

City of Madison, Alabama
Finance Department—Competitive Purchasing Division
INVITATION TO BID
#2022-012-ITB / BRIDGE REPAIR MADISON BOULEVARD
Issued November 17, 2022

AGREEMENT FOR GENERAL CONTRACTING SERVICES

THIS AGREEMENT made and entered into by and between **Miller and Miller Inc.** hereinafter “Contractor,” and the City of Madison, Alabama, a Municipal Corporation, hereinafter “City” or “Owner.”

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

In consideration of the mutual agreements and provisions contained in this Agreement, the Contractor and the City agree in regard to a public works project (hereinafter the "Project") as described in the Invitation to Bid.

The Contractor shall construct the Base Bid for the Project as well as furnish at its own cost and expense all labor, tools, equipment, materials, and transportation as are required to be furnished by the Contractor, and shall perform the work in the manner and form required to construct the Project as it is more specifically described in this Agreement and as provided by the plans, specifications, and documents, all of which are incorporated into this Agreement by reference, and all addenda together with all plans and drawings on file in the City of Madison Legal Department and the City of Madison Engineering Department.

ARTICLE I. GENERALLY

A. Contract. As used throughout these documents, the term "Contract" means and includes all of the following documents regarding this ITB: Advertisement for Bids, each issued Addendum, any Instructions to Bidders, the submitted Bid, all General Specifications, any Detail Specifications, Supplemental and Special Conditions (if attached), together with this Agreement and any modifications, including Change Orders, if made, and the drawings, plans, and profiles now on file with the City Attorney and City Representative, as well as all guaranties and sureties posted by Bidder/Contractor in connection with this Contract and all insurance certificates.

All documents listed in this section are adopted by this reference and constitute a part of this Agreement to the same extent as if each were set out in full.

B. Independent Contractor. City and Contractor hereby state that it is the express mutual intent of the parties that an independent contractor relationship be, and hereby is, established under the terms and conditions of this Agreement. Both parties further mutually understand and agree that employees of the Contractor are not nor shall they be deemed employees of the City and that employees of the City are not nor shall they be deemed employees of the Contractor. In no event shall the Contractor attempt to commit, promise, or obligate the name or resources of the City in any manner whatsoever.

C. Order of Precedence. Where more than one document relates to the same matter, if both can be given reasonable effect both are to be retained. In the event of conflict, the City Representative shall determine which document, term, or specification governs.

D. Integration; Contract Terms and Construction.

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

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

1. Words of masculine, feminine, or neutral gender include the correlative words of other genders. Singular terms include the plural as well as the singular, and vice versa.
2. All references in this Agreement to designated "articles," "sections," and other subdivisions or to lettered appendices are to the designated articles, sections and subdivisions hereof and the appendices attached hereto unless expressly otherwise designated in context. All article, section, and other subdivision and appendix captions are used for reference only and do not limit or describe the scope or intent of, or in any way affect, this agreement.

3. The terms “include,” “including,” and similar terms are construed as if followed by the phrase, “without being limited to”.
4. All recitals set forth in, and all appendices to, this agreement are hereby incorporated into this agreement by reference.
6. No inference in favor of or against any party shall be drawn from the fact that such party or such party’s counsel has drafted any portion hereof.
7. All references in this Agreement to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.
8. Each provision of this Agreement shall be considered to be severable and if for any reason any such provision or any part thereof is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

F. Coordination of Plans, Specifications. The specifications, plans, drawings, and all supplementary documents are essential parts of the Contract, and requirements occurring in one are as binding as though occurring in all. They are intended to be comprehensive to describe and provide a complete work. Should any portions of the plans, specifications, or drawings be obscure or in dispute, they shall be referred to the City Representative, and he shall decide the true meaning and intent. The City Representative shall also have the right to correct any errors or omissions at any time when such corrections are necessary for the proper fulfillment of said plans and specifications.

G. Taxes and Charges. Contractor shall withhold and pay all sales and use taxes and all withholding taxes, whether local, state, or federal, and pay all Social Security taxes and also all State Unemployment Compensation taxes, and pay or cause to be withheld, as the case may be, any and all taxes, charges, or fees or sums whatsoever, which are now or may hereafter be required to be paid or withheld under any laws. Pursuant to *Ala. Code* §39-1-3 (1975), Contractor shall be reimbursed for any additional severance, sales, or uses taxes incurred as a result of an increase in the rate of such taxes imposed during performance of the Contract, measured from the time Contractor submitted the successful Bid until completion of the Contract.

H. Shop Drawings and Submittals. The Contractor shall submit to the City Representative any requested shop drawings, samples, and submittals depicting or representing the construction of portions of the Project in accordance with the plans and specifications. The Contractor shall pay for, or the cost may be withheld from payments to the Contractor for, no more than two (2) reviews of the shop drawings, samples, submittals, or similar element of work by the City Representative.

I. Alabama Immigration Law. By signing this Contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law. Contractor has provided a written certification of compliance with *Ala. Code* § 31-13-9 (1975, as amended) by submitting proof of enrollment in the E-Verify program and by signing the “Immigration Law Compliance Statement” which is included in the Invitation to Bid.

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees and court costs), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations set forth in this section or contained in Ala. Code § 31-13-1 (1975), et seq.

J. Open Trade. By signing this contract, Contractor represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

ARTICLE II. PAYMENTS, CLAIMS, CHARGES, ETC.

A. Contract Price. The City will pay and the Contractor will accept in full consideration for the performance of the Project payment in accordance with the unit prices set forth in Contractor's accepted Bid, the total amount of compensation, subject to additions and deductions as provided in this Agreement will not to exceed **four hundred forty-eight thousand two hundred fifty-seven dollars (\$448,257.00)**.

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

C. Overtime Work by Contractor. If the Contractor, for his convenience and at his own expense, should desire to carry on his work outside the hours of 7:00am to 7:00pm local time, Monday through Friday, he shall submit written notice to the City Representative and he shall allow ample time for satisfactory arrangements to be made for inspecting the work in progress. At no time shall the notice be given less than twenty-four (24) hours before such overtime work is started. The Contractor must obtain, through the City Representative, the City's approval for work outside the specified hours or on Saturdays, Sundays, or legal holidays. The Contractor shall light the different parts of the Project as required to comply with all applicable federal and state regulations and with all applicable requirements of the City.

In general, the City's Inspectors are subject to being present at all times that the Contractor is working. Therefore, if the Contractor elects to schedule and perform overtime work, the Contractor shall pay the City for the City's Inspector's salary and reimbursable expenses for each hour of overtime incurred by the City's Inspector as a result of Contractor's performance outside the hours set forth above. Overtime shall be rounded up to the nearest whole hour. This amount shall include the Inspector's salary at his overtime rate and the labor additive, which includes insurance, social security, workmen's compensation, sick pay, paid holidays, vacation pay, and his vehicle and equipment. Payment to the City shall be made by an equal deduction from the amount due on a subsequent invoice submitted by Contractor for payment.

