress payments (monthly) will be made based upon Applications for Payment submitted to the Engineer by the Contractor and Certificates for Payment issued by the Engineer pursuant to Section II of the Contract entitled Method of Payment.

9.3.1.1 Until final payment, the County will pay ninety percent (90%) of the amount due the Contractor on account of progress payments. If the manner of completion of the Work and its progress are and remain satisfactory to the County, it may, in its sole discretion, for each Work category shown to be fifty percent (50%) or more complete in the Application for Payment, without reduction of previous retainage, on presentation by the Contractor with Consent of Surety for each application, certify any remaining progress payments for each Work category to be paid in full.

9.3.1.2 The full Contract retainage may be reinstated at any time in the sole discretion of the County.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the County, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the County to establish the County's title to such materials or equipment or otherwise protect the County's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

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9.3.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the County either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article IX as liens; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other persons performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.3.4 The Contractor shall submit a report with each Application for Payment which sets forth all subcontractors performing work during that reporting period, the dollar amount paid to the subcontractor, etc. on the form provided by Shelby County Government.

9.4 **Certificate for Payment**

9.4.1 The Engineer will, within seven (7) days after the receipt of the Contractor's Application for Payment, issue a Certificate for Payment to the County for such amount as the Engineer determines is properly due.

9.4.2 The issuance of a Certificate of Payment will constitute a representation by the Engineer to the County, based on his observations at the site as provided in Subparagraph 2.2.3 and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and any specific qualifications stated in his Certificate); and that the Contractor is entitled to payment in the amount certified.

9.5 **Progress Payments**

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9.5.1 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the County, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

9.6 **Payments Withheld**

9.6.1 The Engineer may decline to certify payments and may withhold his Certificate in whole or in part, to the extent necessary to protect the County, if in his opinion he is unable to make representations to the County as provided in Subparagraph 9.4.2. The Engineer may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the County from loss because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the County or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

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9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made, without interest, for any amounts previously withheld.

9.7 Substantial Completion

9.7.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the County, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Engineer a list of items to be completed or corrected. The failure 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. When the Engineer, on the basis of an inspection, determines that the Work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.7.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Engineer, the County shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents. Payment by the County upon application by the Contractor and certification by the Engineer for Substantial Completion does not waive any claims the County may have against the Contractor.

9.8 Final Completion and Final Payment

9.8.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of

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his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.7.2 have been fulfilled.

9.8.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Engineer (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the County or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety to final payment and (3) if required by the County, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims, encumbrances and/or alleged liens arising out of the Contract, to the extent and in such form as may be designated by the County. If any Subcontractor refuses to furnish a release or waiver required by the County, the Contractor may furnish a bond satisfactory to the County to indemnify him against such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the County all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

9.8.3 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

ARTICLE X
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

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10.2 Safety of Persons and Property

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- .1 all employees on the Work and all other persons who may be affected thereby;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities. Pavements, sidewalks, alleys, adjacent buildings not included in this Contract, which may be damaged, shall be repaired and/or replaced immediately and in a manner satisfactory to the Engineer, Shelby County and/or other governing officials.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy all damage or loss (other than damage or loss insured under Paragraph 11.3) to any

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property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, Subcontractor, or any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts the Contractor may be liable or responsible. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 4.16.

10.2.6 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the County and the Engineer.

10.2.7 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.3 **Emergencies**

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article XII for Changes in the Work.

10.3.2 Whenever the Contractor has not taken sufficient precautions for the safety of the public or the protection of work to be performed under this Project, or adjacent structures or property which may be injured by processes of construction, demolition and/or site clearance on account of such neglect, and whenever an emergency shall arise and immediate action shall be considered necessary in order to protect public or private, persons or property interest, then the Engineer and/or the County shall so instruct the Contractor.

10.3.3 If correction is not made in due time or if conditions such as lack of time prevent instructions to Contractor, then the County, without notice to the Contractor, may provide reasonable, suitable protection by causing such Work to be done and material to be furnished and placed as the Engineer and County may consider necessary and adequate. The cost and expense of such work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills thereof, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency work under the

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direction of the County and/or Engineer shall in no way relieve the Contractor of the responsibility for damages which may occur during or after such performance.

10.3.4 None of the foregoing shall make the County and/or Engineer responsible for foreseeing and protecting against emergency.

ARTICLE XI
INSURANCE

11.1 Contractor's Liability Insurance

11.1.1 The Contractor shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the Contractor or Subcontractor may be liable:

- .1 claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- .4 claims for damages insured by personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- .5 claims for damages, other than the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

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- .6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater. The Contractor shall maintain throughout the life of his Contract, liability insurance, written in a comprehensive form, satisfactory to the County in the following minimum requirements:

- .1 Worker's Compensation with limits required by statute. Employers Liability \$100,000.00 without restriction as to whether covered by the Worker's Compensation Law.
- .2 Commercial General Liability with minimum liability limits of \$1,000,000.00 combined single limit per occurrence with \$2,000,000.00 aggregate to include perils of explosion, collapse, and underground hazards including broad form property damage, with Shelby County Government its elected officials, appointees and employees named as additional insured.
- .3 Automobile Liability \$1,000,000.00 each occurrence bodily injury, including death and property damage combined, for all owned, non-owned and hired vehicles.
- .4 Protective Liability: County's and Contractor's Protective Liability bodily injury (including death) minimum limits of \$500,000.00 each occurrence, and \$1,000,000.00 aggregate, with Shelby County Government, its elected officials, appointees and employees named as additional insured.
- .5 Property Damage: Minimum limits of \$500,000.00 each occurrence; \$500,000.00 aggregate builder's "all risk" in the amount of the Contract with Shelby County Government named as additional insured. Such insurance carried by the Contractor shall include a \$1,000.00 deductible clause for each

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occurrence. This deductible amount will be the responsibility of the County.

