

RESOLUTION 21-23

**A RESOLUTION TO AWARD THE CONTRACT TO ONGRADE, LLC/HARAKAS
CONSTRUCTION, INC. FOR THE TOM LUNN ROAD WIDENING PROJECT**

WHEREAS, the City of Spring Hill has identified the need to widen Tom Lunn Road to improve safety while traveling along this important road corridor; and

WHEREAS, the City has contracted with Collier Engineering to provide professional services for the roadway widening design and to oversee construction; and

WHEREAS, Collier Engineering prepared a Request for Proposals for construction services with a bid opening on January 26, 2021; and

WHEREAS, five proposals were received with the apparent low bidder being Ongrade, LLC/Harakas Construction, Inc. with a bid amount of \$1,276,322.74 and an add alternative bid of \$35,000.00 for a total bid of \$1,311,322.74; and

WHEREAS, Collier Engineering has reviewed all proposals and recommends the contract be awarded to Ongrade, LLC/Harakas Construction, Inc. at a total cost of \$1,311,322.74 that includes a bid amount of \$1,276,322.74 and an add alternate bid amount of \$35,000.00; and

WHEREAS, funding for the construction will be expensed from the Adequate Facilities Tax Fund (125-44420-912) with a current budget of \$1,000,000.00; and

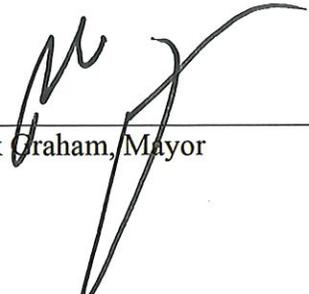
WHEREAS, the total budget appropriation for the project is \$1,510,000.00 and with the bid amount of \$1,311,322.74, the total project cost is estimated to be \$1,681,322.74 that could require a budget amendment in the amount of \$171,322.74 should the amount budgeted for contingency and utilities be fully expended; and

WHEREAS, City staff recommends approval of the construction contract with Ongrade, LLC/Harakas Construction, Inc. in the amount of \$1,311,322.74.

NOW, THEREFORE BE IT RESOLVED, the City of Spring Hill Board of Mayor and Aldermen:

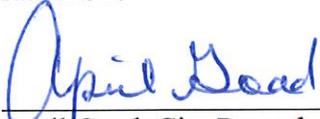
1. Award the contract for the Tom Lunn Road widening project construction to Ongrade, LLC/Harakas Construction, Inc. at a total bid cost of \$1,311,322.74.
2. Authorize the Mayor to sign the Construction Agreement including in the bid book.

Passed and Adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on the 16th day of February, 2021.



Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick Carter, City Attorney

SECTION 008

**LARGE PROJECT UNIT PRICE CONSTRUCTION
CONTRACT BY AND BETWEEN THE
CITY OF SPRING HILL AND**

**FOR THE CONSTRUCTION OF ROADWAY WIDENING
IMPROVEMENTS ALONG TOM LUNN ROAD**

INTRODUCTION

This Unit Price Construction Contract ("Contract") is made and entered into as of the Effective Date hereafter set out by and between the City of Spring Hill, a governmental and public corporation created and existing under and by virtue of the Constitution and laws of the State of Tennessee (hereinafter the "CITY"), and _____ (hereinafter the "CONTRACTOR").

The construction services required by the CITY in this Contract are to be rendered for the construction of roadway widening and roadway improvements along Tom Lunn Road from Port Royal Road to John Lunn Road. (hereinafter "Project" or "Work").

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements stated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY and the CONTRACTOR agree as follows:

1. DOCUMENTS INCORPORATED BY REFERENCE

This Contract includes the plans and specifications for the Project (incorporated herein as Section 009); Bid Documents and Contractor's Bid (incorporated herein as Sections 001, 002, 003, 006, and 007); Supplementary Conditions (incorporated herein as Section 010); Ethical Standards Affidavits (incorporated herein as Sections 004 and 005); Insurance Requirements and Certificate of Insurance (incorporated herein as Section 011); Contractor's Performance Bond (incorporated herein as Section 013); Contractor's Payment Bond (incorporated herein as Section 012); plus the following documents [insert N/A if there are no additional documents]:

all of which are hereby incorporated herein by reference and made a part hereof. Change Orders and Field Authorizations issued hereafter and any other amendments executed by the CITY and the CONTRACTOR on the forms attached hereto and incorporated herein as Sections 015 and 016 shall become and be a part of this Contract. Documents not included or expressly contemplated in this Paragraph 1 do not, and shall not, form any part of this Contract.

2. REPRESENTATIONS OF THE CONTRACTOR

In order to induce the CITY to execute this Contract and recognizing that the CITY is relying thereon, the CONTRACTOR, by executing this Contract, makes the following express representations to the CITY:

(A) The CONTRACTOR is fully qualified to act as the CONTRACTOR for this Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the CONTRACTOR for, and to construct, the Project;

(B) The CONTRACTOR has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated;

(C) The CONTRACTOR has received, reviewed and carefully examined all of the documents which make up this Contract, including, but not limited to, the plans and specifications, and has found them to be generally sufficient to indicate and convey understanding of the terms and conditions for constructing and completing the Project, and the CONTRACTOR further agrees to notify the ENGINEER immediately of all conflicts, errors, ambiguities or discrepancies that are discovered in the Contract, including, but not limited to, the plans and specifications;

(D) The CONTRACTOR had access to the site for examinations, explorations, tests, and studies prior to submitting Contractor's Bid, and relied exclusively upon the CONTRACTOR'S own estimates and investigations and other data which was necessary for full and complete information upon which the Contractor's Bid was based.

3. EMPLOYMENT

The CONTRACTOR is prohibited from discriminating against any individual due to race, creed, color, national origin, age, or gender and from violating any applicable laws concerning the employment of individuals with disabilities. The CONTRACTOR agrees to execute the Fair Employment Affidavit included herewith evidencing the CONTRACTOR'S compliance with this policy.

4. ETHICAL STANDARDS

(A) It shall be a breach of ethical standards for any person to offer, give or agree to give any CITY employee or former CITY employee, or for any CITY employee or former CITY employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore.

(B) It shall also be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(C) It shall also be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or to secure a contract with the CITY upon the agreement or understanding for a contingent commission, percentage or brokerage fee, except for the retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(D) The CONTRACTOR affirms that it has not retained anyone in violation of this Paragraph 4. A breach of ethical standards is a material breach of this Contract and could result in civil or criminal sanctions and/or debarment or suspension from being a contractor or subcontractor under contracts with the CITY.

(E) The CONTRACTOR shall execute the Ethical Standards Affidavit incorporated herein as Section 004.

5. WAGE RATE

The CONTRACTOR shall not pay less than the minimum wage rate for all types and classifications of any work performed under this Contract, such rates being those established for the City of Spring Hill. The minimum wage rates must be posted at the Project job site. Failure to pay the minimum wage rate is a material breach of this Contract.

6. INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Contract, the CITY and the CONTRACTOR agree as follows:

(A) This Contract, which includes the documents listed in Paragraph 1 (Documents Incorporated By Reference), constitutes the entire and exclusive agreement between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements. This Contract also supersedes any bid documents (unless incorporated herein in Paragraph 1);

(B) Unless specifically stated to be the responsibility of the CITY, anything that may be required, implied, or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the CONTRACTOR for the Contract Price. Specifications stating that the CONTRACTOR shall perform any particular responsibility at CONTRACTOR'S own cost and/or expense shall not imply that any other obligation or responsibility of the CONTRACTOR is not to be performed at CONTRACTOR'S cost and expense.

It is the intent of the Specifications and Drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials, or equipment such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of opening of Bids (or, on the effective date of the Contract if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of the CITY, the CONTRACTOR or the ENGINEER, or any of their agents or employees from those set forth in the Contract Documents.

(C) Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the CITY and any person except the CONTRACTOR;

(D) Whenever a word, term or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

(E) The words "include", "includes" or "including", as used in this Contract shall be deemed to be followed by the phrase, "without limitation";

(F) The specifications herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract;

(G) The CONTRACTOR shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings and other submittals and shall give written notice to the CITY and the ENGINEER of any conflict, ambiguity, error or omission which the CONTRACTOR may find with respect to these documents before proceeding with the affected work. The express or implied approval of the CITY or the ENGINEER of any shop drawings or other submittals shall not relieve the CONTRACTOR of the continuing duties imposed hereby, nor shall any such approval be evidence of the CONTRACTOR'S compliance with this Contract. The CITY has requested the ENGINEER to prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated, and sufficient for construction in addition to the other duties of ENGINEER enumerated herein;

(H) In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:

- (1) As between figures given on plans and scaled measurements, the figures shall govern;
- (2) As between large scale plans and small scale plans, the large scale plans shall govern;
- (3) As between plans and specifications, the requirements of the specifications shall govern;
- (4) As between this document and the plans or specifications, this document shall govern.
- (5) As between this document and any Exhibit, this document shall govern.