D. Payments to Contractor, Retainage. City shall make partial payments to Contractor of the billable work performed less payments already made and less deductions for any incomplete, unaccepted, or defective work. In making partial payments to the Contractor, there shall be retained five percent (5%) of the estimated amount of work done and of the estimated value of materials stored on the site or suitably stored and insured off-site. Contractor may apply for payment for work performed by submitting to the City Representative an application for payment showing the status of the Contract sum to date, including the total dollar amount of the Project

completed to date; the amount of retainage (if any); the total of previous payments; a summary of Change Orders; and the amount of current payment requested. If properly completed and acceptable to the City Representative, he shall affix his signature and certify to the City that payment in the amount indicated is due to Contractor. However, if, upon inspection of the Work performed, the City Representative finds that the payment requested is not appropriate given the Work completed, the City Representative may certify an amount different than the amount applied for and provide an explanation therefor.

Once fifty percent (50%) of the Project has been satisfactorily completed, no further retainage will be withheld. Retainage shall be held until final completion and acceptance of all Work covered by the Contract unless escrow or deposit arrangements are agreed to by the City. When maintenance periods are included in the Contract covering highways, bridges, or similar structures, such period shall be considered a component part of the Contract and retainage will be held until the expiration of such periods.

At the conclusion of the Project and upon Contractor's completion of the Project, Contractor shall present a verified application for payment. On completion and acceptance of each separately identifiable portion of the Project for which a separate price has been stated in the Contract or which can be separately ascertained, payment may be made in full including retainage but less deductions.

All materials and work covered by partial payments as provided for in this Agreement shall become the sole property of the City, but the Contractor shall maintain the sole responsibility for the care and protection of materials and Work upon which payments have been made and for the restoration of any damaged Work.

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

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

- a. Defective work.
- b. Evidence indicating probable filing of claims by other parties against the Contractor.
- c. Failure of the Contractor or its subcontractor to promptly make payments to subcontractors or for materials, labor, food stuffs, and supplies.
- d. Damage to another contractor under separate contract with the City.
- e. Assessment of liquidated damages.

In the absence of same, applications for payment will be verified by the City Representative and/or approved for amounts not previously verified and approved because of their presence.

At any time during the term of this Contract or any extensions thereof, Contractor shall not attempt to withdraw, without the express written consent of the City, the whole or any part of the amounts so retained by the

City from payments due the Contractor by the establishment of an escrow account or by depositing securities in lieu thereof pursuant to *Ala. Code* §39-2-12(e) or (f), or any amendments thereto or any equivalent law, ordinance, or regulation. It is expressly agreed between the parties hereto that should the City elect not to consent to the same, then the Contractor shall not withdraw, attempt to withdraw, or in any manner whatsoever endeavor to withdraw such retained amounts.

E. Differing Site Conditions. If, in the performance of the Contract, subsurface or latent conditions are found to be materially different from those indicated by the plans and specifications, or unknown conditions of an unusual nature are disclosed which differ materially from conditions usually inherent in work of the character shown and specified, the Contractor shall immediately notify the City Representative in writing regarding such conditions but in no event later than twenty-four (24) hours after discovery of such conditions by the Contractor.

Upon such notice, or upon observation of such conditions, the City Representative will promptly make such changes in the plans and/or specifications as he finds necessary (if any are necessary) to conform to the different conditions, and any increase or decrease in the cost of the Project resulting from such changes may be adjusted as provided under Change Orders as set forth in this Agreement.

F. Change Orders. The City may approve Change Orders if one or more of the following conditions apply:

1. Minor changes for a total monetary amount less than that required for competitive bidding.
2. Changes for matters incidental to the original Contract necessitated by unforeseeable circumstances arising in the course of work under the Contract.
3. Changes due to emergencies.
4. Changes provided for in the original bidding and original Contract as alternates.
5. Changes of items not contemplated or foreseen when the plans and specifications were prepared and the Project was advertised, which are in the public interest, and which generally do not exceed ten percent (10%) of the Contract Price, subject to Alabama Bid Law exceptions.

The Contractor is expected to complete the Project as bid and specified within the financial parameters stated in the ITB. However, if it shall be determined that a Change Order condition exists during the performance of the Contract, the Contractor shall promptly notify in writing the City Representative and shall not implement such change until having received necessary City approvals. If the change is minor in the opinion of the City Representative and does not involve (1) an increase in the Contract sum; (2) an extension of the Contract time; or (3) a material change in the Contract scope of services, then the City Representative may authorize the change in writing to the Contractor. The Contractor shall not perform such change until receipt of such written Change Order.

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

The City reserves the right to institute Change Orders as the Owner pursuant to the aforesaid terms and conditions.

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

G. Construction Schedule and Periodic Estimates. After execution and delivery of the Contract and before the first partial payment is made, the Contractor shall deliver to the City Representative a construction schedule showing the proposed dates of commencement and completion of each of the various activities; the work required under the Contract; the interrelationship of each activity; sequencing and timing of performance of each portion of the Project; and the anticipated amount of each monthly payment that will become due in accordance with the Construction Schedule. The Contractor shall also furnish a detailed estimate giving a complete breakdown on the Contract price and periodic itemized estimates of the Work done for the purpose of making partial payments. The Contractor must also submit a revised schedule to completion with each request for periodic payment apprising the City of what remaining work is required for completion of the project. However, the same will not be considered as fixing a basis for additions to or deductions from the Contract price.

H. Contingency. The contract sum includes a fifty thousand dollar (\$50,000) contingency for use by the City to cover scope growth or revisions resulting from City directives, revisions to the contract due to missing design, or for other changes to the project. Contractor must receive written approval from the City in order to use the contingency amount for a revision or scope change. At any time, the City may elect to increase the contract volume in lieu of using this contingency, and such direction will be at the discretion of the City. Any contingency remaining at project completion will be deducted via change order and returned to the City.

ARTICLE III. TIME

A. Time for Completion. The Contractor hereby agrees to commence performance of this Contract on the date to be specified in a written "Notice to Proceed" and to fully complete the Project within 150 days from being provided a Notice to Proceed.

B. Delay. Contractor may be entitled to a reasonable extension of time, as determined by the City, in which to complete the Project if he is delayed at any time in the progress of the Work by any of the following causes:

1. Fires, abnormal floods, tornadoes, or other cataclysmic phenomena of nature.
2. Strikes, embargoes, lockouts, war, acts of public enemy.
3. Properly authorized and approved Change Orders.
4. Acts of performance or delays in performance by other contractors employed by the City or their subcontractors.
5. Causes shown by Contractor to be beyond its control.