11.1.3 The insurance required by Subparagraph 11.1.1 shall include contractual liability insurance applicable to the Contractor's obligations under Paragraph 4.16.

11.1.4 Certificates of Insurance acceptable to the County shall be filed with the County at the time of submittal of the Contract Documents to the County for execution. These certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the County.

11.2 **County's Liability Insurance**

11.2.1 The County shall be responsible for purchasing and maintaining its County liability insurance and, at its option, may purchase and maintain such insurance as will protect him against claims which may arise from operations under the Contract. Such insurance, if carried by the County, will include a \$1,000.00 deductible clause for each occurrence except fire, extended coverage, vandalism, and malicious mischief, which shall have no deductible.

11.3 **Property Insurance**

11.3.1 The Contractor shall be responsible for "all risk" insurance for physical loss or damage.

11.3.2 The County shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the County, the Contractor, Subcontractors and Sub-subcontractors in the Work.

11.3.3 The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require such Subcontractor to make payments to his Sub-subcontractors in similar manner.

11.3.4 The Contractor shall furnish to County a copy of all policies with the Contractor before an exposure to loss may occur.

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11.3.5 If the Contractor requests in writing that insurance for risks other than those described in Subparagraphs 11.3.1 and 11.3.2 or other special hazards to be included in the property insurance policy, the County shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.3.6 The County and Contractor waive all rights against (1) each other and the Subcontractors, Sub-subcontractors, agents and employees each to the other, and (2) the Engineer and separate contractors, if any, and their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 11.3 or other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the County as trustee. The foregoing waiver afforded the Engineer, his agents and employees shall not extend to the liability imposed by Subparagraph 4.16.3. The County or the Contractor, as appropriate, shall require of the Engineer, separate contractors, Subcontractors and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of all other parties enumerated in this Subparagraph 11.3.6.

11.4 Loss of Use Insurance

11.4.1 All insurance policies maintained by the Contractor shall provide that insurance as applying to the County shall be primary and non-contributing irrespective of such insurance as the County may maintain in its own name and on its own behalf.

ARTICLE XII
CHANGES IN THE WORK

12.1 Change Orders

12.1.1 A Change Order is a written order to the Contractor signed by the County issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time. The

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Contractor by execution of the Change Order waives any further claims or damages in any manner whatsoever for the changes set forth in the Change Order.

12.1.2 The County, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 The cost or credit to the County resulting from a change in the Work shall be determined in one or more of the following ways:

- .1 by lump sum properly itemized on the form furnished by the County which shall show the actual verified cost of the work, plus ten percent overhead and five percent profit; if the work is performed by a Subcontractor, the Contractor is allowed an additional five percent;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided in Subparagraph 11.1.4.

12.1.4 If none of the methods set forth in Clauses 12.1.3.1, 12.1.3.2, or 12.1.3.3 is agreed upon, the Contractor, provided he receives a written order signed by the County, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Engineer on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit, which shall be defined as ten (10%) percent overhead and five percent profit with an additional five (5%) percent going to the Contractor when the work is performed by a Subcontractor. In such case, and also under Clauses 12.1.3.3 and 12.1.3.4 above, the Contractor

Initial _____

shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of labor, including social security, old age and unemployment insurance and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums, rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the County, payments on account shall be made on the Engineer's Certificate for Payment. The amount of credit to be allowed by the Contractor to the County for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Engineer. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

12.2 Concealed Conditions

12.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, Contractor, subject to approval by the Engineer, shall be entitled to a time extension for only the period that the Contractor's performance is extended due to the unforeseen conditions.

12.3 Minor Changes in the Work

12.3.1 The Engineer will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order, and shall be binding on the County and the Contractor. The Contractor shall carry out such written orders promptly.

Initial _____

ARTICLE XIII
UNCOVERING AND CORRECTION OF WORK

13.1 Uncovering of Work

13.1.1 If any portion of the Work should be covered contrary to the request of the Engineer or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Engineer, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Engineer has not specifically requested to observe prior to being covered, the Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the County. If such Work is found not in accordance with the Contract Documents, the Contractor shall pay such costs. If the Work to be uncovered by the Contractor should have been inspected by the Engineer prior to being covered, and the Work is found to be in accordance with the Contract Documents, the cost of the uncovering and recovering of the Work shall be borne by the Engineer.

13.2 Correction of Work

13.2.1 The Contractor shall promptly correct all Work rejected by the Engineer as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Engineer's additional services made necessary thereby.

13.2.2 If, within one (1) year after the Date of Substantial Completion of the Work or designated portion thereof, within one year after acceptance by the County of designated equipment or within such longer period of time as may be prescribed by law or by the term of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the County to do so. This obligation shall survive termination of the

Initial _____

Contract. The County shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming, unless removal is waived by the County.

13.2.4 If the Contractor fails to correct defective or non-conforming Work as provided in Subparagraphs 4.5.1, 13.2.1 and 13.2.2, the County may correct it in accordance with Paragraph 3.4.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Engineer, the County may remove it and store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the County may, upon ten additional days written notice, sell such Work at auction or a private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Engineer's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the County.

13.2.6 The Contractor shall bear the cost of making good all work of the County or separate contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one (1) year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

Initial _____

13.3 Acceptance of Defective or Non-Conforming Work

13.3.1 If the County prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effective whether or not final payment has been made.

