



WILLIAMSON COUNTY

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November 30, 2017

To Whom It May Concern:

Williamson County is accepting bids for replacing 6 existing roof-top gas-fired air conditioning units located at 408 Century Court, Franklin, TN.

It is not the intent of Williamson County to favor one vendor; however, we do, from time to time, have to rely on vendors' help in writing specifications. We will accept all bids with exceptions noted, and all bids will be given equal consideration.

A MANDATORY pre-bid conference will be held on Thursday, December 12, 2017 at 9:00 a.m. at the project site. Bids will be opened Thursday, December 21, 2017, 2:00 p.m. Bids should be submitted in a sealed envelope to the County Mayor's Office, 1320 West Main Street, Suite 125, Franklin, TN 37064. Each envelope should be plainly marked: **HVAC Replacements, Criminal Justice Center, December 21, 2017, 2:00 p.m. Envelope must also include bidder's company name. IF THE SEALED PACKAGE IS NOT LABELED EXACTLY AS SPECIFIED ABOVE, THE BID WILL NOT BE OPENED. A bid bond in the amount of 5% of the bid must also be included with the bid.**

Bidding shall be in accordance with the Tennessee General Contractor's License Law. Bidders on construction in the amount of \$25,000 or more must be a licensed contractor as required by the Contractor's License Act of 1976. Public Chapter #82 of the General Assembly of the State of Tennessee amended by Public Chapter #406, Public Acts 1977, and further amended by House Bill #2507 and approved May 10, 1994. **If your bid meets the above criteria, the envelope must contain your company's license number, expiration date, and classification, and license number, expiration date and classification of any subcontractors that will be used in the areas of electrical, mechanical, plumbing or HVAC. IF THE SEALED PACKAGE IS NOT LABELED EXACTLY AS SPECIFIED ABOVE, THE BID WILL NOT BE OPENED.**

Williamson County reserves the right to reject any and/or all proposals, to waive technicalities or informalities, and to accept any proposal deemed to be in the best interest of Williamson County. **No bid shall be valid unless signed.** No bid shall be accepted by FAX machine.

The successful bidder will be required to comply with contract, insurance and drug-free requirements, and to furnish Payment and Performance Bonds for 100% of the amount of the contract. Sample contracts are draft only and terms can change at the discretion of the County.

If you have any questions, please email lesliem@williamson-tn.org. All questions must be in writing by 4:30 p.m. on December 15, 2017. No addenda will be issued within 48 hours of the bid opening date and time.

Sincerely,

Leslie Mitchell, CPPO, CPPB
Purchasing Agent

LM/lw
Enclosure

Minimum Specifications HVAC Replacement

Williamson County Government will be accepting bids for replacing 6 existing roof-top gas-fired air conditioning units located at 408 Century Court in Franklin, TN, the John I Easley, Jr. Criminal Justice Center.

- UNIT 2 Juvenile Lobby
Model# YCD060C4
 - UNIT 3 Juvenile Kitchen/Hall
Model# YCD075C4
 - UNIT 4 Juvenile Judges Chambers
Model# YCD060C4
 - UNIT 7 Juvenile Court Lobby/ALC Office
Model# YCD075C4
 - UNIT 8 ALC South Classrooms
Model# YDC075C4
 - UNIT 9 ALC North Classrooms
Model# YDC075C4
1. Curb adaptors will be included on all units as needed
 2. All units will be manufactured by the Trane Company and have the factory installed TD-5 digital displays, stainless steel condensate pans and hinged access doors.
 3. Units will be dual power source to be able to operate fan and fire alarm controls on generator power
 4. All unit must seamlessly interface into the existing Alerton Energy Management Control system including full color graphics, optimal start and stop, trend logging of operating points, alarm notification via network or e-mail of critical operating temperatures and conditions, real time monitoring of space temperature, space set point, supply air temperature, return air temperature, return Co2 sensor, operating status for the blower motor and compressors. User shall be provided with full control of unit operation and set point adjustments from the operator workstation.
 5. Includes enthalpy enabled economizers, dampers to be interfaced with existing fire and smoke controls to drive O.A. dampers open during an alarm condition using a dedicated DC power supply and interlock relay
 6. The old units must be removed by crane and the new units set by crane.