In the event one of the above-cited circumstances results in Contractor's delay, Contractor shall immediately give notice in writing to the City and follow extension of time procedures as provided for in this Agreement. The City expressly disclaims any liability to Contractor for any cost, expense, or damage caused by other contractors, subcontractors, or suppliers, including those engaged by the City. The City will not be liable for damages or costs to the Contractor sustained due to any interference from utilities or appurtenances or from the operations of relocating the same.

C. Extensions of Time. All written requests for extensions of time must be submitted to the City Representative within five (5) calendar days after the occurrence of the cause for delay. The City Representative shall ascertain the facts and the extent of the delay and shall recommend to the City Council whether it should extend the time for completing the Project. Any extension of time shall be in writing and processed as a Change Order.

For Change Orders requesting extensions of time due to rain, wind, flood, or any other natural phenomenon, the Contractor's written request must be accompanied, at the City's request, by a detailed report of weather at this site for the last three (3) years with averages showing means and statistical deviations from mean averages to support request for extension. No extension shall be made for delays due to rain, wind, flood, or any other natural phenomenon of normal intensity for the locality.

In the event any material changes, alterations, or additions are requested and which, in the opinion of the City Representative, will require additional time for execution of any work under the Contract, the time of the completion of the Project may be extended through Change Order. No extensions of time shall be given for any minor changes, alterations, or additions. The Contractor shall not be entitled to any reparation or compensation on account of such additional time or extensions of time, and the City's granting of an extension of time shall not be valid grounds for a claim by the Contractor for damages or for additional costs, expenses, overhead, profit, or other compensation.

D. Right of the City to Terminate Contract. Owner may at any time and for any reason terminate Contractor's services and work at Owner's convenience by providing written notice to Contractor of such termination. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, equipment, and supplies in connection with the performance of this Agreement. Upon such termination, Contractor shall be entitled to payment only as follows:

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

If the Contractor should be adjudged as bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for the Contractor or any of its property, or if it should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or if it should refuse or fail to make prompt payment to persons supplying labor for the Project under the Contract, or persistently disregard instructions of the City Representative or fail to observe or perform any provisions of the Contract, or fail or neglect to promptly prosecute or perform the Project in accordance with the Contract, or otherwise be guilty of a substantial violation of any provision of the Contract, then the City may, without prejudice to any other rights or remedies of the City in the premises, immediately terminate the Contractor's right to proceed with the Project. In such event, the City may take over the Project and prosecute the same to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any and all excess cost occasioned to the City thereby, including attorney's fees; and in any such case, the City may take possession of and utilize in completing the Project such appliances and plant of the Contractor or its subcontractors as may be on the work site and necessary or useful therefor.

In the event of termination, the same shall not relieve the Contractor or any of its sureties of their obligations pursuant to this Contract.

In the event it becomes necessary for the City to maintain any legal action against the Contractor to enforce its rights under this Agreement, the Contractor shall pay the City's expenses associated therewith, including a reasonable attorney's fee.

E. Time of the Essence; Liquidated Damages. The parties hereto mutually understand, agree, and state that, due to the nature of the Project and the damage and inconvenience to the City and its citizens that would be caused by any delay in completion thereof, *time is of the essence*. The Project contracted hereunder shall be fully completed no later than June 2, 2023. Because time is a material element of this Agreement, should the Project not be completed within the time specified, scheduled, or as extended by properly executed Change Order, it is understood and agreed that the City will deduct from the partial or final payments to the Contractor, or otherwise charge to the Contractor, **eight hundred fifty dollars (\$850.00)** per calendar day if the work remains incomplete after one-hundred days from issuance of the Notice to Proceed, and the City will continue to withhold liquidated damages until the project reaches substantial completion.

The parties agree that potential damages are difficult to determine at the time of execution and that this amount is a reasonable measure thereof. It is understood and agreed by the parties that the above deduction is not a penalty, but money due to reimburse the City for inconvenience and damage to the general public due to the delay in the completion of the Project and is reasonable amount intended to compensate the City for increased time in administering the contract, supervision, inspection, and management, particularly that management and inspection which requires maintaining normal field project management forces for a longer time on any construction operation or phase than originally contemplated when the contract period was agreed upon in the contract.

The collection of liquidated damages by the City shall not constitute an election or waiver by the City of recovery of additional delay or non-delay-related damages from the Contractor, and the City expressly reserves the right to recover actual damages for other harms resulting from delay. The provisions of the liquidated damages clause shall apply and continue to apply even if the Contractor terminates or abandons the Project prior to the scheduled completion dates. Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the City of any of its rights under the contract.

ARTICLE IV. WORK AND MATERIALS

A. Cooperation of Contractor. Contractor shall have available on the job site at all times at least one (1) copy of the plans and specifications prepared for the Project. He shall give the Project all attention necessary to facilitate the progress thereof and shall cooperate with the City, City Representative, and with other contractors in every way possible. Using his best skill and attention, Contractor shall give efficient supervision to the Project and shall be solely responsible for all construction means, methods, techniques, and procedures; for providing adequate safety precautions; and for coordinating all portions of the Project under the Contract.

B. Superintendence. Contractor shall assign to and keep at the Project site competent supervisory personnel and, prior to commencement of the Work, shall designate in writing an authorized representative who shall be an employee of the Contractor and who shall have complete authority to represent, to receive notice for, and to act for the Contractor. Contractor shall not permit or allow any work to be conducted upon the Project site without the presence of such supervisory personnel. The City Representative shall be notified in writing prior to any change in superintendent assignment.

C. Contractor's Tools and Equipment. The Contractor's tools and equipment used on the Project shall be furnished in sufficient quantity and of a capacity and type that will adequately and safely perform the work specified, and shall be maintained and used in a manner that will not create a hazard to persons or property or cause a delay in the progress of the Project.

D. Furnishing Labor and Equipment. Contractor shall furnish and pay for all equipment, labor, and supervision, and all such materials as required to be furnished to perform the Work and as may otherwise be necessary to the completion of the Project and the operation of each construction crew required.

E. Employees. Contractor shall employ only competent, skillful workers on the Project, and whenever any person shall appear to be incompetent or to act in a disorderly, unsafe, illegal, or improper manner, such person shall promptly be removed from the Project by the Contractor.

F. Materials and Appliances. Unless otherwise stipulated, the Contractor shall provide and pay for all materials, water, heating, lighting, fuel, power, transportation, machinery, appliances, telephone, sanitary facilities, temporary facilities, and other facilities and incidentals necessary for the execution and completion of the Project.