**ARTICLE XIV
TERMINATION OF THE CONTRACT**

14.1 Termination for Default

14.1.1 Should the Contractor fail to perform in strict accordance with this Contract, where or as County may so direct, or should the Contractor become insolvent, unable to or fail to pay its obligations as they mature or, in any other respect fail in the opinion of the County, to properly prosecute and perform any part of its work, fail to exert its best performance efforts, be involved in labor disputes, or be terminated under any other contract with County, then the Contractor may be deemed by County to have materially breached and to have defaulted in its obligations under this Contract. In case of a breach and default, the County, at its discretion, may terminate this Contract, or any part thereof, by giving five (5) days written notice thereof to the Contractor. In case of such termination, County may use any and all materials, equipment, tools or chattels furnished by or belonging to the Contractor either at or for the Project.

14.1.2 The Contractor, on termination, will be deemed to have offered to County an assignment of all of its subcontracts and purchase orders relating to this Project. County may, at its discretion, do whatever is necessary to assure performance of any terminated work and to take such action, if necessary, in the Contractor's name. County may withhold from Contractor any monies due or to become due under this or any other contract between the Contractor and County, to offset the damages incurred or possibly incurred as a result of the breach and default by the Contractor. In case of a breach, or in the event County is required to retain the services of an attorney to enforce any provisions of this Contract, then the Contractor and its surety company shall be liable to County for any and all additional costs, expenses, attorney's fees and other damages, both liquidated and

Initial _____

unliquidated, which directly or indirectly result from the Contractor's breach, threatened breach, default or lack of performance of any term or condition of this Contract.

14.1.3 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Engineer's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the County. The amount to be paid to the Contractor or to the County, as the case may be, shall be certified by the Engineer, upon application, in the manner provided in Paragraph 9.4, and this obligation for payment shall survive the termination of this Contract.

14.2 **Termination for Convenience**

14.2.1 County, by written notice, shall have the right to terminate and cancel this Contract, without the Contractor being at fault, for any cause or for its own convenience, and require the Contractor to immediately stop work. In such event, County shall pay the Contractor for that Work actually performed and materials furnished in an amount proportionate to the Contract price. County shall not be liable to the Contractor for any other costs, including prospective profits on Work not performed.

ARTICLE XV
RIGHT TO OCCUPY BY COUNTY

15.1 **Early Occupancy by County**

15.1.1 The County has the right to occupy or use ahead of schedule all or any substantially completed or partially completed portion of the Work when such occupancy and use are in its best interest, notwithstanding the time of completion for all of the Work. If occupancy or use increases the cost of the Work (other than for corrections which are the responsibility of the Contractor) and/or as a result of the County exercising its rights herein, the contractor shall be entitled to extra costs and extensions of time, or both. Claims for such extra costs and extensions of time, to be valid, shall be made in writing to the County within seven (7) calendar days of the notification of County to the Contractor of its intent to so occupy or use.

Initial _____

15.2 Corrections After Occupancy

15.2.1 After the County has taken occupancy of all or any substantially completed portion of the Work, the Contractor shall not disrupt the use and occupancy of the County to make corrections in the Work but shall, at the discretion of the County, make such corrections at the expense of the Contractor after normal working hours.

15.3 Heating, Ventilating and Air-Conditioning Systems

15.3.1 The County may require the use and operation of any completed heating, ventilating and air-conditioning equipment at the time it occupies or uses any substantially completed portion of the Work. In such event, the County may require the Contractor to operate such equipment and will pay the Contractor the cost of such utilities required for the use and occupancy of the County, but the Contractor shall be responsible for such equipment and for its careful and proper operation. At any time, the County may assume the care and maintenance of any portion of the Work which it is occupying and using for the operation of any such equipment, but in each case, the Contractor shall not be relieved of its responsibility for the full completion of the Work and the protection of its tools, materials and equipment.

ARTICLE XVI
REGULATIONS**16.1 Nondiscriminating in Employment**

16.1.1 The Contractor hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The Contractor shall, upon request, show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

Initial _____

16.2 [RESERVED]

16.3 Maintenance and Records

16.3.1 The Contractor shall, and shall make it a condition of all its contracts with its Subcontractors maintain copies of every subcontract awarded and their own payrolls, for each weekly payroll period during the term of this Contract and for a period of one (1) year after release and payment is made by County to the Contractor.

16.4 County's Right of Inspection

16.4.1 Representative of the County, as designated by the County Mayor, shall have the right to inspect the Contractor's facilities and payroll records during the life of the Contract and for a period of one (1) year after final release and final payment by the County for the purpose of verifying nondiscrimination in employment.

**ARTICLE XVII
PROCEDURE FOR INSTALLATION OR
REMOVAL OF FIBERGLASS INSULATION**

The following procedures should be adhered to when disturbing, installing or removing fiberglass insulation. These procedures are established to minimize employee exposure to the adverse health affects of fiberglass exposure.

The below procedures are the minimal requirements for handling fiberglass in Shelby County Facilities. Mandates by code or law must be adhered to.

17.1 Installation, Removal, or Disturbance of Fiberglass Insulation

17.1.1 Install in well ventilated areas and avoid breathing dust.

17.1.2 Wear loose, comfortable clothing and long-sleeved shirts to minimize skin contact.

17.1.3 Handle carefully to minimize airborne dust.

Initial _____

17.1.4 If high dust levels are anticipated during installation, such as with power tools, use appropriate NIOSH approved dust respirator.

17.1.5 All power cutting tools must be equipped with dust collectors.

17.2 Exposure

17.2.1 After use, wash with warm water and mild soap. Do not scratch or rub skin if it becomes irritated. Utilize running water.