(I) The ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder. Claims, disputes and other matters relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work shall be referred initially to the ENGINEER in writing with a request for a formal decision in accordance with this paragraph, which the ENGINEER will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter shall be delivered by the claimant to the ENGINEER and the other party to the Agreement within fifteen (15) days of the occurrence of the event giving rise thereto, and written supporting data will be submitted to the ENGINEER and the other party within forty-five (45) days of such occurrence unless the ENGINEER allows an additional period

of time to ascertain more accurate data. In his capacity as interpreter and judge the ENGINEER will not show partiality to the CITY or the CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used, to describe requirement, direction, review or judgment of the ENGINEER as to the work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise).

7. OWNERSHIP OF PROPERTY

The following shall remain the property of the CITY:

- (A) All documents which make up this Contract as set forth in Paragraph 1;
- (B) All other documents furnished by the CITY;
- (C) All shop drawings and other submittals by the CONTRACTOR, including Change Orders (see Paragraph 21); and,
- (D) All other original works of authorship, whether created by the CITY, the ENGINEER, or the CONTRACTOR, embodied in any tangible medium of expression, including, without limitation, pictorial, graphic, sculptural works, two dimensional works, and three dimensional works.

The CONTRACTOR shall have the right to keep one (1) copy of the aforementioned documents upon completion of the Project; provided, however, that in no event shall the CONTRACTOR use, or permit to be used, any portion of the aforementioned on other projects without the CITY'S prior written authorization. Neither the CONTRACTOR nor any subcontractor, manufacturer, fabricator, supplier or distributor shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of the ENGINEER; and they shall not reuse any of them on extensions of the Project or any other project without written consent of the CITY and the ENGINEER and specific written verification or adaptation by the ENGINEER.

8. CONTRACTOR'S PERFORMANCE

The CONTRACTOR shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

- (A) Construction of the Project;
- (B) The furnishing and maintenance of any required surety bonds and insurance;
- (C) The provision or furnishing, and the prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities required for construction and all necessary building permits and other permits required for the construction of the Project, including any use and occupancy or similar permit(s) that may be required before the completed Project may be put in use; and

(D) The creation and submission to the CITY, bound in hardback notebooks of five (5) sets of all manuals, operating instructions, bonds, warranties, guarantees, maintenance instructions, et cetera. Said information shall be submitted to the CITY upon final completion of the Project and receipt of same by the CITY shall be a condition precedent to final payment to the CONTRACTOR.

9. TIME FOR CONTRACTOR'S PERFORMANCE

(A) The CONTRACTOR shall commence the performance of this Contract ("Commencement of Work Date") within ten (10) calendar days after the date of issuance to the CONTRACTOR of a Notice to Proceed by the CITY or the ENGINEER, however, in no event shall the Notice to Proceed be issued or performance commence prior to the Effective Date of this Contract as hereafter set out. Once timely commenced, the CONTRACTOR shall diligently continue its performance to and until final completion of the Project. The CONTRACTOR shall accomplish Substantial Completion of the Project within one hundred eighty (180) calendar days after the date that the Notice to Proceed is issued. The CONTRACTOR shall accomplish Final Completion of the Project within fifteen (15) calendar days after the date that Substantial Completion is accomplished.

(B) The term "Substantial Completion" as used herein shall mean that point at which, as certified in writing by the ENGINEER, the Project is at a level of completion in strict compliance with this Contract such that the CITY or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete and such partial use or occupancy shall not be evidence of Substantial Completion. The term "Final Completion" as used herein shall mean that point at which, as certified in writing by the ENGINEER, that the Project is 100% complete and in conformance with the Contract.

(C) Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion;

(D) The CITY will suffer financial loss, in addition to any increased costs of completion of the Project, if the Project is not Substantially Complete within the time period set forth in Subparagraph 9(A). The CONTRACTOR and Contractor's Surety shall be liable for and shall pay to the CITY as liquidated damages to compensate for the losses and damages suffered by any delay, and not as penalty, the sum of Five Hundred Dollars (\$500.00) for each calendar day of delay until the Project is Substantially Complete. Such liquidated damages do not include any additional costs of this Project caused by delay (such as additional costs of construction, additional architect or engineer fees or other liquidated costs) and the CONTRACTOR, in addition to liquidated damages for the cost of delay itself, shall be liable to the CITY for same. The CONTRACTOR agrees that the Contract time and the amount established by this Paragraph for liquidated damages are reasonable and are in addition to all other remedies available to the CITY;

(E) The CITY will suffer financial loss, in addition to any increased costs of completion of the Project, if the CONTRACTOR fails to achieve Final Completion within the time period set forth in Subparagraph 9(A). The CONTRACTOR and Contractor's Surety shall be liable for and shall pay to the CITY as liquidated damages to compensate for the losses and damages suffered by any delay, and not as penalty, the sum of Five Hundred Dollars (\$500.00) for each calendar day of delay until the Project is Finally Complete. Such liquidated damages do not include any additional costs of this Project caused by delay (such as additional costs of construction, additional engineer fees or other liquidated costs) and the CONTRACTOR, in addition to liquidated damages for the cost of delay itself, shall be liable to the CITY for same. The CONTRACTOR agrees that the Contract time and the amount established by this Paragraph for liquidated damages are reasonable and are in addition to all other remedies available to the CITY; and,

(F) All limitations of time set forth herein are material and are of the essence of this Contract.

10. COMPENSATION (UNIT PRICE)—AMOUNT AND PROCEDURES

(A) The CITY shall pay and the CONTRACTOR shall accept, as full and complete payment for the CONTRACTOR'S timely performance of its obligations hereunder, the unit prices outlined in Section 007. It is estimated that the total price is _____ Dollars (\$_____). The price estimate set forth in this Subparagraph 10(A) shall constitute the Contract Price but be modified by Change Orders as provided in this Contract. The CONTRACTOR agrees that the contract price is subject to upward and downward revision to reflect variation in expected quantities of unit price work, use of allowances, increases, and decreases in the scope of work and other changes contemplated by and made in accordance with the terms of this Contract. Notwithstanding any other provision of this Contract, the CONTRACTOR is not guaranteed to earn any minimum amount of compensation. Rather, the total amount of compensation the CONTRACTOR may earn under this Contract shall be based on the total number of authorized and approved units of work performed.

(B) PAYMENT TO CONTRACTORS. The CONTRACTOR will receive payments based on estimates to the CITY. No payment will be made to the CONTRACTOR until the estimate is checked and approved by the ENGINEER and the STATE. Payment will be made to the CONTRACTOR after the CITY has received payment from the STATE. Estimates shall be submitted no more than twice for each structure and shall be based on work performed during the estimate period. The estimate shall only include material and labor for work that has been completed at the time that the estimate is prepared. Each estimate shall be submitted on the Payment Request Form attached hereto as Section 014.