Contractor warrants to the City that, unless otherwise specified, all materials furnished under this Contract shall be new and that both workmanship and materials shall be of good quality, free of faults and defects, and in conformance with the Contract. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Material and/or equipment damaged by flooding or other causes during the construction period shall be subject to rejection by the City Representative. Reconditioning and/or repairing materials used for the Project is not acceptable unless first approved by the City Representative.

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

At the completion of the Project, the Contractor shall submit a duly executed Asbestos Affidavit (if applicable) prior to final payment.

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

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

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

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

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

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

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

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

Contractor shall provide and maintain access to all public and private properties at all times and be responsible for any damage caused by his operation to existing driveways, yards, streets, parking lots, utilities, railroads, etc., and such damage shall be corrected at the Contractor's expense. Roadways authorized closed by State or Local authorities shall be maintained to provide access to all fire, police, and other emergency vehicles, and all individuals having private property in the closed area. In the event access to any public or private property or right-of-way will be completely closed for a period of time, Contractor shall notify the City Representative and all other individuals, businesses, or governmental agencies that may be affected by such closure at least seventy-two (72) hours in advance.

I. Protection of Existing Utilities. Contractor shall determine the exact location of all existing utilities before commencing the Work and shall provide whatever measures are necessary to properly protect and maintain all existing utilities encountered in the course of the Work. Contractor agrees hereby to be fully responsible and liable for any and all damages which might occur by his failure to exactly locate and/or preserve the location of any and all underground or overhead utilities. If any utilities are to be affected during the course of construction, the Contractor shall so notify the owners thereof at least seventy-two (72) hours prior to any such construction activity. The Contractor shall fully cooperate and coordinate with all utility owners in the event of an interruption to any utility service. The cost for locating, uncovering, and protecting underground and/or overhead utilities is included within the Contractor's Bid price.

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

J. Limiting Exposures. The Contractor shall perform the work on the Project to insure that no part of the construction, complete or in progress, is subject to harmful, dangerous, damaging, or otherwise deleterious exposure during the construction period.

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

K. Safety. Contractor shall take all necessary precautions for the safety of employees on the Project and shall comply with all applicable provisions of federal, state, and municipal safety laws and applicable regulations to prevent accidents or injury to persons on or about or adjacent to the premises where the Project is being performed. He shall erect and properly maintain at all times, as required by conditions and progress of the Project, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by features of construction and the site.

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

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

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

Contractor shall at all times provide proper facilities for safe access to the work by authorized representatives of the Owner.

L. Traffic Control. Contractor shall be responsible for any necessary traffic control, including a plan and all necessary devices, required to work in, upon, or in proximity to public right-of-way or vehicular traffic. The traffic control plan and all traffic control devices shall conform, at a minimum, to the *Manual on Uniform Traffic Control Devices for Streets and Highways*, latest edition, Federal Highway Administration. Should the appropriate public authority determine a greater degree of traffic control is required, the Contractor shall promptly provide the same. Where deemed necessary by either the Contractor or the City, the Contractor shall submit a plan to the City Representative for approval before commencing construction.

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

M. Sanitary Regulations. Contractor shall provide and maintain such sanitary accommodations for the use of his employees and those of his subcontractors as may be necessary to comply with the requirements and regulations of the local and State Department of Health. At a minimum, necessary sanitary conveniences for the use of the laborers on the work shall be erected and maintained by the Contractor in such a manner and at such points as shall be approved by the City Representative. Use of these facilities must be strictly enforced.

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

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

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

Unless otherwise indicated in the Contract Documents, all pavement, rights-of-way, or driveways cut by the Contractor during the performance of the Project shall be returned to service as soon as possible and replaced or repaired within seven (7) calendar days of completion of the Project.

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

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

City Representative's approval shall be obtained before cutting or drilling holes in concrete or masonry that tend to damage or weaken the load capacity.

O. Trailers. With the approval of the City Representative, the Contractor may park trailers or other structures for housing men, tools, machinery, and supplies, but they will be permitted only at approved places and their surroundings shall be maintained at all times in a sanitary and satisfactory manner by the Contractor. On or before the completion of the Project, all such trailers or structures shall be removed, unless the City authorizes their abandonment without removal, together with all rubbish and trash, at the expense of the Contractor.

P. Construction Staking. If necessary, the City will furnish initial lines and grades to establish the initial horizontal and vertical control points and define the beginning and ending points of the Project. The Contractor is responsible for engaging the services of a qualified engineer or land surveyor to replace and/or re-establish, in

accordance with the construction plans and/or specs, all construction stakes that are disturbed, displaced, or destroyed during construction.

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

Q. Periodic Cleanup. At all times, the Project premises should be sanitary, safe, reasonably clean, and orderly. Contractor shall provide adequate and approved containers throughout the work site for collection and disposal of waste material, debris, and rubbish and shall, at least weekly (and as requested by the City Representative during the progress of the Project), clean up and remove from the premises all refuse, rubbish, scrap materials, and debris caused by its employees or its subcontractors resulting from the Work. Trash and combustible materials shall not be allowed to accumulate inside buildings or elsewhere on the premises. At no time shall any rubbish be thrown from window openings, except during building renovations with adequate precautions and into proper receptacles. The Contractor shall comply with all municipal litter and construction site ordinances.

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

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

R. Erosion Control. As required by the City of Madison Engineering Department, Contractor shall provide and maintain temporary soil erosion and sediment controls necessary for the management of construction stormwater discharge quality. These controls shall be in accordance with the most recent version of Section 665, "Temporary Soil Erosion and Sediment Control," of the Alabama Department of Transportation's *Standard Specifications for Highway Construction*, and shall be designed to protect the Project site from soil erosion and adjacent property and waters from damage by sediment transport and deposition during construction.

S. Wastewater Containment and Management Plan. To the extent that construction activity by the Contractor involves any wastewater infrastructure or construction activities in close proximity to any wastewater infrastructure, Contractor shall submit to the City Engineer, prior to commencing construction, a wastewater containment and management plan (the "Plan"). The Plan shall adequately address the means, methods, and techniques to be employed by the Contractor for containing and transporting wastewater in a sanitary manner without, at any time, permitting the discharge of wastewater into the environment or creating the necessity of a State-required sanitary sewer overflow report. The City Engineer may waive the requirement of submitting a Plan if he determines that the construction activity to which the Plan would relate does not involve any potential for the discharge of wastewater into the environment or does not necessitate creation of a State-required sanitary sewer overflow report.