17.2.2 Wash work clothes separately, and then rinse the washer.

17.2.3 Eye exposure: Flush with flowing water for at least 15 minutes. If symptoms persist, seek immediate medical attention.

17.3 Work Site Environment

17.3.1 Insure area is free of obvious particles through proper cleanup procedures. Use of vacuum with proper filters or wet cleanup is acceptable. (This includes office furniture, floors and walls.)

17.3.2 Initially, there may be a potential adverse impact on indoor air quality within the general work area during the installation process. Notify building manager or other appropriate person that it will be necessary to establish and maintain adequate ventilation of the work area, without causing the entry of contaminants to other parts of the building. Persons who are sensitive to odors and/or chemicals should be advised to avoid the work area during this process.

17.3.3 Exposure to employees should be kept to a minimum.

17.3.4 Disturbance of ceiling tiles where fiberglass insulation exists, requires the same procedures as if installation or removal was taking place.

Initial _____

BY THE SIGNING OF THIS DOCUMENT AND INITIALING EACH PAGE HEREOF,
THE CONTRACTOR CERTIFIES THAT HE HAS READ AND UNDERSTANDS ALL OF
THE ABOVE AND AGREES TO ABIDE BY THESE GENERAL CONSTRUCTION
CONDITIONS.

CONTRACTOR

BY: _____

TITLE: _____

DATE: _____

Initial _____

EXHIBIT

"C"

**LIST OF
SUBCONTRACTORS**

EXHIBIT C

This page may be reproduced if necessary.

RFP NUMBER _____

DATE _____

**NAME AND ADDRESS
OF SUB-CONTRACTOR**

EOC NO.: _____

.....
PRINCIPAL
.....

**TYPE OF WORK TO BE
SUB-CONTRACTED**

AMOUNT: _____

CLASSIFICATION: Circle/Check

- A. Locally Owned Small Business _____
- B. Minority Owned Business _____
- C. Female Owned Business _____
- D. N/A Appropriate Information _____

Definition Page Attached

____ Male _____ Female

(Do not circle "C" if this space [female] is checked)

.....
RFP NUMBER _____

DATE _____

**NAME AND ADDRESS
OF SUB-CONTRACTOR**

EOC NO.: _____

.....
PRINCIPAL
.....

**TYPE OF WORK TO BE
SUB-CONTRACTED**

AMOUNT: _____

CLASSIFICATION: Circle/Check

- A. Locally Owned Small Business _____
- B. Minority Owned Business _____
- C. Female Owned Business _____
- D. N/A Appropriate Information _____

Definition Page Attached

____ Male _____ Female

(Do not circle "C" if this space [female] is checked)

NAME _____ TITLE: _____
(PLEASE PRINT)

SIGNATURE _____ DATE: _____

THE INFORMATION REFERENCED FOR CLASSIFICATION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A CRITERIA FOR THE SELECTION OR AWARD OF ANY BID OR CONTRACT. IF NONE, THEN INDICATE SO ON THE SUBCONTRACTOR LINE FIRST ABOVE AND SIGN WHERE INDICATED.

EXHIBIT "C" Continued

DEFINITIONS

A. LOCALLY OWNED SMALL BUSINESS:

For this purpose, a Locally Owned Small Business is defined as a sole proprietorship, corporation, partnership, joint venture or any other business or professional entity located within Shelby County, Tennessee, and at least 51% owned, operated and managed by a Shelby County resident with gross annual sales of \$3 million dollars or less. The Business must be confined within the boundaries of Shelby County, Tennessee.

B. MINORITY OWNED BUSINESS ENTERPRISE:

A Minority is defined as African American(s) (a person(s) having origins in any of the indigenous sub-Saharan racial groups of Africa), Native Americans, Hispanic Americans and Asian Americans and any other racial group(s) for which there is a legally sufficient statistical disparity indicated and/or an underutilization attributable to the effects of past or present discrimination in the local industry.

For this purpose, a Minority Business Enterprise is defined as a sole proprietorship, corporation, partnership, joint venture or any other business or professional entity located within Shelby County, Tennessee, and at least 51% owned, operated and managed by a Shelby County resident with gross annual sales of \$3 million dollars or less. The Business must be confined within the boundaries of Shelby County, Tennessee.

C. WOMEN OWNED BUSINESS ENTERPRISE:

For this purpose, a Women Business Enterprise is defined as

a sole proprietorship, corporation, partnership, joint venture, or any other business or professional entity which is at least 51% owned, operated and managed by one or more Women (WBE), and whose management and daily business operations are controlled by one or more of the WBE individuals who own it. The business must be confined within the boundaries of Shelby County, Tennessee.

EXHIBIT

"D"

CONSTRUCTION JUSTIFICATION STATEMENT

**(ONLY IF PROJECTS
ARE OVER \$100,000)**

CONSTRUCTION JUSTIFICATION STATEMENT

PROJECTS OVER \$100,000.00 - FACILITIES

Project Name: _____

ACTION ITEM

1 **Establish User Needs**

Date:

Remarks:

Action Item 1 Contact:

2 **Division of Shelby County Government Served by this Project**

Division:

Remarks:

Action Item 2 Contact:

3 **Consultant**

If yes, name & contract amt.:

Remarks:

Architect

If yes, name & contract amt.:

Action Item 3 Contact:

4 **Is Shelby County Currently Utilizing a Facility to Meet User Needs Described Above?**

If yes, location:

Remarks:

If yes, own or lease

the property?:

Action Item 4 Contact:

5 **New Construction Assessment**
Renovation Assessment

Date:

Date:

If yes, date:

Remarks:

Action Item 5 Contact:

6 **Based on Overall Assessment, Administration's Recommendation is:**

Basis for Decision:

New Construction or Renovation

List Construction or Renovation:

Action Item 6 Contact:

Project Name: _____

ACTION ITEM

Construction/Renovation Written Estimates

Project Cost Sheet/Estimates Attached? **Remarks:**

Action Item 7 A Contact:

Total Project Cost:

Potential Costs Not Listed in Total Project Cost, i.e.