The bidding contractor is to visit the site and is to be familiar with all existing conditions.

This is a detention facility; therefore appropriate security measures will be followed.

The awarded contractor will be responsible for:

1. All fees and permits necessary to complete the work
2. All necessary tools, equipment supplies and manpower necessary to complete the work.

3. Any roof alterations will be done by a certified Firestone EDFM installer and paid by the contractor
4. The contractor will be responsible for any and all fire alarm/smoke connections and controls. The new system will function according to the existing. The existing unit will be checked for any necessary modifications that need to be made to the new unit.

A job site visit will be held on December 12, 2017 at 9:00 A.M. **Attendance is mandatory at this meeting in order to bid.**

Add Alternate:

All 6 units to include factory installed hot gas reheat, dehumidification capabilities and Alerton digital room sensors displaying space temperature and humidity.

Bid Sheet
Replacement of 6 HVAC Units, Jail

Base Bid \$ _____
Number of Days _____

Add Alternate \$ _____
(Cost to add to all 6 units factory installed hot gas reheat, dehumidification capabilities and Alerton digital room sensors displaying space temperature and humidity)

Company Name _____

Physical Address _____

Remittance Address _____

Authorized Signature _____

Printed Name _____

Phone _____

Fax _____

Date _____

**FIXED PRICE
LARGE CONSTRUCTION AGREEMENT**

THIS AGREEMENT is entered into by and between WILLIAMSON COUNTY, TENNESSEE, a political subdivision of the State of Tennessee, located at 1320 West Main Street, Franklin, Tennessee, 37064, and _____, located at _____, for _____ construction services.

This Agreement incorporates the following affidavits by reference and made a part hereof:

1. **Fair Employment Affidavit**
2. **Ethical Standards Affidavit**
3. **Drug-Free Workplace Affidavit**
4. **Illegal Immigration Attestation Affidavit**

**ARTICLE I
DEFINITIONS**

A. As used in this Agreement, the following terms have the specific meaning assigned them:

1. **"Agreement"** means the entire Agreement between County and Contractor as contained herein and in any attachments or exhibits to this Agreement explicitly incorporated into this Agreement by the parties;
2. **"Contract Documents"** mean this Agreement and any attachments, exhibits, construction plans, amendments, addendums, bonds, bid request documents and bid response;
3. **"Contractor"** means _____ of _____;
4. **"County"** means Williamson County, Tennessee;
5. **"Fee"** or **"Contract Price"** means the total compensation that County shall pay to the Contractor for the performance of all services and the satisfactory completion of the Project as required by this Agreement;
6. **"Final Completion"** as used herein shall mean that point at which, as certified in writing by the County, the Project is 100% complete and in conformance with the Agreement.
7. **"Project"** means _____;
8. **"Services"** mean all activities required to complete the Project to the specifications and contractual duties contained herein as is more specifically described in the specifications contained in the County's bid request.
9. **"Substantial Completion"** means that point at which, as certified in writing by the County, the Project is at a level of completion in strict compliance with this Agreement such that Williamson County or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete and such partial use or occupancy shall not be evidence of Substantial Completion; and
10. **"Work"** means all labor, services, equipment, and material necessary to complete the Project and all other requirements included in this Agreement.

B. Quotation marks and capital letters are not part of the defined terms above.

**ARTICLE II
INTENT AND INTERPRETATION**

With respect to the intent and interpretation of this Agreement, Williamson County and the Contractor agree as follows:

A. Unless specifically stated to be the responsibility of Williamson County, anything that may be

required, implied or inferred by the Contract Documents, shall be provided by the Contractor for no extra cost. Specifications stating that the Contractor shall perform any particular responsibility at Contractor's own cost and/or expense shall not imply that any other obligation or responsibility of Contractor is not to be performed at Contractor's cost and expense.