T. Environmental Clause/Covenant. In all respects, Contractor shall comply with all environmental laws affecting the Premises. Contractor covenants to hold the City, its officers, agents, and employees harmless from and against any losses, costs, damages, or expenses (including attorney's fees and expenses) arising out of the

presence of hazardous substances on or about the premises or the violation of any environmental laws with respect thereto, the occurrence of which having arisen solely from the acts or omissions of Contractor, its subcontractors, agents, invitees, or employees. This indemnity shall survive the termination of this Contract and shall inure to the benefit of the City of Madison and its successors and assigns.

ARTICLE V. INSURANCE, LIABILITY

A. Contractor's Insurance.

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

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

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

2. Additional Insurance. The Contractor may have an insurance professional review the Contractor's activities in regard to the performance of this Contract and is free to obtain any further or additional insurance or greater limits as recommended by the insurance professional. All additional policies of insurance shall name the City as an additional insured.
3. Insurance Limits. Neither the setting of insurance limits or requirements nor the acceptance or approval of the same by the City imply or represent that the limits or the insurance carrier is sufficient or that such insurance actually has been obtained, that being the responsibility of the Contractor.
4. Subcontractors. The Contractor shall require all subcontractors to take out and maintain the type of insurance required in this Agreement to the extent of their involvement in the Project so as to be adequate to protect against liability. In the event any work under this Contract is performed by a subcontractor(s), the Contractor shall remain responsible for any liability directly or indirectly arising out of the work performed under this Contract, regardless of whether or not such work is covered by the subcontractor's insurance. The Contractor shall not allow any subcontractor to commence work on the project until all similar insurance required of the subcontractor has been obtained. All subcontractors shall maintain required insurance during the term of the Contract including any extensions of the term.
5. City's Right to Review Coverage. The City shall have the right to inspect and approve Contractor's insurance coverage required in this Agreement. Should the City deem it advisable to modify the coverage in any way, it shall so request of the Contractor in writing and should the Contractor fail

to modify the coverage, then the City may pay the cost of any increased coverage or take credit for any decreases as may be appropriate. Review or acceptance of insurance by the City or representatives of the City shall not relieve or decrease the responsibility of the Contractor hereunder.

6. Waiver of Subrogation. To the extent that the Contractor is required to maintain insurance coverage for loss or damage to property or bodily injury, including Builders Risk All Risk insurance, the insurance must waive and the Contractor hereby waives subrogation of claims against the City, its officers, agents and employees.
7. City as Additional Insured. The City shall be named as additional insured for ongoing and completed operations for up to two (2) years on the Contractor's and any subcontractor's policies for any claims arising out of the Work. Contractor shall provide the City with a Certificate of Insurance and endorsements naming the City as an additional insured and giving the City the promise of a thirty (30) day notice of cancellation or intent not to renew the insurance. Unless precluded by law, all policies must waive the right to recovery or subrogation against the City, officers, directors, employees, agents, and representatives. The coverage available to the City as an additional insured shall not be less than the limits set forth in this section and shall apply as primary and non-contributory insurance with respect to any other insurance afforded to the City through its own carrier or otherwise.
8. Elevators, Hoists, Cranes, Conveyors. If the Contractor or a subcontractor will utilize in connection with the performance of the Work an elevator, material hoist, crane, conveyor, or other similar equipment, then the Contractor shall take out and maintain (or require the subcontractor to take out and maintain) insurance that shall protect the Contractor and the City against claims for injuries to members of the public (including City employees) or damages to property of others (including City property) arising out of any act of the Contractor or any of its agents, employees, or subcontractors resulting from the operation of such equipment.

B. Insurance.

TYPES OF INSURANCE	MINIMUM LIMITS OF LIABILITY
Worker's Compensation	Statutory
Employer's Liability	\$1,000,000 <i>each employee, each accident and policy limit</i>
Commercial General Liability	
Each Occurrence	\$2,000,000
Personal and Advertising Injury	\$2,000,000
Products/Completed Operations	\$5,000,000
General Aggregate	\$5,000,000
Umbrella/Excess	\$5,000,000 each occurrence, and \$5,000,000 aggregate
Automobile Liability	\$1,000,000 <i>each accident, combined single limit</i>

1. Worker's Compensation Insurance. Contractor shall take out and maintain during the term or any extensions of this Contract Workmen's Compensation Insurance as required by Alabama law for all of its employees employed on the Project and, in case any work is sublet, the Contractor shall

require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor.

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

Where work under this Contract may trigger the requirement for Federal Longshoreman's and Harbor Worker's Act and Federal Jones Act or insurance required by other applicable law or regulations, the Contractor shall obtain the same as required.

2. Owner's Protective Insurance. For projects with a contract amount of \$500,000.00 or greater, an Owner's Protective Policy is required in the minimum amount of \$1,000,000 each occurrence.
3. Umbrella/Excess Liability Insurance. Excess Liability insurance must insure against bodily injury, personal and advertising injury, and property damage, and all other coverages as specified above (Commercial General Liability, Employer's Liability, and Commercial Automobile Liability). Coverage must be follow form and must apply as excess of the scheduled underlying policies. Such policy(ies) shall name the Owner as additional insureds to the policy by applicable endorsement and provide a waiver of subrogation endorsement in favor of the Owner.
4. Miscellaneous Insurance. Contractor shall provide whatever insurance may be required of the City or the Contractor by permits from or agreements with the railroad, highways, or other utilities. Contractor shall familiarize himself with all insurance requirements contained in easements, permits, and agreements associated with this Project. Contractor shall provide any Railroad Protective Liability and other General Liability Insurance in the amounts contained in the agreements, permits, or easements or in greater amounts if higher limits are appropriate or required elsewhere. Contractor shall bear the cost of all required insurance and shall include in his Bid a sufficient amount to cover the cost of all required insurance. To the extent the City obtains permits or licenses for railroad or highway bores, crossings, or other work involved in the Project, the Contractor shall obtain adequate insurance to protect itself and the City.
5. Builder's Risk All Risk Insurance. The Contractor shall secure and maintain during the life of this Contract Builder's Risk All Risk Insurance coverage for 100% of the Contract Price. This insurance shall not exclude coverage for earthquake, landslide, tornado, flood, collapse, or loss due to the result of faulty workmanship. Such insurance shall also provide for any damages caused by injury to, or destruction of, tangible property, including loss of use resulting therefrom, and shall pay all losses to the Contractor and the City as their interest may appear.
6. Proof of Carriage of Insurance. Contractor shall furnish the City with satisfactory proof of carriage of the insurance required in this Agreement in the form of insurance certificates and endorsements, as well as the form of a policy upon City request.
 - a. Contractor's and any subcontractor's general liability and automobile liability insurance shall endorse the City of Madison, Alabama, a municipal corporation, and its officers, agents, and employees as additional insureds for any claims arising out of the Work.