(C) The CITY shall pay the CONTRACTOR in accordance with the procedures set forth in this Paragraph 10. Therein, the CONTRACTOR may request payment for ninety-five percent (95%) of that part of the Contract Price allocable to Contract requirements properly provided, labor and materials. Five percent (5%) will be retained from each payment by CITY until CONTRACTOR has reached Final Completion. As a condition precedent to payment, the CONTRACTOR shall, if required by the CITY, also furnish to the CITY properly executed waivers of lien or other claims, in a form acceptable to the CITY, from all subcontractors, materialmen, suppliers or others having lien or other claim rights, wherein said subcontractors, materialmen, suppliers or others having lien or other claim rights shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project. Each Payment Request shall be signed by the CONTRACTOR and notarized and shall constitute the CONTRACTOR'S representation that the quantity of work has reached the level for which payment is requested, that the work has been properly installed or performed in strict compliance with this Contract and that the CONTRACTOR knows of no reason why payment should not be made as requested. The submission by the CONTRACTOR of a Payment Request also constitutes an affirmative representation and warranty that all work for which the CITY has previously paid is free and clear of any lien, claim or other encumbrance of any person whatsoever. Furthermore, the CONTRACTOR warrants and represents that, upon payment of the Payment Request submitted, title to all work, materials and equipment included in such payment shall be vested in the CITY. Thereafter, the ENGINEER shall review the Payment Request and may also review the work at the Project site or elsewhere to determine whether the quantity and quality of the work, materials and equipment are as represented by the Payment Request and are as required by this Contract. The ENGINEER shall approve in writing the amount which, in the opinion of the ENGINEER, is properly owing to the CONTRACTOR. The CITY shall make every attempt to make payment to the CONTRACTOR within thirty (30) days following the ENGINEER'S written approval of a Payment Request. The amount of each such payment shall be the amount approved for payment by the ENGINEER less such amounts, if any, otherwise owing by the CONTRACTOR to the

CITY or which the CITY shall have the right to withhold as authorized by this Contract. The ENGINEER'S approval of the CONTRACTOR'S Payment Requests shall not preclude the CITY from the exercise of any of its rights as set forth in Subparagraph 10(H) below.

(D) The ENGINEER'S recommendation of any payment requested in an Application for Payment will constitute a representation by the ENGINEER to the CITY, based on the ENGINEER'S on-site observations of the work in progress as an experienced and qualified design professional and on the ENGINEER'S review of the Application for Payment and the accompanying data and schedules that the work has progressed to the point indicated; that, to the best of the ENGINEER'S knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation; and that the CONTRACTOR is entitled to payment of the amount recommended less retainage as explained in Subparagraph 10(C). However, by recommending any such payment the ENGINEER will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the work, or that the means, methods, techniques, sequences and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose the CONTRACTOR has used the moneys paid or to be paid to the CONTRACTOR on account of the Contract Price, or that title to any work, materials or equipment has passed to the CITY free and clear of any liens.

(E) The ENGINEER may refuse to recommend the whole or any part of any payment if, in his opinion, it would be incorrect to make such representations to the CITY. He may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended to such extent as may be necessary in the ENGINEER'S opinion to protect the CITY from loss because:

- (1) the work is defective, or completed work has been damaged requiring correction or replacement;
- (2) written claims have been made against the CITY or liens have been filed in connection with the work;
- (3) the CITY has been required to correct defective work or complete the work in accordance with Paragraph 22;
- (4) of the CONTRACTOR'S unsatisfactory prosecution of the work in accordance with the Contract Documents; or
- (5) the CONTRACTOR'S failure to make payment to subcontractors, or for labor, materials, or equipment.

(F) When payment is received from the CITY, the CONTRACTOR shall within fourteen (14) calendar days pay all subcontractors, materialmen, laborers, and suppliers the amounts they are due for the work covered by such payment. In the event the CITY becomes informed that the CONTRACTOR has not paid a subcontractor, materialman, laborer or supplier as provided herein, the CITY shall have the right, but not the duty, to issue future checks and payments to the CONTRACTOR of amounts otherwise due hereunder naming the CONTRACTOR and any such subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the CITY, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the CITY to repeat the procedure in the future.

(G) Neither payment to the CONTRACTOR, utilization of the Project for any purpose by the CITY, nor any other act or omission by the CITY shall be interpreted or construed as an acceptance of any work of the CONTRACTOR not strictly in compliance with this Contract.

(H) The CITY shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the CONTRACTOR due to:

- (1) The quality of a portion, or all, of the CONTRACTOR'S work not being in accordance with the requirements of this Contract;
- (2) The quantity of the CONTRACTOR'S work not being as represented in the CONTRACTOR'S Payment Request, or otherwise;
- (3) The CONTRACTOR'S rate of progress being such that, in the CITY'S opinion, Substantial or Final Completion, or both, may be inexcusably delayed;
- (4) The CONTRACTOR'S failure to use Contract funds, previously paid the CONTRACTOR by the CITY, to pay the CONTRACTOR'S Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
- (5) Claims made, pending, or known against the CITY or its property in relation to this contract or the acts or omissions of the CONTRACTOR or any of its subcontractors;
- (6) Loss caused by the CONTRACTOR; and,
- (7) The CONTRACTOR'S failure or refusal to perform any of its obligations to the CITY.

In the event that the CITY makes written demand upon the CONTRACTOR for amounts previously paid by the CITY as contemplated in this Subparagraph 10(H), the CONTRACTOR shall promptly comply with such demand.

(I) If within forty-five (45) days from the date payment to the CONTRACTOR is due, the CITY, without cause or basis hereunder, fails to pay the CONTRACTOR any amount then due and payable to the CONTRACTOR, the CONTRACTOR shall have the right to cease work until receipt of proper payment after first providing ten (10) days written notice to the CITY of the CONTRACTOR'S intent to cease work.

(J) When Substantial Completion has been achieved, the CONTRACTOR shall notify the CITY and the ENGINEER in writing and shall furnish to the ENGINEER a listing of those matters yet to be finished. The ENGINEER will thereupon conduct an inspection to confirm that the work is in fact Substantially Complete. Upon its confirmation that the CONTRACTOR'S work is Substantially Complete, the ENGINEER will so notify the CITY and the CONTRACTOR in writing and will therein set forth the date of Substantial Completion. If the ENGINEER, through its inspection, finds that the CONTRACTOR'S work is not Substantially Complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the CONTRACTOR shall bear the cost of such repeat inspection(s) which cost may be deducted by the CITY from any payment then or thereafter due to the CONTRACTOR. Upon Substantial Completion, the CITY shall pay the CONTRACTOR an amount sufficient to increase total payments to the CONTRACTOR to one hundred percent (100%) of the Contract Price less any amounts attributable to liquidated damages and deductions including deduction of one hundred and twenty-five percent (125%) of the reasonable costs as determined by the CITY for completing all incomplete work, correcting and bringing into conformity all defective and nonconforming work, and handling any outstanding or threatened claims.

(K) When the Project is Fully Complete and the CONTRACTOR is ready for a final inspection, it shall notify the CITY and the ENGINEER thereof in writing. Thereupon, the ENGINEER will perform a final inspection of the Project. If the ENGINEER confirms that the Project is complete in full accordance with this Contract and that the CONTRACTOR has performed all of its obligations to the CITY hereunder, the ENGINEER will furnish a final Approval for Payment to the CITY certifying to the CITY that the Project is complete and the CONTRACTOR is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the ENGINEER finds that the Project is not Fully Complete and is required to repeat all or any part of its final inspection of the Project, the CONTRACTOR shall bear the cost of such repeat inspection(s), which costs may be deducted by the CITY from the CONTRACTOR'S final payment.

(L) When the CITY reasonably believes that Substantial Completion or Final Completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving Substantial Completion or Final Completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable, as liquidated damages less any liquidated damages to which the CITY is entitled.

(M) Prior to being entitled to receive final payment, and as a condition precedent thereto, the CONTRACTOR shall furnish the CITY, in the form and manner required by the CITY, if any, with a copy to the ENGINEER:

- (1) An affidavit that all of the CONTRACTOR'S obligations to subcontractors, laborers, equipment, and material suppliers and other third parties in connection with the Project have been paid or otherwise satisfied;
- (2) Separate releases of claims or claim waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has or might have a claim against the CITY or the payment bond;
- (3) Consent(s) of surety to final payment; and,
- (4) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the CONTRACTOR, or expressly required herein, as part of or prior to Project close-out.

(N) The CITY shall, subject to its rights set forth in Subparagraph 10(M) above, make every attempt to make final payment of all sums due the CONTRACTOR within forty-five (45) days of the ENGINEER'S execution of a final Approval for Payment.