B. Nothing contained in this Agreement shall create, nor be interpreted to create, privity or any other relationship whatsoever between Williamson County and any person except the Contractor;

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

D. The words "include", "includes" or "including", as used in this Agreement shall be deemed to be followed by the phrase, "without limitation";

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

F. The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the Contract Documents which make up this Agreement, shop drawings and other submittals and shall give written notice to Williamson County of any conflict, ambiguity, error or omission which the Contractor may find with respect to the Contract Documents before proceeding with the affected work. The express or implied approval of Williamson County of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Agreement; and

G. In the event of any conflict, discrepancy or inconsistency among any of the documents which make up this Agreement, the following shall control:

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

ARTICLE III TERM OF AGREEMENT

The Term of this Agreement shall extend from _____ to the date in which the Contractor achieves Final Completion. All warranty obligations shall survive the termination of this Agreement. This Agreement may not be extended unless agreed in writing by the parties. The option to extend shall be exercised and in the discretion of the Williamson County Purchasing Agent. To be effective, any extension must be approved by the County's Attorney and the Purchasing Agent and signed by the Williamson County Mayor. In no event shall the term of this Agreement extend beyond 5 years.

ARTICLE IV REPRESENTATIONS OF THE CONTRACTOR

In order to induce Williamson County to execute this Agreement and recognizing that the County is relying thereon, the Contractor, by executing this Agreement, makes the following express representations to Williamson County:

A. The Contractor is fully qualified to act as the contractor for this Project and has, and shall maintain, all licenses, permits or other authorizations necessary to act as the contractor to complete the Services and Work to construct the Project;

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

C. The Contractor has received, reviewed and carefully examined all of the documents which make up

this Agreement, including, but not limited to, the plans and specifications, and has found them to be generally sufficient to indicate and convey understanding of the terms and conditions for constructing and completing the Project. Contractor further agrees to notify the County immediately of all conflicts, errors, ambiguities or discrepancies that are discovered in this Agreement, including, but not limited to, the plans and specifications;

- D.** The Contractor had access to the site for examinations, explorations, tests and studies prior to submitting Contractor's Bid, and relied exclusively upon the Contractor's own estimates and investigations and other data which was necessary for full and complete information upon which the Contractor's Bid was based;
- E.** It is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department, State Department or Local Department;
- F.** It has not, within a 3-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- G.** It is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of other similar crimes;
- H.** Has not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default; and
- I.** It will comply with all Federal, State, and local governmental laws, rules, and regulations relating to its responsibilities, as set forth in the Contract Documents.

ARTICLE V DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

In addition to any and all other duties, obligations and responsibilities of the Contractor, the Contractor shall have and perform the following duties, obligations and responsibilities at Contractor's expense:

- A.** The provision or furnishing, and the prompt payment therefor, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities required for construction and all necessary building permits and other permits required for the construction of the Project, including any use and occupancy or similar permit(s) that may be required before the completed Project may be put in use;
- B.** The Contractor shall not perform work without adequate plans and specifications, or, as appropriate, approved shop drawings or other submittals. If the Contractor performs Work knowing, or under circumstances that the Contractor should reasonably have known, the Work involves an error, or inconsistency with this Agreement without first providing written notice to the County, the Contractor shall be responsible for such work;
- C.** Ensure that all Work shall strictly conform to the requirements of this Agreement;
- D.** The Contractor shall strictly supervise the work and bear full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Contractor;
- E.** The Contractor hereby warrants that all labor furnished under this Agreement shall be competent to perform the tasks undertaken, that the product of such labor shall yield only high quality results, that all materials and equipment provided shall be new and of high quality, that the completed Project will be of high quality and without defects, and that all work will strictly comply with the requirements of this Agreement. Any work not strictly complying with the requirements of this Agreement shall constitute a breach of the Contractor's warranty;
- F.** The Contractor shall comply with all legal requirements applicable to the work and shall obtain and pay for all required permits, fees and licenses customarily obtained by a Contractor. Any required permits for sites used for the disposal and/or stockpiling of material must be obtained, and copies must be provided by Contractor to Williamson County before the Notice to Proceed will be issued. The Contractor shall be responsible for any costs of moving materials, including illegally stored materials;
- G.** The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Williamson County reserves the right to require the Contractor to remove any individual from the Project when in Williamson County's judgment said individual is detrimental to the Project. The Contractor shall provide