Infrastructure, Change Orders, Etc.

7 B Cost of Project Over Life of Loan/Financing

Cost of Renovation w/ Financing

Action Item 7 B Contact:

Cost of New Construct w/ Financing

8 Request for Bids

Dates:

Remarks:

Date Bid Posted by Purchasing:

Bid Closing Date:

Name:

Bid Award - Contractor:

Amount:

Bid Amount:

Action Item 8 Contact:

If "yes" was the answer to Action Item # 4, please complete items 9 - 11 .

9 Existing Facility Financials

Lease or Own?

Remarks:

Action Item 9 Contact:

Existing Financial Obligation:

10 Existing Land

Acreage:

Remarks:

Will additional land be acquired?

Action Item 10 Contact:

Location:

If yes, acreage:

If yes, location:

Project Name: _____

ACTION ITEM

Existing Building

Age:

Remarks:

Square Footage:

Exterior Veneer Type:

Roof Age & Type:

Remodeled or Renovated?:

Will additional buildings be acquired or built?

If yes, answer the following:

Remarks:

Acquire or New Construction

Square Footage:

Location:

If acquired, answer the following:

Age:

Square Footage:

Exterior Veneer Type:

Roof Age & Type:

Remodeled or Renovated?:

Action Item 11 Contact:

12 **Miscellaneous Project Notes or Disclosures:**

Action Item 12 Contact:

ADDENDUM NO. 10

SHELBY COUNTY
FORM FOR
CONTRACT AMENDMENT

Amendment to Agreement

THIS AMENDMENT (hereinafter "Amendment") is made and entered into this _____ day of _____, 20__, by and between Shelby County Government (hereinafter "County") and _____ (hereinafter "_____").

WHEREAS, the parties previously entered into an agreement (hereinafter "Agreement") dated _____, for _____.

WHEREAS, the Agreement has previously been amended by the parties by written instrument on _____.

WHEREAS, the parties now desire to enter into this Amendment to _____.

NOW, THEREFORE, for and in consideration of the mutual promises of the parties to this agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Section ____ of the Agreement entitled _____ is hereby amended to _____.
(or) The Agreement between the parties is hereby renewed for the period beginning _____, 20__, until _____, 20__.
2. The total cost for this renewal period (or) Amendment shall not exceed _____ and 00/100 (\$ _____) Dollars payable in accordance with the terms of the Agreement.
3. _____ **shall not be permitted or authorized to incur costs beyond the extent that purchase orders have been issued on approved contracts and/or purchases prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of County contracts or purchases without prior, expressly written, appropriate authorization pursuant to County purchasing procedures and rules and regulations. County is not obligated to pay nor shall _____ be entitled to receive payments for contract fees and expenses incurred in violation of this provision.**
4. This Amendment shall be subject to and contingent upon adoption of the Fiscal Year 20__-20__ Operating Budget of Shelby County Government by the Board of County Commissioners and approval of the cost for this Amendment within said Operating Budget.
5. The terms and conditions of the original Agreement, except as amended herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment on the

_____ day of _____ 20__.

**APPROVED AS TO FORM
AND LEGALITY:**

SHELBY COUNTY GOVERNMENT

Contract Administrator
Assistant County Attorney

MARK H. LUTTRELL, JR., MAYOR

INSERT ENTITY NAME

By: _____

Title: _____

CORPORATE ACKNOWLEDGMENT

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the _____ the within named bargainor, a corporation, and that he as such _____, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as _____.

WITNESS my hand and official seal at office this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

ADDENDUM NO. 11

SAMPLE MAINTENANCE AGREEMENT

PREVENTATIVE MAINTENANCE SERVICE AGREEMENT

... , for the sum of \$ _____ payable annually in advance, agrees to render 2 regular service inspections, at the address specified below, on the machine(s) listed, and at the annual rate(s) specified; and provide all additional special calls, limited to our normal business hours, at no additional charge for labor or travel.

The following terms and conditions apply:

1. The equipment to be covered is subject to inspection by qualified _____ Service Personnel prior to acceptance of this agreement.
2. _____ agrees to clean, oil, adjust and test each machine during scheduled inspection calls, furnishing all necessary lubricants.
3. _____ agrees to include all parts.
 - a. consumables such as bulbs, printheads, ribbons and cards are not included.
4. _____ agrees to render additional operator instructions, however, only during scheduled service inspection calls or during special calls specifically placed for mechanical adjustment.
5. Loaner systems are included, and in the case of DataCard SP series printers, permanent replacement units may be installed.
6. PMA Customers receive priority service over non-PMA customers.
7. External devices not provided by _____ (i.e. PC's, IO boxes) are not covered under the agreement.
8. This agreement does not cover service and parts required as a result of fire, water, storm, negligence or misuse, power failures, current fluctuations, lighting surges or for any cause external to the equipment. Specification changes, alterations or addition of attachments may require a change in maintenance charges.
9. All service covered by this agreement will be rendered on the users premises, during _____ regular business hours.
 - a. Regular business hours are Monday-Friday, 8:00 a.m. to 5:00 p.m.
11. Travel and labor time for calls after business hours and on Saturdays, Sundays, or holidays are charged to the customer at established rates.
 - a. Second shift rates are 1 1/2 times our normal hourly rate, portal to portal.
 - b. Third shift, Sunday, and holiday rates, are 2 times our normal hourly rate, portal to portal.
12. Service when required, authorized and rendered on additional equipment not covered by this agreement will be charged for at established rates.
9. Service when required, authorized and rendered on additional equipment not covered by this agreement will be charged for at established rates.
10. The terms of this agreement are valid only when _____ approved parts and supplies are used.
11. _____ does not guarantee to be able to supply all parts for equipment that has been out of production over seven (7) years.
12. This agreement shall be effective from _____ to _____ and thereafter can be renewed for successive periods of one year each, subject, however, to the right of either party to terminate the contract at the end of the original or any renewal term by letter to that effect at least thirty (30) days prior to the designated termination date.
13. _____ shall not be liable for loss of use of any of the items of Covered Product(s) or for any loss or damage occasioned by such loss of use or by any failure of any equipment to perform properly. _____ liability hereunder shall be limited to the repair or replacement of any parts of items of covered product(s)