- b. Contractor's insurance endorsing the Owner and others as additional insureds shall be primary and non-contributory as to such endorsed insureds.
- c. The certificate or policy, as the case may be, shall state that the City shall be given thirty (30) days' written notice of cancellation or of any change in the insurance coverage.
- d. There shall be a statement that the Contractor and any subcontractors waive subrogation as to the City, its officers, agents, and employees.
- e. There shall be a statement that full aggregate limits apply per job or contract.
- f. Agent's verification of Contractor's insurance must be provided in a form satisfactory to the City.
- g. Insurance shall contain no XCU exclusions or special endorsements.
- h. Full aggregate limits must apply per job or contract.

C. No Personal Liability of Public Officials. In carrying out any of the provisions hereof in exercising any authority granted by the Contract, there will be no personal liability upon any public official.

D. Indemnity. To the maximum extent permitted by law, the Contractor shall save harmless, indemnify, and defend the City and its officers, agents, and employees from and against any and all claims and losses, costs, expenses, or liability, including attorney's fees and litigation costs, caused by, arising out of, resulting from, or occurring in connection with the performance of the Work by the Contractor or any subcontractor, regardless of the fault, breach of contract, or negligence of the City, its officers, agents, or employees, excepting only such claims or losses that have been adjudicated to have been caused solely by the negligence of the City and regardless of whether or not the Contractor is or can be named a party in a litigation.

Contractor agrees to indemnify and/or reimburse the City for any fines, violations, charges, suits, or sums of money imposed by the Alabama Department of Environmental Management (ADEM), Environmental Protection Agency (EPA), or any administrative agency on the City of Madison for any sewage or contaminate discharged or wetlands regulations violated as a result of or arising out of the Work as performed by Contractor.

Contractor has provided a written certification of compliance with Ala. Code § 31-13-9 (1975, as amended) by submitting proof of enrollment in the E-Verify program and by signing the "Immigration Law Compliance Statement" which is included in the Invitation to Bid. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees and court costs), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations set forth in this section or contained in Ala. Code § 31-13-1 (1975), et seq.

E. Errors and Omissions. Contractor agrees to release and hold harmless the City of Madison and each of its officers, agents, and employees from any damages claimed by the Contractor or subcontractors resulting from or attributable, in whole or in part, to errors in or omissions of the plans and specifications, including final drawings of the Engineer or other design professionals. As to plans, specifications, or designs prepared by independent design professionals, the parties agree that any City review or approval thereof is only for overall suitability, maintenance, and usability and there are no express or implied warranties by the City as to the adequacy, accuracy, correctness, or code compliance thereof.

F. Exclusion of Contractor Claims. In performing its obligations, the City Representative may cause expense for the Contractor or its subcontractors and equipment or material suppliers. However, those parties and their sureties shall maintain no direct action against the City or its officers, employees, or agents for any claim arising out of, in connection with, or resulting from the engineering services performed or required to be performed where such services are performed in good faith to protect the City or the public.

G. Inadequate Surety/Insurance. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement, any of the surety bonds of the Contractor or subcontractors relating to the Project shall be deemed by the City to be unsatisfactory, or if for any reason such bond(s) ceases to be adequate to cover the performance of the Work or the surety ceases to do business by agent in Alabama, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the City so to do, furnish an additional bond or bonds in such form and amount and with such surety or sureties as shall be satisfactory to the City. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the Work shall be furnished in manner and form satisfactory to the City.

H. Changes. When changes in the scope of work by written order or Change Orders cumulatively equal ten percent (10%) of the total contract, including the Change Order or Change Orders, the insurance coverage included under this heading shall be increased accordingly by the Contractor. Proof of coverage shall be established by endorsement to the original policy or by re-issue of the original policy to include the added coverage, or in accordance with any other acceptable policy with the insuring company for increasing the coverage.

ARTICLE VI. OBSERVATION OF THE PROJECT

A. Authority and Duties of City Representative. The City Representative shall be authorized and permitted to inspect all facets of the Work, including all materials, workmanship, equipment, processes, and methods of construction used by Contractor. Subject to the provisions of Article II, paragraphs F & G, he is not authorized to alter or waive any requirements of the specifications or the Contract. However, he shall have authority to reject material, workmanship, and/or equipment that are defective or otherwise not in accordance with the drawings and specifications and require correction by the Contractor. No work shall be deemed complete until it has been inspected by the City Representative.

The City Representative may designate observers, with assigned duties and restricted authority, to inspect the Project and to report to him on the progress of the Project, manner of procedure, quality of the material and workmanship, and compliance with the Contract. However, the presence of the City Representative or his designee as an inspector of the work performed shall not in any manner lessen the responsibility of the Contractor pursuant to this Agreement. Neither the City Representative nor any other representative of the City shall be responsible in any way for construction means, methods, or techniques or for the safety of the construction work, progress, or employees of the Contractor or any subcontractors.

B. Defective Work/Correction. Rejected workmanship shall be satisfactorily corrected by Contractor and rejected material shall be satisfactorily replaced with proper material by the Contractor, each without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises. Upon failure or neglect by the Contractor to promptly prosecute or perform the Work in accordance with the Contract or to make corrections to the Work as required by the City Representative, the City may, without prejudice to any other remedy it may have, complete the Work and/or correct the deficiencies and then deduct the actual cost thereof from payment which is then or thereafter due to the Contractor.

C. Contractor's Obligation Continues. The inspection of the Work shall not relieve the Contractor of any of its obligations to fulfill its Contract, notwithstanding that such work has been previously inspected by the City Representative and accepted or estimated for payment. The failure of the City Representative as inspector to condemn improper workmanship shall not be considered as a waiver of any defect, whether known at the time or discovered later, or as preventing the City at any time subsequently from recovering damages for work actually defective. All work shall be guaranteed by the Contractor against defects in workmanship for a period of **two (2) years from date of final payment.**

D. Disagreement. Should any disagreement or difference arise as to the estimated quantities or classifications or as to the meaning of the drawings or specifications, or any point concerning the character or acceptability or nature of the several kinds of work, or construction thereof, the decision of the City Representative shall be final and conclusive and binding on the Contractor.

E. Stop Work Orders. During unseasonable weather, all Work must stop when the City Representative so directs, and all work must be suitably protected by Contractor at all times. However, the City Representative shall be under no obligation to stop work on the Project. If the Project is stopped, the Contractor shall not be entitled to extra compensation for delays or problems associated with the stoppage.

F. Progress Meetings. Contractor shall conduct regular progress meetings during the course of the Project at least once a month or more often if requested by the City Representative. The meetings shall be held at a site convenient to all parties and if a site cannot be agreed upon, the City will designate a site. The Contractor, City Representative, the Contractor's Superintendent, all subcontractors, engineers, and inspectors, will attend.