the name, phone number and other contact information of a supervisory personnel who can be reached 24 hours a day in case of emergencies to the Williamson County Property Manager. The Contractor shall provide updated information should the name of the responsible supervisory personnel change;

H. If required by the Contract Documents, within 5 calendar days of the commencement of the Work, the Contractor shall submit for approval to Williamson County the Contractor's Project Schedule for completing the Work. Such Project Schedule shall be in a form acceptable to the County. The Contractor's Project Schedule shall be updated no less frequently than monthly. Each such revision shall be submitted for approval to the County. Failure of the Contractor to strictly comply with Project Schedule requirements shall constitute a material breach of this Agreement;

I. The Contractor shall keep an updated copy of this Agreement at the site. Additionally, the Contractor shall keep a copy of approved shop drawings and other submittals at the site. Upon completion of the Work, all of these items shall be completed and provided to Williamson County and shall become the property of Williamson County;

J. Shop drawings and other submittals provided by the Contractor do not constitute a part of the Contract Documents, unless approved as part of a Change Order. All work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the County shall not be evidence that Work completed pursuant thereto conforms with the requirements of the Contract Documents. Williamson County shall have no duty to review partial or incomplete submittals. The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection and the reason for the approval or rejection. The Contractor shall have the duty to carefully review, inspect and examine any and all submittals before submitting them to the County. Contractor shall reimburse Williamson County for any fees that are incurred as a result of partial or incomplete submittals;

K. The Contractor shall maintain the Project site in a reasonably clean condition during performance of the work. Upon final completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment;

L. The Contractor shall furnish such watchmen, guards, fences, warning signs, lights, walkways, and shall take all other precautions as shall be necessary to prevent damage to persons or property. All structures and improvements in the vicinity of the Work shall be protected by the Contractor; and, if such property is damaged, injured or destroyed by the Contractor, Contractor's employees, subcontractors or agents, it shall be restored to a condition as good as when Contractor entered upon the Work. All safety provisions contained in applicable laws, regulations, ordinances, guidelines or building and construction codes, shall be strictly adhered to;

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

N. At all times relevant to this Agreement, the Contractor shall permit the County to enter upon the Project site and to review or inspect the work without formality or other procedure;

O. Contractor shall be responsible for the cost of storing, moving, and transporting materials stored off-site;

P. Contractor shall notify owners of adjacent property and underground facilities and utility owners when prosecution of the work may affect them, and shall cooperate with the owners in the protection, removal, relocation and replacement of property;

Q. Contractor shall make changes that are ordered by the County which do not involve a change in the Contract Price, do not involve a change in the time for the Contractor's performance, and are consistent with the intent of this Agreement. Contractor shall also have made or permit to be made any inspections or testing, in addition to those required in the Contract Document, that are required by the County as appropriate to ensure compliance with the requirements of this Agreement.

ARTICLE VI TIME FOR CONTRACTOR'S PERFORMANCE

- A. If the Contract Documents so require, the Contractor shall commence the performance of this Agreement ("Commencement of Work Date") within 5 calendar days after the date of issuance to Contractor of a Notice to Proceed by the County. Once timely commenced, Contractor shall diligently continue its performance to and until final completion of the Project. The Contractor shall accomplish Substantial Completion of the Project within 60 calendar days after the date that the Notice to Proceed is issued. The Contractor shall accomplish Final Completion of the Project within 15 calendar days after the date that Substantial Completion is accomplished.
- B. Guarantees and equipment warranties required by this Agreement shall commence on the date of Substantial Completion.
- C. All limitations of time set forth herein are material and are of the essence of this Contract.