MODEL	SERIAL NUMBER /	DESCRIPTION	ANNUAL RATE
CP80	P70110		
IDCTR Silver	CS52010583		Included
Valcam	114616		Included
We, the undersigned, authorize the periodical inspections and mechanical service referred to by this agreement on the equipment listed above, and on the terms and conditions as herein stated.		TOTAL	

Approved: _____

BY _____
DATE _____

SHELBY COUNTY
160 N. MAIN
MEMPHIS, TN 38103
BY _____

PURCHASE ORDER # _____

GENERAL CONDITIONS FOR CONTRACTING WITH SHELBY COUNTY GOVERNMENT**1. SUBCONTRACTING**

- a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party, provided however permission will not be unreasonably withheld. No subcontracting, assignment, delegation or transfer shall relieve the CONSULTANT from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the CONSULTANT's obligations to its transferors or subcontractors.
- b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

2. CONFLICT OF INTEREST

The CONSULTANT covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The CONSULTANT warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the CONSULTANT in connection with any work contemplated or performed relative to this Contract.

3. CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

4. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- a. CONSULTANT shall indemnify, defend, save and hold harmless the COUNTY, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts occurring from gross negligence or willful defaults that occur in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by the CONSULTANT its subcontractors, agents, employees or assigns and provided however that in no event either party is liable for the following categories of damages: punitive, consequential, indirect, special, loss of use, loss of data, lost profits, lost income, or loss of goodwill. To the extent permitted by Tennessee State Law each party agrees to be responsible for its own acts, errors, or omissions pertaining to this indemnification provision. This indemnification shall survive the termination or conclusion of this Contract.
- b. CONSULTANT expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the CONSULTANT shall in no way limit the responsibility to indemnify, defend, save and hold harmless the COUNTY or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.
- c. The COUNTY has no obligation to provide legal counsel or defense to CONSULTANT or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against CONSULTANT as a result of or relating to performance of the Services under this Contract.
- d. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against CONSULTANT as a result of or relating to performance of the Services under this Contract.
- e. CONSULTANT shall immediately notify the COUNTY of any claim or suit made or filed against CONSULTANT or its subcontractors regarding any matter resulting from or relating to CONSULTANT's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

5. GENERAL COMPLIANCE WITH LAW

- a. The CONSULTANT certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.
- b. The CONSULTANT is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).
- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the CONSULTANT agrees that all actions, whether sounding in contract or in tort, relating to the validity,

construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

6. **NON-DISCRIMINATION**

The CONSULTANT hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the CONSULTANT on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CONSULTANT shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

7. **SUBJECT TO FUNDING**

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

8. **TERMINATION**

This Contract may be terminated by either party by giving reasonable written notice to the other, before the effective date of termination (the "Termination Date"). In the event of such termination, the CONSULTANT shall be paid for all Services provided prior to the Termination Date. If the COUNTY elects to terminate for convenience, then the COUNTY will not be entitled to refund of any fees or other monies paid to consultant.

9. **DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION**

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CONSULTANT, CONSULTANT understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by CONSULTANT due to Services performed pursuant to this Contract is subject to being divulged as a public record in accordance with the laws of the State of Tennessee. Additionally, all books of account and financial records that are specific to the work being performed in accordance with this Contract may be subject to audit by the Director of Administration and Finance of Shelby County Government and/ or its designated appointee, and all records pertaining to the subject matter contained herein must be preserved by CONSULTANT for a period of three (3) years from the date of final payment and for such period, if any, as is required by all applicable laws.

10. **LIVING WAGE ORDINANCE**

In accordance with Ordinance Number 328, commonly referred to as the Living Wage Ordinance, all persons/entities engaged in service contracts with the County, including but not limited to both prime and subcontractors, shall pay a Living Wage to employees for all work performed on said service contract, as defined in the Living Wage Ordinance. Proof of such compensation must be evidenced as required in the Living Wage Ordinance.