(O) Use by the CITY of completed portions of the work may be accomplished prior to Substantial Completion of all the work subject to the following:

- (1) The CITY at any time may request the CONTRACTOR in writing to permit the CITY to use any part of the work which the CITY believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the work. If the CONTRACTOR agrees, the CONTRACTOR will certify to the CITY and the ENGINEER that said part of the work is Substantially Complete and request the ENGINEER

to issue a certificate of Substantial Completion for that part of the work. Within a reasonable time thereafter the CITY, the CONTRACTOR and the ENGINEER shall make an inspection of that part of the work to determine its status of completion. If the ENGINEER does not consider that part of the work to be Substantially Complete, the ENGINEER will notify the CITY and the CONTRACTOR in writing giving his reasons therefore. If the ENGINEER considers that part of the work to be Substantially Complete, the ENGINEER will execute and deliver to the CITY and the CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the work, attaching thereto a tentative list of items to be completed or corrected before final payment. Prior to issuing a certificate of Substantial Completion as to part of the work the ENGINEER will deliver to the CITY and the CONTRACTOR a written recommendation as to the division of responsibilities pending final payment between the CITY and the CONTRACTOR with respect to security, operation, safety, maintenance, utilities and insurance for that part of the work which shall become binding upon the CITY and the CONTRACTOR at the time of issuing the definitive certificate of Substantial Completion as to that part of the work unless the CITY and the CONTRACTOR shall have otherwise agreed in writing and so informed the ENGINEER. The CITY shall have the right to exclude the CONTRACTOR from any part of the work which the ENGINEER has so certified to be Substantially Complete, but the CITY shall allow the CONTRACTOR reasonable access to complete or correct items on the tentative list.

- (2) In lieu of the issuance of a certificate of Substantial Completion as to part of the work, the CITY may take over operation of a facility constituting part of the work whether or not it is Substantially Complete if such facility is functionally and separately useable; provided that prior to any such takeover, the CITY and the CONTRACTOR have agreed as to the division of responsibilities between the CITY and the CONTRACTOR for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

11. INFORMATION AND MATERIAL SUPPLIED BY THE CITY

(A) The CITY shall furnish to the CONTRACTOR, prior to the execution of this Contract, any and all written and tangible material known by the CITY to be in its possession concerning conditions above or below ground at the site of the Project. Such written and tangible material is furnished to the CONTRACTOR only in order to make complete disclosure of such material as being known to be in the possession of the CITY and for no other purpose. By furnishing such material, the CITY does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. The CITY shall also furnish, if appropriate, the legal description of the Project site and any required survey.

(B) The CITY does not represent, warrant, or guarantee the accuracy, either in whole, in part, implicitly or explicitly, or at all, of any estimates provided in this Contract or in the Invitation to Bid for this Contract, and shall have no liability therefore.

(C) The CITY shall obtain all required authorizations, approvals, and the like, excluding the building permit and other permits or fees required of the CONTRACTOR by this Contract or permits and fees customarily the responsibility of the CONTRACTOR. The CITY shall furnish, as indicated in the Contract Documents, the lands upon which the work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the CITY, unless otherwise

provided in the Contract Documents. If the CONTRACTOR believes that any delay in the CITY furnishing these lands or easements entitles him to an extension of the Contract Time, the CONTRACTOR may make a claim therefore as provided in Paragraph 21. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

12. CEASE AND DESIST ORDER

In the event the CONTRACTOR fails or refuses to perform the work as required herein, the CITY may instruct the CONTRACTOR to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the CONTRACTOR shall immediately cease and desist as instructed by the CITY and shall not proceed further until the cause for the CITY'S instruction has been corrected, or no longer exists, or the CITY instructs that the work may resume. In the event the CITY issues such instruction to cease and desist and in the further event that the CONTRACTOR fails and refuses within seven (7) days of receipt of same to provide adequate assurances to the CITY that the cause for such instruction will be eliminated or corrected, then the CITY shall have the right, but not the obligation, to carry out the work with its own force or with the forces of another contractor, and the CONTRACTOR shall be fully responsible and liable for the costs of performing such work. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the CITY may have against the CONTRACTOR.

13. DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

In addition to any and all other duties, obligations and responsibilities of the CONTRACTOR set forth in this Contract, the CONTRACTOR shall have and perform the following duties, obligations, and responsibilities to the CITY, at the CONTRACTOR'S expense:

- (A) The CONTRACTOR has the continuing duties set forth in Subparagraph 6(G) which are by reference hereby incorporated in this Subparagraph 13(A). The CONTRACTOR shall not perform work without adequate plans and specifications, or, as appropriate, approved shop drawings or other submittals. If the CONTRACTOR performs work knowing or under circumstances that the CONTRACTOR should reasonably have known it involves an error, inconsistency or omission in the Contract without first providing written notice to the ENGINEER and the CITY, the CONTRACTOR shall be responsible for such work and pay the cost of correcting same;
- (B) All work shall strictly conform to the requirements of this Contract;
- (C) The CONTRACTOR shall strictly supervise the work and bear full responsibility for any and all acts or omissions of those engaged in the work on behalf of the CONTRACTOR;
- (D) The CONTRACTOR hereby warrants that all labor furnished under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only high quality results, that all materials and equipment provided shall be new and of high quality, that the completed work will be complete, of high quality and without defects, and that all work strictly complies with the requirements of this Contract. Where lesser grades are required by the specifications, the phrase "high quality" shall refer to the spectrum of quality possible within the grade(s) specified. Any work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the CONTRACTOR'S warranty;

(E) The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the work. If the CONTRACTOR observes that the Specifications or Drawings are at variance therewith, the CONTRACTOR shall give the ENGINEER prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. If the CONTRACTOR performs any work knowing or having reason to know that it is contrary to such laws, ordinances, rules and regulations, and without such notice to the ENGINEER, the CONTRACTOR shall bear all costs arising therefrom; however, it shall not be the CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations. The CONTRACTOR shall comply with all legal requirements applicable to the work, and shall obtain and pay for all required permits, fees and licenses customarily obtained by a Contractor. Any required permits for sites used for the disposal and/or stockpiling of material must be obtained, and copies must be provided by the CONTRACTOR to the CITY before the Notice to Proceed will be issued. The CONTRACTOR shall be responsible for any costs of moving materials, including illegally stored materials;

(F) The CONTRACTOR shall employ and maintain at the Project site only competent supervisory personnel. The CITY reserves the right to require the CONTRACTOR to remove any individual from the Project when in the CITY'S judgment said individual is detrimental to the Project. Key supervisory personnel assigned by the CONTRACTOR to this Project are as follows:

Name	Function
_____	_____
_____	_____
_____	_____
_____	_____

The CONTRACTOR shall identify with an asterisk ("*") one of the individuals above as being accessible twenty-four hours a day in the event of an emergency, and shall provide the ENGINEER and the CITY with the information to so contact that person. So long as the individuals named above remain actively employed or retained by the CONTRACTOR, they shall perform the functions indicated next to their names unless the CITY agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the CONTRACTOR shall be bound by the provisions of this Subparagraph 13(F) as though such individuals had been listed above. All communications given to the superintendent or to those identified above shall be as binding as if given to the CONTRACTOR;

(G) The CONTRACTOR, within ten (10) calendar days of the commencement of work date, shall submit for approval to the CITY and the ENGINEER the CONTRACTOR'S Project Schedule for completing the work. Such Project Schedule shall be in a form acceptable to the ENGINEER and the CITY. The CONTRACTOR'S Project Schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be submitted for approval to the CITY and the ENGINEER. The CONTRACTOR shall comply with the Project Schedule and any revision once same is approved. Strict compliance with the requirements of this Subparagraph 13(G) shall be a condition precedent to payment to the CONTRACTOR and failure by the CONTRACTOR to strictly comply with said requirements shall constitute a material breach of this Contract;

(H) The CONTRACTOR shall keep an updated copy of this Contract at the site. Additionally, the CONTRACTOR shall keep a copy of the Plans, Specifications, each Reference Standard, approved shop drawings and other submittals at the site. All of these items shall be available to the CITY and the

ENGINEER at all regular business hours. Upon completion of the work, all of these items shall be finally updated and provided to the CITY and shall become the property of the CITY;

(I) Shop drawings and other submittals from the CONTRACTOR do not constitute a part of this Contract, unless approved as part of a Change Order or other approval process in accordance with Paragraph 21. The CONTRACTOR shall not do any work requiring shop drawings or other submittals unless such have been approved in writing by the ENGINEER. All work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the ENGINEER or the CITY shall not be evidence that work installed pursuant thereto conforms with the requirements of this Contract. The CITY and the ENGINEER shall have no duty to review partial or incomplete submittals. The CONTRACTOR shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection and the reason for the approval or rejection. The CONTRACTOR shall have the duty to carefully review, inspect and examine any and all submittals before submission of same to the CITY or the ENGINEER. The CONTRACTOR shall reimburse the CITY for any ENGINEER fees that are incurred as a result of partial or incomplete submittals;

(J) The CONTRACTOR shall maintain the Project site in a reasonably clean condition during performance of the work. Upon final completion, the CONTRACTOR shall thoroughly clean the Project site of all debris, trash and excess materials or equipment. The CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment;

(K) The CONTRACTOR shall furnish such watchmen, guards, fences, warning signs, lights, walkways, and shall take all other precautions as shall be necessary, to prevent damage to persons or property. All traffic control devices shall meet the requirements of the "Manual on Uniform Traffic Control Devices". All operations performed under this CONTRACT shall be conducted in such a manner and sequence as to cause the least practical interference with the traveling public, fire protection and other emergency services or public utility service. The CONTRACTOR shall provide vehicular access at all times to existing residences located on haul route or adjoining work areas. All structures and improvements in the vicinity of the work shall be protected by the CONTRACTOR; and, if such property is damaged, injured or destroyed by the CONTRACTOR, the CONTRACTOR'S employees, subcontractors, or agents, it shall be restored to a condition as good as when the CONTRACTOR entered upon the work.

The CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- (1) all employees on the work and other persons who may be affected thereby;
- (2) all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site; 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.

The CONTRACTOR shall comply with all applicable laws, including but not limited to O.S.H.A. and T.O.S.H.A., ordinances, rules, regulations, building and construction codes and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and

shall erect and maintain all necessary safeguards for such safety and protection. The CONTRACTOR shall notify owners of adjacent property and utilities when prosecution of the work may affect them. All damages, injury or loss to any property referred to in this Subparagraph 13(K) caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by the CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the CITY or the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR). The CONTRACTOR'S duties and responsibilities for the safety and protection of the work shall continue until such time as all the work is completed and the ENGINEER has issued a notice to the CITY and the CONTRACTOR in accordance with Paragraph 10 that the work is acceptable;

(L) Unless otherwise indicated in the Contract Documents, or unless otherwise taken care of by the owner thereof, all utilities and all structures of any nature, whether below or above ground, that may be affected by the work, shall be protected and maintained by the CONTRACTOR and shall not be disturbed or damaged by the CONTRACTOR during the progress of the work. Should the CONTRACTOR disturb, disconnect, or damage any utility or any structure, all expenses of whatever nature arising from such disturbance or the replacement or repair thereof shall be borne by the CONTRACTOR;

(M) At all times relevant to this Contract, the CONTRACTOR shall permit the CITY and the ENGINEER to enter upon the Project site and to review or inspect the work without formality or other procedure;

(N) The CONTRACTOR shall be responsible for payment, at its own expense, of any and all costs, including moving and/or transportation costs, related to off-site storage of materials;

(O) The CONTRACTOR shall make changes that are ordered by the ENGINEER which do not involve a change in the Contract Price, do not involve a change in the time for the CONTRACTOR'S performance, and are consistent with the intent of this Contract. The CONTRACTOR shall also have made or permit to be made any inspections or testing, in addition to those required in the plans and Specifications, that are required by the ENGINEER as appropriate to ensure compliance with the requirements of this Contract.

(P) The means and methods of construction, including safety precautions and programs related to safety, are the sole responsibility of the CONTRACTOR.

(Q) The CONTRACTOR, and not the CITY, shall be responsible for payment of all taxes, including sales and use taxes that are imposed on the CONTRACTOR. The CONTRACTOR understands that the CITY is exempt from many or all taxes, and that the CONTRACTOR is not entitled to the benefit of, and cannot claim exemption under, any tax exemption to which the CITY is entitled.

(R) Before undertaking each part of the work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The CONTRACTOR shall promptly report in writing to the ENGINEER any conflict, error or discrepancy which the CONTRACTOR may discover; however, the CONTRACTOR shall not be liable to the CITY or the ENGINEER for failure to report any conflict, error or discrepancy in the Drawings or Specifications, unless the CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

(S) Except in connection with the safety or protection of persons or the work or property at the site or adjacent thereto; and except as otherwise indicated in the Supplementary Conditions, all work at the site shall be performed during regular working hours, and the CONTRACTOR will not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday without the CITY'S written consent given after prior written notice to the ENGINEER.

(T) All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier, or distributor, except as otherwise provided in the Contract Documents.

(U) The CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the CONTRACTOR subject any part of the work or adjacent property to stresses or pressures that will endanger it.

(V) If any part of the CONTRACTOR'S work depends for proper execution or results upon the work of any such other contractor or utility service company (or the CITY), the CONTRACTOR shall inspect and promptly report to the ENGINEER in writing any patent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. The CONTRACTOR'S failure so to report shall constitute an acceptance of the other work as fit and proper for integration with the CONTRACTOR'S work except for latent and non-apparent defects and deficiencies in the other work.

(W) The CONTRACTOR shall do all cutting and fitting of its work that may be required to make its several parts come together properly and integrate with such other work. The CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the ENGINEER and the third party whose work will be affected.

14. HAZARDOUS MATERIALS AND WASTE

Unless otherwise specified in the plans and specifications, it is the responsibility of the CITY to remove and dispose of pre-existing hazardous materials or waste that are at the project site. Hazardous materials and waste include asbestos, polychlorinated biphenyl (PCB), petroleum, and radioactive material. It is the responsibility of the CONTRACTOR to immediately notify the CITY and the ENGINEER as soon as any hazardous materials or waste are discovered.

15. INDEMNITY

The CONTRACTOR shall indemnify, defend, and hold the CITY and the ENGINEER harmless from any and all claims, liability, damages, penalties, loss, cost, and expense of every type whatsoever including, without limitation, attorney fees and expenses, arising in connection with the CONTRACTOR'S performance of this Contract. The CONTRACTOR shall also indemnify, defend and hold the CITY and the ENGINEER harmless from any claims, damages, penalties, costs and attorney fees arising from any action brought against the CITY by any of the CONTRACTOR'S officers, employees and/or agents arising out of any injury incurred by such officer, employee and/or agent in the course of the performance of this Contract, regardless of the cause of such injury. To the extent caused by the CONTRACTOR or anyone for whose acts the CONTRACTOR may be liable, the CONTRACTOR shall be liable for such claims, liability, damage, loss, cost or expense due to sickness, personal injury, disease or death, or the loss or destruction of tangible property (other than the work itself), including loss of use resulting therefrom, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the CITY or the ENGINEER.

16. THE PROJECT ENGINEER

The ENGINEER for this Project is Collier Engineering, Inc. The CONTRACTOR shall be notified in writing of any change of the ENGINEER. Unless the CONTRACTOR is otherwise advised by the CITY in writing, the ENGINEER shall act as the CITY'S representative from the Effective Date of this Contract until final payment has been made.

(A) The ENGINEER shall furnish the CONTRACTOR with five (5) sets of Plans and one (1) set of Specifications. ENGINEER will not furnish copies of Reference Standards. CONTRACTOR is responsible for acquiring any necessary Reference Standards;

(B) The CITY and the CONTRACTOR shall communicate with each other in the first instance through the ENGINEER;

(C) Requests for interpretations necessary for the proper execution or progress of the work shall be submitted to the ENGINEER;

(D) Requests and recommendations for Change Orders shall be submitted to the ENGINEER;

(E) Shop drawings and other submittals shall be submitted to the ENGINEER;

(F) The CONTRACTOR shall be responsible for making requests to the ENGINEER for required inspections; and,

(G) THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS CONTRACT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED OR SATISFIED BY ANY DUTY, OBLIGATION OR RESPONSIBILITY OF THE ENGINEER. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY CONTRACT BY AND BETWEEN THE CITY AND THE ENGINEER. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO THE CITY ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE ENGINEER TO THE CITY.

(H) The ENGINEER will review and approve with reasonable promptness Shop Drawings and samples, but the ENGINEER'S review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. The CONTRACTOR shall make any corrections required by the ENGINEER and shall return the required number of corrected copies of Shop Drawings and resubmit new samples for review and approval. The CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by the ENGINEER on previous submittals. The CONTRACTOR'S stamp of approval on any Shop Drawing or sample shall constitute a representation to the CITY and the ENGINEER that the CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that the CONTRACTOR has reviewed or coordinated each Shop Drawing or sample with the requirements of the work and the Contract Documents.

(I) The ENGINEER'S review and approval of Shop Drawings or samples shall not relieve the CONTRACTOR from responsibility for any deviations from the Contract Documents unless the CONTRACTOR has in writing called the ENGINEER'S attention to such deviation at the time of submission and the ENGINEER has given written concurrence and approval to the specific deviation, nor shall any concurrence or approval by the ENGINEER relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.