ARTICLE VII SURETY BONDS

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

ARTICLE VIII ADDITIONAL DUTIES OF CONTRACTOR

- A. Contractor shall submit to the County any needed requests for interpretations necessary for the proper execution or progress of the Work.
- B. Contractor shall submit to the County all requests and recommendations for Change Orders.
- C. The Contractor shall be responsible for making requests to the County for required inspections.
- D. **THE DUTIES, OBLIGATIONS, AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS AGREEMENT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION, OR RESPONSIBILITY OF ANY THIRD PARTY. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BY AND BETWEEN WILLIAMSON COUNTY AND OTHER THIRD PARTIES. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO WILLIAMSON COUNTY ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF A THIRD PARTY TO WILLIAMSON COUNTY.**

ARTICLE IX ETHICAL STANDARDS

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

pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.

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

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

D. The Contractor affirms that it has not retained anyone in violation of this Article IX. A breach of ethical standards is a material breach of this Agreement and could result in civil or criminal sanctions and/or debarment or suspension from being a contractor or subcontractor under contracts with Williamson County.

ARTICLE X COMPENSATION (FIXED PRICE)--AMOUNT AND PROCEDURES

A. Williamson County shall pay and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder, the fixed price of _____\$. The Contract Price shall not be modified except by Change Order as provided for in this Agreement. **Because time is of the essence and in order to secure this Agreement, and within the time specified, Contractor distinctly agrees that damages arising from the non-fulfillment of this Agreement regarding the failure to meet the date of Substantial Completion or Final Completion would be substantial and difficult to measure and shall be deducted from the Compensation, as liquidated damages and not in the nature of a penalty, and shall be Two Hundred Fifty and 00/100 dollars per calendar day beyond the scheduled date.**

B. Within 5 calendar days of the Effective Date of this Agreement, the Contractor shall prepare and present to the County the Contractor's Schedule of Values apportioning the Contract Price among the different elements of the Project for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in a format acceptable to the County, with such detail and supporting information that the County requests. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. Violation of this provision by the Contractor shall constitute a material breach of this Agreement. The Contractor's Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been approved in writing by the County.

C. Williamson County shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Article. On or before the 10th day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending on the last day of the prior month. Therein, the Contractor may request payment for the portion of work satisfactorily completed by Contractor allocable to the Contract Document requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if off site storage is approved in writing by Williamson County), less amounts held in retainage (up to a maximum of 5% of the total Contract Price) by County and less the total amounts of previous payments received from the County. Any request for payment on account of stored materials or equipment must be accompanied by written proof that the County has free and clear title to such materials or equipment and that they are fully insured by Contractor against loss or damage. As a condition precedent to payment, the Contractor shall, if required by Williamson County, also furnish to Williamson County properly executed waivers of lien or other claims, in a form acceptable to Williamson County, from all subcontractors, materialmen, suppliers or others having lien or other claim rights, wherein said subcontractors, materialmen, suppliers or others having lien or other claim rights shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project. Each Payment Request shall be signed by the Contractor and notarized and shall constitute the Contractor's representation that the quantity of work has reached the level for which payment is requested, that the work has been properly installed or performed in strict compliance with this Agreement and that the Contractor knows of no reason why payment should not be made as requested. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all work for which Williamson County has previously paid is free and clear of any lien, claim or other

encumbrance of any person whatsoever. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all work, materials and equipment included in such payment shall be vested in Williamson County. Thereafter, the County shall review the Payment Request and may also review the work at the Project site or elsewhere to determine whether the quantity and quality of the work, materials and equipment are as represented by the Payment Request and are as required by this Agreement. Williamson County shall make every attempt to make payment to the Contractor within 30 days following the approval of a Payment Request. The amount of each such payment shall be the amount approved for payment by the County less such amounts, if any, otherwise owing by the Contractor to Williamson County or which Williamson County shall have the right to withhold as authorized by this Agreement. The County's approval of the Contractor's Payment Requests shall not preclude Williamson County from the exercise of any of its rights as set forth in this Agreement.