ADDENDUM NO. 12

TENNESSEE ATTORNEY GENERAL OPINION
NO. 93-01

Tenn. Op. Atty. Gen. No. 93-01, 1993 WL 349719
(Tenn.A.G.)1Office of the Attorney General
State of Tennessee

Opinion No. 93-01

January 4, 1993

Agreements by Local **Governmental** Entities to
Indemnify Private Parties or other **Governmental**
EntitiesRepresentative Gary Odom
General Assembly of the State of Tennessee
House of Representatives
22 Legislative Plaza
Nashville, TN 37243-0155**QUESTION**Whether local **governmental** entities [FN1] in
Tennessee can by contract indemnify or hold
harmless private parties or other **governmental**
entities.**OPINION**A contract provision which requires that a local
governmental entity indemnify or hold harmless
another **governmental** entity or a private party
beyond the liability imposed upon that entity by law
is unenforceable because it appropriates public
money and abrogates **governmental** immunity
without the authorization of the General Assembly.**ANALYSIS**Local **government** entities are frequently asked to
enter into contracts with state agencies, the United
States and private parties which contain **indemnity** orhold harmless clauses. [FN2] An agreement to
indemnify or hold harmless is a contract of
indemnity requiring the indemnitor to prevent loss to
the indemnitee or to reimburse the indemnitee for all
losses suffered from a designated peril. Pinney v.
Tarpley, 686 S.W.2d 574, 579 (Tenn.App.1984).
Hold harmless agreements are intended to shift the
liability, cost, or loss to one party regardless of actual
or relative fault and regardless of the liability which
might otherwise be imposed by existing legal
principles. Annotation, Tenant's Agreement to
Indemnify Landlord against All Claims as including
Losses Resulting from Landlord's Negligence, 4
A.L.R.4th 798, 800 n. 2. (1981).This office has consistently opined that indemnity
agreements by the state and state agencies to hold
another party harmless are void unless the General
Assembly has authorized the agreement because they
constitute an unauthorized waiver of the State's
sovereign immunity. See, Op.Tenn.Atty.Gen. U82-
008 (Jan. 27, 1982); III Op.Tenn.Atty.Gen. 93 (Jan.
2, 1973). This office has also opined that this
rationale extends to local officials at least where
indemnity of the United States is concerned. See,
Op.Tenn.Atty.Gen. U82-217 (November 10, 1982).There is little judicial authority in Tennessee on the
question of the validity of **indemnity** agreements
executed by local **governmental** entities. In
Wajtasiak v. Morgan County, 633 S.W.2d 488
(Tenn.1982) the Court of Appeals, Eastern Section
held unenforceable the provisions of a contract by
Morgan County to indemnify the state and employees
of the Tennessee Department of Transportation. The
Court reasoned that the language of the agreement
evidenced no intent, express or implied, to indemnify
the state and its employees against their own
negligent acts. Mere general, broad and seemingly all
inclusive language in the indemnifying agreement is
not sufficient to impose liability for the indemnitee's
own negligence. 633 S.W.2d at 390, citing Kellogg
Company v. Sanitors, Inc., 496 S.W.2d 472
(Tenn.1973). The court in Wajtasiak did not address
whether such indemnity agreements may be void for
constitutional reasons; the county admitted the
validity of the contract in its answer. Id. at 490.In Nashville v. Sutherland & Co., 92 Tenn. 335
(1893), property was conveyed to the City of
Nashville for a sewer right of way to drain a pond
near the property of Sutherland & Co. The city paid

cash consideration of \$150.00 and agreed that it would construct the sewer with a suitable valve so that in the event of high water in the river, water would not flow back through the sewer line into Sutherland's property. An unusually high rise in the river caused an overflow through the valve and pipe damaged Sutherland's property. Sutherland sued the city for breach of contract and was awarded damages at trial.

The Court reversed the trial court and held that the contract was ultra vires and that the city could not, in the absence of charter power, bind the city by a guarantee that would in essence make the city insurers of the property. 92 Tenn. at 337. In citing the general rule applicable to ultra vires contracts, the Court stated:

... [t]he agents, officers, or even city council of a municipal corporation cannot bind the corporation by any contract which is beyond the scope of its powers, or entirely foreign to the purposes of the corporation, or which (not being legislatively authorized) is against public policy.

Id. at 338. The Court examined cases from other jurisdictions and cited with approval the following language:

Indemnification against liability must always be regarded as having reference to existing grounds of liability, and not serving to create new ones. Besides, the city could not assume liability for negligence in cases where the law did not already impose a liability. The contract, then, must be construed as covering only cases where an action might be maintained against the city independent of the contract.

92 Tenn. at 342, citing 4 Am & Eng.C.C., 341.

Thus, under the rationale of the Sutherland case, local governmental officials may not by contract assume liabilities for actions that in the absence of such a contract, the entity could not be held liable. By doing so the officials exceed their authority and the contract is ultra vires and void.

The question then is whether an **indemnity** provision in a contract pursuant to which a local **governmental** entity indemnifies another party (private or **governmental**) against its own negligence or the negligence of a third party is outside the authority granted to the local **governmental** entity. We believe it is for the following reasons.

A. An **indemnity** agreement abrogates municipal

immunity.

Article I, Section 17 of the Tennessee Constitution states:

That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suit may be brought against the State in such manner and in such courts as the Legislature may by law direct. Article I, Section 17 has been interpreted as a grant of sovereign immunity to the state and therefore no suit may be maintained against the State absent express authorization from the Legislature. E.g. Coffman v. City of Pulaski, 220 Tenn. 642, 422 S.W.2d 429, 434 (1967). Counties and municipalities operating in their governmental capacity fall within the doctrine of sovereign immunity because they are arms of the State and the State is said to have delegated sovereignty to them. Sovereign Immunity and the Tennessee Governmental Tort Liability Act, 91 Tenn.L.Rev. 885 n. 3. Although it is not clear how the doctrine of sovereign immunity was extended to municipalities, it has been firmly fixed in Tennessee law for over 100 years. Crowe v. John W. Harton Memorial Hosp., 579 S.W.2d 888, 891 (Tenn.App.1979).