(J) The ENGINEER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the Contract Documents. The ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. The ENGINEER'S efforts will be directed toward providing for the CITY a greater degree of confidence that the completed work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, the ENGINEER will keep the CITY informed of the progress of the work and will endeavor to guard the CITY against defects and deficiencies in the work.

(K) Neither the ENGINEER'S authority to act under this Paragraph 16 or elsewhere in the Contract Documents nor any decision made by the ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the ENGINEER to the CONTRACTOR, any subcontractor, any manufacturer, fabricator, supplier or distributor, or any of their agents or employees or any other person performing any of the work.

17. CLAIMS BY THE CONTRACTOR

Claims by the CONTRACTOR against the CITY are subject to the following terms and conditions:

(A) All CONTRACTOR claims, including any claim for an extension of time, against the CITY shall be initiated by a written claim submitted to the CITY and the ENGINEER. Such claim shall be received by the CITY and the ENGINEER no later than ten (10) calendar days after the event, or the first appearance of the circumstances causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim;

(B) The CONTRACTOR and the CITY shall continue their performance hereunder regardless of the existence of any claim submitted by the CONTRACTOR;

(C) The CONTRACTOR bears the risk of (1) subsurface or otherwise concealed physical conditions which do not differ materially from those indicated in the Contract Documents taking into account that unless otherwise stipulated in Contract, excavations and other subsurface construction activity shall be unclassified down to design depth, regardless of substrate and abandoned or inactive infrastructures, and (2) unknown physical conditions which do not differ materially from those ordinarily found to exist and are generally recognized as inherent in construction activities of the character provided for in the Contract, and (3) the location of utilities. No change shall be made in the Contract Price as a result of the foregoing risks borne by the CONTRACTOR. Changes in the Contract Price may be made, pursuant to Paragraph 21, if increased costs will result from risks not borne by the CONTRACTOR, including conditions that require redesign in order for the Project to be completed.

(D) In the event the CONTRACTOR seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the CITY therefore the CONTRACTOR shall strictly comply with the requirements of Subparagraph 17(A) above and such claim shall be made by the CONTRACTOR before proceeding to execute any additional or changed work. Failure of the condition precedent to occur shall constitute a waiver by the CONTRACTOR of any claim for additional compensation;

(E) In connection with any claim, not covered by Change Order, by the CONTRACTOR against the CITY for compensation in excess of the Contract Price, any liability of the CITY for the CONTRACTOR'S cost shall be strictly limited to direct cost incurred by the CONTRACTOR and shall in no event include indirect cost or consequential damages of the CONTRACTOR. The CITY shall not be liable to the CONTRACTOR for claims of third-parties including subcontractors; and,

(F) In the event the CONTRACTOR should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission of the CITY or someone acting on the CITY'S behalf, or by the CITY authorized Change Orders, unusually bad weather not reasonably anticipated, fire or other Acts of God, the date for achieving Substantial Completion, or, as applicable, Final Completion, shall be appropriately adjusted by the CITY upon the written claim of the CONTRACTOR to the CITY and the ENGINEER. A task is critical within the meaning of this Subparagraph 17(F) if, and only if, said task is on the critical path of the Project Schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the CONTRACTOR shall strictly comply with the requirements of Subparagraph 17(A) above. If the CONTRACTOR fails to make such claim as required in this Subparagraph 17(F), any claim for an extension of time shall be waived. Further, extensions of time shall be the CONTRACTOR'S sole remedy for any and all delays. No payment or compensation of any kind shall be made to the CONTRACTOR for damages because of hindrance in the orderly progress of the Work or delay from any cause in the progress of the Work, whether such hindrances or delays be avoidable or unavoidable. The CONTRACTOR expressly agrees not to make, and hereby waives, any claim for damages on account of any delay, obstruction or hindrance attributable to any cause whatsoever and agrees that the CONTRACTOR'S sole right and remedy in the case of any delay, obstruction or hindrance, shall be an extension of the time unit for completion of the Contract.

18. WAIVER OF RIGHTS

The CITY and the CONTRACTOR waive all rights against each other and the subcontractors and their agents and employees and against the ENGINEER and separate contractors (if any) and their subcontractors' agents and employees, for damages caused by fire or other perils to the extent covered by insurance provided under Paragraph 26, inclusive, or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such insurance held by the CITY as trustee. The CONTRACTOR shall require similar written waivers from each subcontractor.

19. UNFORESEEN PHYSICAL CONDITIONS

The CONTRACTOR shall promptly notify the CITY and the ENGINEER in writing of any subsurface or latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the Contract Documents. The ENGINEER will promptly review those conditions and advise the CITY in writing if further investigation or tests are necessary. Promptly thereafter, the CITY shall obtain the necessary additional investigations and tests and furnish copies to the ENGINEER and the CONTRACTOR. If the ENGINEER finds that the results of such investigations or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by the CONTRACTOR, a Change Order shall be issued incorporating the necessary revisions.

20. SUBCONTRACTORS

(A) Upon execution of this Contract, the CONTRACTOR shall identify to the CITY and the ENGINEER, in writing, any subcontractor not previously identified on the Project. The CITY shall, in writing, state any objection the CITY may have to one or more of such subcontractors. The CONTRACTOR shall not enter into a subcontract with an intended subcontractor with reference to whom the CITY objects. Should a proposed subcontractor that was listed on Contract Exhibit B when the CONTRACTOR'S bid was submitted (this sentence does not apply to subcontractors listed after that time) be disapproved, and the CONTRACTOR provides proof that the replacement subcontractor will charge the CONTRACTOR a higher price than the disapproved subcontractor, then the Contract Price may be adjusted at a rate equal to the difference between the price charged the CONTRACTOR by the new subcontractor and the price charged by the disapproved subcontractor. Failure of the CITY to object to the subcontractor shall not impose on the CITY any liability or responsibility for the performance or character of said subcontractor. All subcontracts shall afford the CONTRACTOR rights against the subcontractor which correspond to those rights afforded to the CITY against the CONTRACTOR herein, including those rights of Contract termination as set forth in Paragraph 25.

(B) The CONTRACTOR shall be fully responsible for all acts and omissions of its subcontractors and of persons and organization directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that the CONTRACTOR is responsible for the acts and omissions of persons directly employed by the CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between the CITY or the ENGINEER and any subcontractor or other person or organization having a direct contact with the CONTRACTOR, nor shall it create any obligation on the part of the CITY or the ENGINEER to pay or to see to the payment of any moneys due any subcontractor or other person or organization, except as may otherwise be required by law. The CITY or the ENGINEER may furnish to any subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to the CONTRACTOR on account of specific work done.

(C) The divisions and sections of the Specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the work among subcontractors or delineating the work to be performed by a specific trade.

(D) All work performed for the CONTRACTOR by a subcontractor will be pursuant to an appropriate agreement between the CONTRACTOR and the subcontractor which specifically binds the subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the CITY and the ENGINEER.

21. CHANGE ORDERS

Changes to the work within the general scope of this Contract may be ordered by Field Authorization or Change Order and must be on the Field Authorization attached hereto as Section 015 or Change Order Form attached hereto as Section 016. To be authorized and implemented, all Change Orders shall be signed by the CONTRACTOR, the City Mayor, the applicable Public Works Director, and the City Budget Director prior to the CONTRACTOR proceeding with any such change(s). In addition the ENGINEER may order minor changes--those that do not involve a change in the Contract Price exceeding the Field Allowance outlined in subparagraphs 21(A) and (B) below and do not involve a change in the time for the CONTRACTOR'S performance--that the ENGINEER deems necessary for performance of and are consistent with the intent of this Contract in the form of a Field Authorization. The CONTRACTOR shall proceed with any such change(s).

(A) Field Authorizations:

- (1) Class I--routine--any in-scope change that does not exceed the field allowance described below.
- (2) Class II--urgent--delay in progress could be financially detrimental to CITY, i.e., crews and equipment on site being held up due to overrun on an item (gravel, pavement, remobilization, et cetera).
- (3) Class III--emergency--this is defined as any needed action that if not performed could result in jeopardizing the safety of the general public or result in property damage.

(B) Field Allowance:

ORIGINAL CONTRACT PRICE	FIELD ALLOWANCE*
0 to \$49,999.99	\$5,000.00 or 1.5% of Original Contract Price, whichever is greater
\$50,000.00 to \$999,999.99	\$10,000.00 or 2.5% of Original Contract Price, whichever is greater
\$1,000,000.00 to \$1,999,999.99	\$25,000.00
\$ 2,000,000.00+	1.25% of Original Contract Price

*cumulative

(C) Change Orders:

- (1) Change Orders shall be prepared by the CONTRACTOR and approved by the ENGINEER, the City Mayor, the applicable Public Works Director, and the City Budget Director
- (2) Prior to final payment, a Statement shall be prepared by the CONTRACTOR that reflects all changes to the Contract Price.