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

E. Neither payment to the Contractor, utilization of the Project for any purpose by Williamson County, nor any other act or omission by Williamson County shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Agreement.

F. In addition to all other rights available to Williamson County, Williamson County shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

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

In the event that Williamson County makes written demand upon the Contractor for amounts previously paid by Williamson County as contemplated in this Article X (F), the Contractor shall promptly comply with such demand.

G. If within 45 days from the date payment to the Contractor is due, Williamson County, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, the Contractor shall have the right to cease work until receipt of proper payment after first providing 10 days written notice to Williamson County of the Contractor's intent to cease work.

H. When Substantial Completion has been achieved, the Contractor shall notify Williamson County in writing and shall furnish to the County a listing of those matters yet to be finished. The County will thereupon conduct an inspection to confirm that the work is in fact Substantially Complete. Upon its confirmation that the Contractor's work is Substantially Complete, the County will notify Contractor in writing and will therein set forth the date of Substantial Completion. If the County, through its inspection, finds that the Contractor's work is not substantially complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by Williamson County from any payment then or thereafter due to the Contractor. Upon Substantial Completion,

Williamson County shall pay the Contractor an amount sufficient to increase total payments to the Contractor less amounts held in a retainage fund and any amounts attributable to liquidated damages and deductions of the reasonable costs as determined by Williamson County for completing all incomplete work, correcting and bringing into conformity all defective and nonconforming work, and handling any outstanding or threatened claims.

I. When the Project is fully complete and the Contractor is ready for a final inspection, it shall notify Williamson County in writing. Thereupon, the County will perform a final inspection of the Project. If the County confirms that the Project is complete in full accordance with this Agreement and that the Contractor has performed all of its obligations to Williamson County, the County shall pay to the Contractor the remainder of the unpaid Contract Price, less any liquidated damages or other amounts withheld pursuant to this Agreement. If the County finds that the Project is not fully complete and is required to repeat all or any part of its final inspection of the Project, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by Williamson County from the Contractor's final payment or if cost exceeds final payment, then Contractor shall reimburse the County the difference in the amount of the excess cost and the amount paid.

J. When Williamson County reasonably believes that Substantial Completion or Final Completion will be inexcusably delayed, Williamson County shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount specified herein to recover liquidated damages applicable to such delays.

K. Prior to being entitled to receive final payment, and as a condition precedent thereto, the Contractor shall furnish Williamson County, in the form and manner required by Williamson County, if any:

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

L. Williamson County shall, subject to its rights set forth in this Article, make every attempt to make final payment of all sums due the Contractor within 45 calendar days of the County's execution of a final Approval for Payment.

ARTICLE XI CHANGE ORDERS

A. Changes to the work within the general scope of this Agreement shall be ordered by Change Order and must be submitted on the Change Order Form. To be authorized and implemented, all Change Orders shall be prepared and signed by the Contractor. The Change Order shall be signed by the County Mayor, and the Williamson County Budget Director, prior to the Contractor proceeding with any such change(s). Prior to final payment, a statement shall be prepared by the Contractor that reflects all changes to the Contract Price.