If requested by the City Representative, Contractor shall keep accurate written minutes of the meetings and forward copies thereof to the City Representative before the next scheduled meeting.

ARTICLE VII. PROJECT COMPLETION

A. Substantial Completion. "Substantial completion" shall be that degree of completion of the Project or a defined portion of the Project, as evidenced by the City Representative's written notice of Substantial Completion, sufficient to provide the City, at its discretion, the full-time use of the Project or defined portion of the Work for the purposes for which it was intended.

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

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

B. Final Inspection. Upon notice from the Contractor that its work is complete, the City Representative shall make a final inspection of the Work and conduct any necessary testing. The City Representative shall notify the Contractor of all apparent and/or visible instances where the Project fails to comply with the plans and specifications and Contract, as well as any defects he may discover. Contractor shall immediately make such alterations as are necessary to make the Project comply with the plans and specifications and to the satisfaction of the City Representative.

After the City Representative has determined that the Work is acceptable under the Contract and after publication of final completion and all other requirements of final payment as provided for in this Agreement, then there shall be issued a final certificate of payment to the City stating the balance due the Contractor, less such amounts as may have been withheld by the City from time to time as provided in the Contract. In recommending to the City that it make such final payment to the Contractor, the City Representative shall also issue a certificate of final acceptance in which he shall recommend to the City that it accept the Work as complete and the Project as being final pursuant to the Contract.

None of the steps or actions taken by the City shall in any way relieve the Contractor of responsibility for faulty materials or workmanship. All warranty and guarantee periods for Contractor's Work on this Project shall commence on the date of issuance of final payment.

C. "As-Built" Drawings. Unless waived by the City Representative, the Contractor must provide to the City a set of "as-built" drawings acceptable to the City as a component part of the Project prior to final payment.

D. Final Cleanup. Before final completion and final acceptance, the Contractor shall remove from all rights-of-way and from all public and private property all tools, scaffolding, false work, temporary structures and/or utilities and their foundations (except those the City permits in writing to remain), rubbish and waste materials resulting from its operation or caused by its employees, and all surplus materials, leaving the site clean and true to its line and grade and the Project in a safe and clean condition ready for use and operation.

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

E. Notice of Completion. Contractor shall, immediately after the completion of the Project and acceptance by the Owner as provided for in this Agreement, give notice as required by and in accordance with *Ala. Code* §39-1-1(f). Proof of publication of said notice shall be made by the Contractor to the City of Madison by affidavit of the Publisher and a printed copy of the notice published.

F. Final Payment. Upon completion of the Project by the Contractor and acceptance by the City Representative of all Work required of the Contractor for the Project, the amount due the Contractor pursuant to the Contract shall be paid upon the presentation by the Contractor to the City Representative of the documents set forth in Article II, Section D. for the purposes of establishing the following:

1. Evidence that all payrolls and all amounts due for labor and materials, other than claims for damages due to tort, have been fully paid and satisfied and there are no outstanding claims or demands associated with the work on the Project.

2. A release of all claims and claims of lien against the City from the Contractor and all major subcontractors (the City may waive the requirement for subcontractor releases) arising under and by virtue of the Contract and with the consent of the surety for release of final payment. If any subcontractor refuses to furnish such a release, Contractor may, with the consent of the City representative, furnish a bond with surety satisfactory to the City representative to indemnify against such claims.
3. Proof of publication of notice of completion, including affidavit of publisher and a printed copy of the notice so published, as provided by law.
4. In accordance with Ala. Code §39-2-12(c), a Non-Resident Contractor shall satisfy the City that he or she has paid all taxes due and payable to the State, the City and all applicable political subdivisions.

G. Acceptance of Final Payment Constitutes Release. The acceptance by the Contractor of the final payment shall release the City, the City Representative, and their officers, employees, agents, and sub-consultants from all claims and all liability to the Contractor for all things done or furnished in connection with the Project, and every act of the City and others relating to or arising out of the Project except claims previously made in writing and still unsettled. No payment, however, final or otherwise, shall operate to release the Contractor or his Sureties from obligations under this Contract and the Performance Bond, Payment Bond, and other bonds, warranties and guarantees as provided in this Agreement and ITB.

ARTICLE VIII. WARRANTY AND GUARANTEES

A. Warranty and Guarantee.

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

The Project furnished must be of first quality and the workmanship must be the best obtainable. The Contractor hereby guarantees the Project and the work on the Project against defective materials or faulty workmanship for **two (2) years after final payment** by the City and shall replace or repair any defective materials or equipment or faulty workmanship during the period of guarantee at no cost to the City.

2. *Guarantee.* If, within the designated warranty period, any of the Project, work, materials, or equipment is found to be defective or not in accordance with the Contract, the Contractor shall correct it promptly after receipt of written notice from the City to do so. The City shall give such notice promptly after discovery of the condition.

B. Correction of Defective Work During Warranty/Guarantee Period. Contractor hereby agrees to make, at his own expense and no cost to the City, all repairs or replacements necessitated by defects in materials or workmanship, provided under the terms of this Contract, and to pay for any damage to other works resulting from such defects, which become evident within **two (2) years after the date of final payment** unless the City

has previously given the Contractor a written acceptance of such defects. The Contractor shall promptly correct such defects upon receipt of a written notice from the City to do so. This obligation shall survive the termination of the Contract.

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

Contractor further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors.

Contractor also agrees to hold the City, the City Representative, and City's employees harmless from liability or damages and cost and expenses of litigation of any kind arising from damage due to said defects.

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

ARTICLE IX. LAWS, PERMITS

Contractor shall comply with and keep itself fully informed of all federal, state, city, and county laws, ordinances, and regulations which affect those engaged or employed in the Project or the execution of the Project. Contractor shall possess all permits and licenses required by applicable law, rule, or regulation for the performance of the Project.

Contractor shall protect and indemnify the City and its employees, officers, consultants, and agents against any claim or liability arising from or based on the violation of any such laws, ordinances, or regulations, including, but not limited to, violation of copyright or patent laws.

Contractor shall cooperate with the City Engineer to register and obtain any and all necessary National Pollutant Discharge Elimination System (NPDES) Permits required by USEPA or the Alabama Department of Environmental Management (ADEM) as well as any applicable storm water permits or registration for the construction of the improvements specified in the Contract. Contractor shall abide by all regulations and conditions relative to the permit or registration and attachments to the permit or registration, including, but not limited to, sampling and monitoring. At the request of the City Representative, Contractor shall fulfill for the City all the requirements made upon the City by the permit or registration and shall perform all Work in compliance with and as required thereby. Contractor agrees to indemnify and hold harmless the City and its officers, agents, and employees from any fines, penalties, damages, claims, liabilities, or judgments arising out of or in any manner associated with Contractor's failure to perform the Work in strict accordance with all stormwater registration, permits, or license requirements.