(D) Changes to the Contract Price shall be determined as follows:

- (1) If unit prices that apply to the work are included in the Contract, the unit prices shall be used; and
- (2) If there are no unit prices in the Contract that apply to the work, then CONTRACTOR shall supply a quote and it shall be compared to either RS means or TDOT Standard Unit Pricing for the current year, whichever is less shall govern; however, all shall be subject to the final approval of ENGINEER, if Field Authorization, and by ENGINEER and CITY, if a Change Order, as outlined in subparagraph 21(C);

(E) The performance of work in accordance with any minor changes by ENGINEER pursuant to this Paragraph or pursuant to a properly executed Field Authorization or Change Order by the CONTRACTOR shall constitute conclusive evidence of the CONTRACTOR'S agreement to the ordered changes in the work

and this Contract as thus amended, including the Contract Price and the time for performance by the CONTRACTOR. The CONTRACTOR, by executing the Field Authorization or Change Order, waives and forever releases any claim against the CITY for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Field Authorization or Change Order; and,

(F) The CONTRACTOR shall notify and obtain the consent and approval of the CONTRACTOR'S surety with reference to all Change Orders. The CONTRACTOR'S execution of the Change Order shall constitute the CONTRACTOR'S warranty to the CITY that the surety has been notified of and consents to such Change Order, and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

(G) Prior to final payment, a Change Order shall be prepared that reflects all changes to the Contract Price, whether resulting from Field Authorizations or bonus payments that are not already reflected in a Change Order. Change Orders are not required for withholdings by the CITY that are authorized under this CONTRACT.

(H) The CITY shall not be liable for any price increase that requires a Change Order in accordance with this Paragraph 21 if no Change Order was approved as required in Paragraph 21.

22. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

(A) In the event that the CONTRACTOR covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the CITY or the ENGINEER, such work shall be uncovered and displayed for the CITY'S ENGINEER'S inspection upon request and shall be reworked at no cost in time or money to the CITY.

(B) If any of the work is covered, concealed, or obscured in a manner not covered by Subparagraph 22(A) above, it shall, if directed by the CITY or the ENGINEER, be uncovered and displayed for the CITY'S or the ENGINEER'S inspection. If the uncovered work conforms strictly with this Contract, the costs incurred by the CONTRACTOR to uncover and subsequently replace such work shall be borne by the CITY. Otherwise, such costs shall be borne by the CONTRACTOR.

(C) The CONTRACTOR shall, at no cost in time or money to the CITY, correct work rejected by the CITY or by the ENGINEER as defective or failing to conform to this Contract. Additionally, the CONTRACTOR shall reimburse the CITY for all testing, inspections and other expense incurred as a result thereof.

(D) In addition to its warranty obligations set forth elsewhere herein, the CONTRACTOR shall be specifically obligated to correct any and all defective or nonconforming work without additional compensation for a period of twelve (12) months following Final Completion upon written notice from the CITY.

(E) The CITY may, but shall in no event be required to, choose to accept defective or nonconforming work. In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the

unpaid Contract Price, if any, is insufficient to compensate the CITY for the acceptance of the defective or nonconforming work, the CONTRACTOR shall, upon written demand from the CITY, pay the CITY such remaining compensation for accepting defective or nonconforming work.

23. TERMINATION BY THE CONTRACTOR

If the CITY repeatedly fails to perform its material obligations to the CONTRACTOR for a period of thirty (30) days after receiving written notice from the CONTRACTOR of its intent to terminate hereunder, the CONTRACTOR may terminate performance under this Contract by written notice to the CITY and the ENGINEER. In such event, the CONTRACTOR shall be entitled to recover from the CITY as though the CITY had terminated the CONTRACTOR'S performance under this Contract for convenience pursuant to Subparagraph 25(A) below.

24. THE CITY'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

(A) The CITY shall have the right at any time to direct the CONTRACTOR to suspend the performance, or any designated part thereof, for any reason whatsoever, or without reason. If any such suspension is directed by the CITY, the CONTRACTOR shall immediately comply with same and shall demobilize as directed by the CITY.

(B) In the event the CITY directs a suspension of performance under this Paragraph 24, through no fault of the CONTRACTOR, the CITY shall pay the CONTRACTOR as full compensation for such suspension the CONTRACTOR'S reasonable costs, actually incurred, and paid, of:

- (1) demobilization and remobilization, including such costs paid to subcontractors,
- (2) preserving and protecting work in place,
- (3) storage of materials or equipment purchased for the Project, including insurance thereon; and,
- (4) performing in a later or during a longer, time frame than that contemplated by this Contract.

25. TERMINATION BY THE CITY

The CITY may terminate this Contract in accordance with the following terms and conditions:

(A) The CITY may, for any reason whatsoever, terminate performance or any designated part thereof under this Contract by the CONTRACTOR for convenience. The CITY shall give written notice of such termination to the CONTRACTOR specifying when termination becomes effective. The CONTRACTOR shall incur no further obligations in connection with the work and the CONTRACTOR shall stop work when such termination becomes effective. The CONTRACTOR shall take such action as the CITY may direct, for the protection, preservation and/or return of the property related to this Contract which is in the possession of the CONTRACTOR and in which the CITY has or may acquire an interest. The CONTRACTOR shall also terminate outstanding orders and subcontractors. The CONTRACTOR shall settle the liability and claims arising out of the termination of subcontractors and orders. The CITY may direct the CONTRACTOR to assign the CONTRACTOR'S right, title and interest under termination orders or subcontracts to the CITY or its designee. The CONTRACTOR shall transfer title and deliver to the CITY such completed or partially completed work and materials, equipment, parts, fixtures, information, and contract rights as the CONTRACTOR has. When terminated for convenience, the CONTRACTOR shall be compensated as follows:

- (1) The CONTRACTOR shall submit a Termination Claim to the CITY and the ENGINEER specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the CITY or the ENGINEER. If the CONTRACTOR fails to file a termination claim within one (1) year from the effective date of termination, the CITY shall pay the CONTRACTOR an amount derived in accordance with Subparagraph 25(A)(3) below;
- (2) The CITY and the CONTRACTOR may agree to the compensation, if any, due to the CONTRACTOR hereunder;
- (3) Absent agreement to the amount due to the CONTRACTOR, the CITY shall pay the CONTRACTOR the following amounts:
 - (a) Contract prices for labor, materials, equipment, and other services accepted under this Contract;
 - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work and in terminating the CONTRACTOR'S performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the CONTRACTOR would not have profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any; and,
 - (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to this Subparagraph 25(A). These costs shall not include amounts paid in accordance with other provisions hereof.
- (4) The total sum to be paid the CONTRACTOR under this Subparagraph 25(A) shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

(B) If the CONTRACTOR does not perform the work, or any part thereof, in a timely manner, respond to the CITY within three (3) working days, be on site within ten (10) working days, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the CITY, in addition to any other rights it may have against the CONTRACTOR or others, may terminate the performance of the CONTRACTOR and assume possession of the Project site and of the materials and equipment at the site and may complete the work. In such case, the CONTRACTOR shall not be paid further until the work is complete. After final completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the CITY of completing the work, including all costs and expenses of every nature incurred, has been deducted by the CITY, such remainder shall belong to the CONTRACTOR. Otherwise, the CONTRACTOR shall pay and make whole the CITY for such cost. This obligation for payment shall survive the termination of this Contract. In the event the employment of the CONTRACTOR is terminated by the CITY for cause pursuant to this Subparagraph 25(B), and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 25(A) and the provisions of Subparagraph 25(A) shall apply.

(C) Should funding for this Contract be discontinued, the CITY shall have the right to terminate the Contract or any designated part thereof upon written notice to the CONTRACTOR. When terminated for unavailability of funds, the CONTRACTOR shall be compensated in accordance with the provisions described in Subparagraphs 25(A)(1) through (3).

26. INSURANCE

The CONTRACTOR shall have and maintain insurance in accordance with the requirements of Section 011 attached hereto and incorporated herein by reference. The required certificate(s) of insurance must be provided by the CONTRACTOR and approved by the CITY before the Notice to Proceed can be issued and before the CONTRACTOR can commence performance.