B. Any properly approved Change Orders that adjust the Contract Price shall be determined as follows:

1. If unit prices that apply to the work are included in the Contract Documents, the unit prices shall be used;
2. If there are no unit prices in the Contract Documents that apply to the Work, then the applicable usual and customary pricing for the Williamson County area shall be used; and
3. If there is no usual and customary pricing that applies to the Work, then the change in the Contract Price shall be derived by determining the actual costs incurred or savings achieved, resulting from the revision in the Work. Such reasonable actual costs or savings shall include a component for direct jobsite overhead and profit but shall not include home-office (including non-job site and administrative costs) overhead or other indirect costs or components. Any such costs or savings shall be documented in the format and with such

- content and detail as Williamson County directs.
4. Any Change Order that would result in a net savings to either Contractor or Williamson County shall not impair any required functions and characteristics of the finished Project such as, but not limited to, service life, reliability, economy of operation, level of operational performance, ease of maintenance, standardized features, aesthetics, and fire protection and safety features. The following must be submitted to the County:
 - a. Separate detailed cost estimates and associated construction schedules for both the requirements of the existing plans and specifications and the proposed change, and an estimate of the costs of the development and implementation of the Change Order. Each estimate shall consist of an itemized breakdown of all costs of the Contractor and all subcontractors' work in sufficient detail to show unit quantities and total costs of labor, material, overhead and equipment.
 - b. Technical analysis in sufficient detail to identify and describe each requirement of the Plans and Specifications which must be changed if the Change Order is accepted, with recommendations as to how to accomplish each such change, and its effect on unchanged work;
 - c. A statement of the time by which approval of the Change Order must be issued by Williamson County to obtain maximum cost reduction and/or construction schedule improvements, noting any effect on the Contract Time or delivery schedule
 5. Should Contractor wish to substitute any materials or items, such substitutions must be approved as a Change Order as provided in this Article. Further, all substitutions must be of equal or superior character, quality and design as that specified, and must be equally suited to the needs of Williamson County as the item(s) specified.
 - C. The performance of work pursuant to a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the work and this Agreement as thus amended, including the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against Williamson County for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Change Order; and
 - D. The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to Williamson County that the surety has been notified of and consents to such Change Order, and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XII DISPUTE RESOLUTION

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

ARTICLE XIII CLAIMS BY THE CONTRACTOR

Claims by the Contractor against Williamson County are subject to the following terms and conditions:

- A. All Contractor claims, including any claim for an extension of time, against Williamson County shall

be initiated by a written claim submitted to Williamson County. Such claim shall be received by Williamson County no later than 10 calendar days after the event, or the first appearance of the circumstances causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim;

B. The Contractor and Williamson County shall continue their performance of this Agreement regardless of the existence of any claim submitted by the Contractor;

C. The Contractor bears the risk of:

1. subsurface or otherwise concealed physical conditions which do not differ materially from those indicated in the Contract Documents taking into account that unless otherwise stipulated in the Contract Document, excavations and other subsurface construction activity shall be unclassified down to design depth, regardless of substrate and abandoned or inactive infrastructures;

2. unknown physical conditions which do not differ materially from those ordinarily found to exist and are generally recognized as inherent in construction activities of the character provided for in the Contract Documents; and

3. the location of utilities.

D. No change shall be made in the Contract Price as a result of the foregoing risks borne by the Contractor. Changes in the Contract Price shall be made by a Change Order, if increased costs will result from risks not borne by the Contractor, including conditions that require redesign in order for the Project to be completed.

E. In the event the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of Williamson County therefor the Contractor shall strictly comply with the requirements defined in this Article and such claim shall be made by the Contractor before proceeding to execute any additional or changed work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation.

F. Williamson County shall have no liability for any claims or costs if the Contractor failed to obtain an approved change order in connection with the claim. Under no circumstances shall Williamson County be liable to the Contractor for claims of third parties including subcontractors.

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

ARTICLE XIV

DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

A. In the event that the Contractor covers, conceals or obscures its work in violation of this Agreement or in violation of a directive from Williamson County such work shall be uncovered and displayed for Williamson County's inspection upon request and shall be reworked at no cost in time or money to Williamson County.

B. If any of the work is covered, concealed or obscured in a manner not covered by this Article, the Contractor shall, if directed by Williamson County, be uncovered and displayed for Williamson County's inspection. If the uncovered work conforms strictly with the Contract Documents in all aspects, the costs incurred by the Contractor to uncover and subsequently replace such work shall be borne by Williamson

County. Otherwise, such costs shall be borne by the Contractor.