If any portion of the Project involves work upon State right-of-way, the Contractor agrees to abide by the laws, terms, and conditions applicable to the same and obtain all permits required by the Alabama Department of Transportation.

ARTICLE X. MISCELLANEOUS

A. Notice and Service Thereof.

1. All notices, demands, requests, Change Orders, instructions, approvals and claims shall be in writing. Unless expressly otherwise provided elsewhere in this Agreement, any election, notice, or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if provided in accordance with the provisions hereof.
2. Any notice to or demand upon either party shall be in writing and shall be sufficiently given if addressed as stated in this Agreement and deposited in the United States mail in a sealed envelope with sufficient postage prepaid or delivered via private carrier in a sealed package with all costs being paid by the sender. It shall also be sufficient if such notice or demand is served personally on a party at the address set forth below.
3. **All notices to the City shall be addressed as follows:**
Engineering Director
City of Madison Engineering Department
100 Hughes Road
Madison, Alabama 35758

With a copy to:
City Attorney
City of Madison Legal Department
100 Hughes Road
Madison, Alabama 35758

All notices to Contractor shall be addressed as follows:
Mark O Seeley, Corp Secretary
Miller & Miller, Inc.
2106 Miller Ferry Way
Huntsville, AL 35801

B. Capacity. Each party to this Agreement represents and warrants to the other as follows:

1. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules, and regulations.
2. That it has full power and capacity to enter into this Agreement and to perform each of the obligations and responsibilities conferred and assumed hereunder.
3. That, to the extent required, it has obtained the necessary authorization and approval through a legally binding act of its organization and that such approval has been reduced to writing and certified or attested by the appropriate official of the party.
4. That it has duly authorized and empowered a representative to execute this Agreement on its behalf and the execution of this Agreement by such representative fully and completely binds the party to the terms and conditions hereof.
5. That, absent fraud or other illegality, the execution of this Agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other party shall be entitled to rely upon the same. To the extent a party is a partnership, limited liability company, or joint venture, the execution of this Agreement by any

member thereof shall bind the party and to the extent that execution of the Agreement is limited to a manager, managing partner, or specific member, then the person so executing this Agreement is duly authorized to act in such capacity for the party.

6. That it represents and warrants to the other party that, to its knowledge, there is no litigation, claim, or administrative action threatened or pending or other proceedings against it which would have an adverse impact upon this transaction or upon its ability to conclude the transaction or perform pursuant to the terms and conditions of this Agreement.
7. That it has obtained any and all required licenses, permits, approvals, and/or authorizations from third parties to enable it to fully perform pursuant to this Agreement.
8. That under the applicable provisions of the Constitution and laws of the State of Alabama it has the power to consummate the transactions contemplated by this Agreement.
9. That it represents and warrants that the execution and delivery of this Agreement and the consummation of the transactions contemplated herein will not conflict with, be in violation of, or constitute (upon notice or lapse of time or both) a default under the laws of the State of Alabama; any resolution, agreement, or other contract, agreement, or instrument to which the party is subject; or any resolution, order, rule, regulation, writ, injunction, decree, or judgment of any governmental authority or court having jurisdiction over the party.
10. That this Agreement constitutes the legal, valid, and binding obligation of the party and is enforceable against it in accordance with its terms, except in so far as the enforceability thereof may be limited by:
 - (a) Bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights
 - (b) General principles of equity, regardless of whether such enforceability is considered as a proceeding at equity or at law.
11. That it will not enter into any agreement to do anything prohibited in this Agreement or enter into any agreement or take any action which would in any way impair the ability of the other party to faithfully and fully perform its obligations hereunder.

C. No Waiver of Rights. Neither the inspection by the City Representative or by any of the City's officers, employees, agents, or sub-consultants; nor any order by the City for payment of money; nor any payment for, or acceptance of, the whole or any part of the Project by the City; nor any extension of time or Change Order; nor any possession taken by the City or its employees; nor the failure by either party to enforce any provision of this Agreement shall operate as a waiver of any provision of this Agreement or of any power reserved to the City in this Agreement, or any right to damages, nor shall any waiver of any breach in this Agreement be held to be a waiver of any other or subsequent breach. Acceptance or final payment shall not be final and conclusive with regard to latent defects, fraud, or such gross mistakes as may amount to fraud, or with regard to the City's rights under any warranty.

D. Subletting or Assigning of Contract. Contractor shall not sublet, assign, transfer, convey, sell, or otherwise dispose of any portion of the Agreement, its obligations, rights, or interest in it, or its power to execute such Agreement, to any person, firm, or corporation without written consent of the City and such written consent shall not be construed to relieve the Contractor of any duty or responsibility to fulfill the Agreement. A sale,

conveyance, or transfer of 50% or more of the stock or ownership of the Contractor shall be considered an assignment. However, in no event shall any portion of this Agreement be assigned to an unsuccessful Bidder whose Bid was rejected because he or she was not a responsible or responsive Bidder.

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

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

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

H. Non-Discrimination. Contractor agrees that it will not discriminate against any person on the basis of race, color, sex, religion, national origin, or age in performing the Work required under this Agreement. Contractor shall fully comply with the Americans with Disabilities Act, the Fair Labor Standards Act, and all other applicable laws and regulations.

I. Fines and Penalties. The Contractor shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the Owner or Contractor which are related to the Contractor's operations.

J. Agreement Date, Counterparts. This Agreement shall be effective as of the date it is executed by the parties. In the event the authorized signatures are affixed on different dates, the latter date of execution shall be the effective date. This instrument may be executed in no more than two (2) counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

IN TESTIMONY WHEREOF, the parties hereto have caused to be affixed the signatures of their duly authorized representatives on the dates set forth below.

CITY OF MADISON, ALABAMA
a municipal corporation

ATTEST:

By: _____
Paul Finley, Mayor

Lisa D. Thomas, City Clerk-Treasurer

Date: _____

STATE OF ALABAMA

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COUNTY OF MADISON

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I, the undersigned authority, as Notary Public in and for said County in said State, hereby certify that Paul Finley and Lisa D. Thomas, whose names as Mayor and the City Clerk-Treasurer of the City of Madison, Alabama, respectively, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of the City of Madison, Alabama, a municipal corporation, on the day the same bears date.

Given under my hand and official seal this ____ day of _____, 2023.

Notary Public

Miller & Miller, Inc.

By: _____

Its: _____

Date: _____

STATE OF ALABAMA

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COUNTY OF MADISON

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I, the undersigned authority, as Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of Miller & Miller, Inc., is signed to the foregoing instrument, and who is known to me, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal this ____ day of _____, 2023.

Notary Public