27. SURETY BONDS

The CONTRACTOR shall furnish separate payment and performance bonds to the CITY in the forms attached hereto as Sections 012 and 013. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the CONTRACTOR shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Orders executed by the CONTRACTOR, the penal sum of both the performance bond and the payment bond shall be deemed adjusted by like amount. The performance and payment bonds furnished by the CONTRACTOR shall be in a form suitable to the CITY and shall be executed by a surety, or sureties, licensed to do business in Tennessee and reasonably acceptable to the CITY. Bonds shall be accompanied by a power of attorney indicating that the person executing the bond is doing so on behalf of the surety. The power of attorney shall have been conferred upon the attorney-in-fact prior to the date of the bond. The power of attorney shall show the date of appointment of the attorney-in-fact and that the appointment and powers have not been revoked and remain in effect.

If the Surety for any Bond furnished by the CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of this Paragraph 27, the CONTRACTOR shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to the CITY.

28. PROJECT RECORDS

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the CONTRACTOR, or any subcontractor of the CONTRACTOR shall be made available to the CITY or the ENGINEER for inspection and copying upon written request by the CITY. Furthermore, said documents shall be made available, upon request by the CITY, to any state, federal or other regulatory authority and any such authority may review, inspect, and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the cost of construction by the CONTRACTOR, including all subcontracts and payroll records of the CONTRACTOR and subcontractors. The CONTRACTOR shall maintain and protect these documents for no less than four (4) years after final completion of the Project or for a longer period of time as may be required by law or good construction practice. The CONTRACTOR shall also retain, for no less than four (4) years after final completion of the Project, all working papers and other documents utilized by the CONTRACTOR in

preparing the bid for the Contract. In the event of litigation, said working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this Paragraph is a material breach of this Contract.

29. APPLICABLE LAW/VENUE

The validity, construction, and effect of this Contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Any action concerning this Contract shall be brought in a court in Maury County, Tennessee.

30. SUCCESSORS AND ASSIGNS

The CONTRACTOR shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the CITY. Subject to the provisions of the immediately preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

31. INTELLECTUAL PROPERTY

(A) The CONTRACTOR shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against the CITY and/or the ENGINEER to the extent that it is based on a claim that the products or services furnished infringe a United States (federal or state) copyright, patent or trademark. The CONTRACTOR shall further indemnify and hold harmless the CITY against any award of damages and costs made against the CITY by a final judgment of a court of last resort in any such suit. The CITY and/or the ENGINEER shall provide the CONTRACTOR immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance, and authority to enable the CONTRACTOR to do so. No costs or expenses shall be incurred for the account of the CONTRACTOR without its written consent. The CITY reserves the right to participate in the defense of any such action. The CONTRACTOR shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon the CITY unless approved by the City Mayor, the City's Attorney and, where required, the City's Board of Mayor & Alderman.

(B) If, in CONTRACTOR'S opinion, the products or services furnished under this Contract are likely to, or do become, the subject of a claim of infringement of a United States (federal or state) copyright, patent or trademark, then without diminishing CONTRACTOR'S obligation to satisfy the final award, the CONTRACTOR may at its option and expense:

- (1) Procure for the CITY the right to continue using the products or services.
- (2) Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the CITY, so that they become non-infringing.
- (3) Remove the products or discontinue the services and cancel any future charges pertaining thereto.
- (4) Provided, however, that the CONTRACTOR will not exercise the option in Subparagraph 31(B)(3) until the CONTRACTOR and the CITY have determined that the options in Subparagraphs 31(B)(1) and (B)(2) are impractical.

(C) The CONTRACTOR shall have no liability to the CITY, however, if any such copyright, patent or trademark infringement or claim thereof is based upon or arises out of:

- (1) The use of the products or services in combination with apparatus or devices not supplied or otherwise approved by the CONTRACTOR.
- (2) The use of the products or services in a manner for which the products or services were neither designated nor contemplated.
- (3) The claimed infringement of any copyright, patent or trademark in which the CITY has any direct or indirect interest by license or otherwise, separate from that granted herein.

32. NOTICES

Notices to the CITY shall be sent to:

Attention: Mayor Rick Graham
City of Spring Hill
Address: 199 Town Center Parkway
Spring Hill, TN 37174

Attention: Missy Stahl, CMFO
City of Spring Hill
Address: 199 Town Center Parkway
Spring Hill, TN 37174

Notices to the CONTRACTOR shall be sent to:

Attention: _____

Address: _____

Notices to the ENGINEER shall be sent to:

Attention: Jeffrey D. Stevens, P.E.
Collier Engineering Co., Inc.
Address: 2949 Nolensville Pike
Nashville, TN 37211

33. CITY PROPERTY

Any CITY property, including but not limited to books, records and equipment that is in the CONTRACTOR'S possession shall be maintained by the CONTRACTOR in good condition and repair, and shall be returned to the CITY by the CONTRACTOR upon termination of the Contract. All goods, documents, records, and other work product and property produced during the performance of this Contract are deemed to be the CITY property.

34. MODIFICATION OF CONTRACT

This Contract may be modified only by written amendment executed by all parties and their signatories hereto.

35. PARTNERSHIP/JOINT VENTURE

Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this Paragraph. No party shall become liable for any representation, act, or omission of any other party contrary to the terms of this Paragraph.

36. WAIVER

No waiver of any provision of this Contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

37. ENTIRE CONTRACT

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

38. FORCE MAJEURE

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any unforeseeable and unavoidable act of God, storm, fire, casualty, unforeseeable work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

39. SEVERABILITY

Should any provision of this Contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Contract, if the purposes of the Contract can reasonably be fulfilled.

40. DISPUTE RESOLUTION

The parties agree to make a reasonable effort to informally resolve, among themselves and with the assistance of the ENGINEER, disputes that may arise during the performance of this Contract in a timely, professional, and non-adversarial manner. In an effort to limit any disputes, the parties agree to periodically meet and evaluate the progress of performance under this Contract. Any agreements reached by the parties utilizing these informal dispute resolution procedures are not binding unless the agreement is contained in an amendment to the Contract that is executed in accordance with Paragraph 21. The CITY and the CONTRACTOR may exercise such rights or remedies as either may otherwise have with respect to any dispute. Nothing in this provision shall create any right of either party to alternative dispute resolution, arbitration, mediation or partnering.

41. DRUG FREE WORKPLACE

If applicable, the CONTRACTOR agrees to abide by all requirements set forth in Tennessee Code Annotated, Section 50-9-113, by establishing a drug free workplace program and to execute the Drug Free Affidavit included herewith as Section 005 evidencing CONTRACTOR'S compliance.

42. HEADINGS

The headings in this Contract are for convenience and reference and are not intended to define or limit the scope of any provision of this Contract.

43. CONTRACTOR'S LICENSE

The CONTRACTOR swears, affirms, and represents that it has complied with all the provisions of the Contractors Licensing Act of 1976 of the State of Tennessee, the same being set out in Tennessee Code Annotated, 62-6-101 et seq., and that it is licensed by the State Board of Licensing Contractors. Said Board is authorized to receive complaints relative to the CONTRACTOR'S professional conduct. Its license number is _____, the date of expiration is ____/____/201____, and that part of the classification applying to this agreement is _____.

44. SIGNATURES

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have hereunto set their hands and seals on the separate Signature Sheets attached hereafter (pages ____ and ____) as of the Effective Date, which date is the day all necessary officials of each party have executed this CONTRACT, the signature of the CONTRACTOR has been notarized and this Contract has been filed in the Office of the City Mayor.

CITY OF SPRING HILL, TENNESSEE:



Rick Graham, Mayor

APPROVED AS TO FORM AND LEGALITY:



City Attorney

CONTRACTOR :

By: _____

Title: _____

Sworn to and subscribed to before me, a
Notary Public, this _____ day of
_____, 201__, by

_____, the

_____ of Contractor and
duly authorized to execute this instrument
on Contractor's behalf.

Notary Public
My Commission Expires _____

AFFIDAVITS

State of _____ County of _____

Fair Employment Practices Affidavit: After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the _____ (Offeror) and that by its employment policy, standards, and practices the Offeror does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal, or laying off of any individual due to his/her race, creed, color, national origin, age, or sex, and that the Offeror is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

And Further Affiant sayeth not:

By: _____
Title: _____
Address: _____

Sworn to and subscribed before me on this _____ day of _____, 201__.

Notary Public
My commission expires: _____