The doctrine of municipal sovereign immunity has been strongly criticized in this and other states. [FN3] See, Cooper v. Rutherford County, 531 S.W.2d 783, 785-92 (Tenn.1975) (Henry J., dissenting). However, neither the Tennessee Supreme Court nor the Legislature has moved to abrogate the doctrine except as set forth in the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101, et seq. ("GTLA").

In 1973, the General Assembly passed the GTLA which abolished the distinction between governmental and proprietary functions in tort actions against local governments. Subject to the exceptions contained in the GTLA, a local government is immune from suit regardless of whether its activities are in a governmental or a proprietary capacity. See Crowe, supra at 892.

The legislature has complete command in creating a city and in granting it sovereign immunity. Corporation of Collierville v. Fayette County Election Comm'n., 539 S.W.2d 334 (Tenn.1976). A city cannot divest its self of inherent powers by contract when acting in a governmental capacity. Batson v. Pleasant View Utility Dist., 592 S.W.2d

578, 581 (Tenn.App.1979). The delegation of sovereign power to the municipality is, in itself, an act of sovereignty and can only be made by the constituent body in whom the original power resides, the people, or by the express authority of the legislature, the branch entrusted with the power to delegate sovereignty. See State v. Armstrong, 35 Tenn. 634 (1856).

Just as the General Assembly is the only branch of government authorized to delegate sovereign immunity, it is the only branch authorized to waive sovereign immunity. See Williams v. Register of West Tennessee, 3 Tenn. 214 (1812). The legislature has not expressly authorized local government entities to waive their municipal immunity; therefore, if the local government entity wishes to indemnify private parties or other governmental entities for their own negligence, it must secure the authority of the General Assembly or its actions will be ultra vires.

There are instances in which the legislature has waived the sovereign immunity of the state and local governmental entities in specific circumstances. For example, T.C.A. § 69-2-201 provides:

The state of Tennessee, its departments or agencies, or any governmental entity is hereby authorized, as required by the secretary of the army or the chief of engineers for projects for water resource development and conservation or other purposes to agree to hold and save the United States free from damages due to the construction or operation and maintenance of such projects, except for damages due to the fault or negligence of the United States or its contractors. Under general rules of statutory construction, T.C.A. § 69-2-201 implies that all other hold harmless agreements, whether by the city or the state, are unauthorized.

B. An indemnity agreement potentially violates constitutional and statutory prohibitions regarding the lending of the local government's credit and the appropriation of public money.

Article II, Section 29 of the Tennessee Constitution provides:

... But the credit of no County, City, or Town shall be given or loaned to or in and or any person, company, association, or corporation except upon an election to be first held by the qualified voters of such county, city, or town, and the assent of three-fourths of the votes cast at said election. To the extent that a local governmental entity assumes the risk of liability that might otherwise fall on other parties, it

potentially lends its credit to that party in violation of Article II, Section 29. [FN4] While the "public purpose doctrine" is applicable to this provision, it does not appear to apply to an **indemnity** provision that shifts liability to the local **governmental** entity that would otherwise be imposed on another party. While the subject matter of the contract as a whole may serve the public good, it is difficult to see how an **indemnity** provision benefits the community as a body and is directly related to the functions of **government** and thus for a public purpose.

There are statutory prohibitions against the assumption of unknown liabilities. For example, the statutes relating to fiscal affairs under a city manager-commission charter require that before a contract is entered into the finance director must certify that the city has sufficient funds in its treasury (or safely assured) to meet the obligations under the contract. [FN5] T.C.A. § 6-22-128. A contractual obligation by this form of local government to assume unknown and unlimited liability for claims arising out of the conduct of third parties involves the potential commitment of funds beyond the amounts recoverable under the Governmental Tort Liability Act. Such an obligation presents problems with the ability to certify that funds are available to cover all costs created by the contract. [FN6]

CONCLUSION

Based upon the foregoing, it is our opinion that a local government does not have the power to enter into an indemnity clause which extends its liability beyond that imposed by law because it constitutes an unauthorized unconstitutional act by the entity. Even if the charter grants the power to make contracts, sue, and be sued, that provision does not authorize a local governmental entity to make contracts of all descriptions but only such as are necessary to enable the entity to carry out the purposes for which it was created. 19 Tenn.Juris., Municipal Corporations, § 70. Since the General Assembly has not authorized **indemnity** and hold harmless agreements generally, **indemnity** provisions that seek to impose liabilities for which the local **government** could not be liable independent of the contract are void and unenforceable.

If you have further questions, do not hesitate to contact this Office.

Charles W. Burson
Attorney General and Reporter

John Knox Walkup
Solicitor General

Steven L. West
Assistant Attorney General

[FN1]

For purposes of this opinion the term "local governmental entity" is defined as set forth in Tenn.Code Ann. § 29-20-102(3).

[FN2]

For example, indemnity and hold harmless clauses are frequently found in contracts in which the State or federal government is providing funds to the local government for construction.

[FN3]

See e.g. Ayala v. Philadelphia Board of Education, 453 Pa. 584, 305 A2d 877 (1973). At the time of the Crowe decision cited above, at least 27 states had eliminated municipal immunity by either legislative or judicial action. 579 S.W.2d at 891.

[FN4]

This rationale would not be applicable to the state since it is not a person, company, association or corporation for purposes of this constitutional provision. See, Ransom v. Rutherford County, 123 Tenn. 1, 130 S.W. 1057 (1909).

[FN5]

For a similar provision applicable to the state see T.C.A. § 9-6-113.

[FN6]

It could also be argued that an indemnity provision violates Article II, Section 24 of the Tennessee Constitution which prohibits public money being expended except pursuant to appropriations made by law.

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