C. The Contractor shall, at no cost in time or money to Williamson County, correct work rejected by Williamson County as defective or failing to conform to the Contract Documents. Additionally, the Contractor shall reimburse Williamson County for all testing, inspections and other expense incurred as a result of the rejected work.

D. In addition to its warranty obligations set forth in this Agreement, the Contractor shall be specifically obligated to correct any and all defective or nonconforming work without additional compensation for a period of 12 months following the date of Final Completion upon receiving written notice from Williamson County.

E. Williamson County may, but shall in no event be required to, choose to accept defective or nonconforming work. In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate Williamson County for the acceptance of the defective or nonconforming work, the Contractor shall, upon written demand from Williamson County, pay Williamson County such remaining compensation for accepting defective or nonconforming work.

ARTICLE XV INFORMATION AND MATERIAL SUPPLIED BY WILLIAMSON COUNTY

A. Williamson County shall furnish to the Contractor, prior to the execution of this Agreement, any and all written and tangible material known by Williamson County to be in its possession concerning conditions above or below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material in the possession of Williamson County and for no other purpose. By furnishing such material, Williamson County does not represent, warrant or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor.

B. WILLIAMSON COUNTY DOES NOT REPRESENT, WARRANT OR GUARANTEE THE ACCURACY, EITHER IN WHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR AT ALL, OF ANY ESTIMATES PROVIDED IN THIS AGREEMENT OR IN THE INVITATION TO BID OR ANY OF THE OTHER CONTRACT DOCUMENTS, AND SHALL HAVE NO LIABILITY THEREFOR.

ARTICLE XVI WILLIAMSON COUNTY'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

A. Williamson County shall have the right, at any time, to direct the Contractor to suspend the performance, or any designated part thereof, for any reason whatsoever, or without reason. Upon notification of the suspension, the Contractor shall immediately comply with the suspension and shall demobilize as directed by Williamson County.

B. In the event Williamson County directs a suspension of performance under this Article, through no fault of the Contractor, Williamson County shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- 1) demobilization and remobilization, including such costs paid to subcontractors;
- 2) preserving and protecting work in place; and
- 3) storage of materials or equipment purchased for the Project.

ARTICLE XVII CEASE AND DESIST ORDER

In the event the Contractor fails or refuses to perform the work as required herein, Williamson County may issue a cease and desist order to the Contractor to cease and desist from performing further work in whole or in part. Upon receipt of such order, the Contractor shall immediately cease and desist as instructed by Williamson County and shall not proceed further until the cause for Williamson County's order has been

corrected, or no longer exists, or Williamson County instructs the Contractor to resume the Work. In the event Williamson County issues a cease and desist order to the Contractor and in the further event that the Contractor fails or refuses to remedy the cause of the order or to provide adequate assurances to Williamson County within 7 days then Williamson County shall have the right, but not the obligation, to carry out the Work with its own force or with the forces of a third party contractor, and the Contractor shall be fully responsible and liable for the costs of performing such work. The rights provided herein are in addition to, and without prejudice to, any other rights or remedies Williamson County may have against the Contractor whether under the terms of this Agreement or otherwise provided under law.

ARTICLE XVIII TERMINATION BY WILLIAMSON COUNTY

Williamson County may terminate this Agreement in accordance with the following terms and conditions:

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

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

- B.** In addition to any rights or remedies available to Williamson County, the County may terminate the performance of the Contractor and assume possession of the Project and of the materials and equipment and may complete the work if the Contractor commits any of the following:
1. Fails to perform the work, or any part thereof, in a timely manner;
 2. Fails to begin the Work within the time as defined in this Agreement;
 3. Fails to supply adequate labor, supervisory personnel and proper equipment and materials;
 4. If Contractor fails to timely discharge its obligations for labor, equipment and materials in the manner as provided for in the Contract Documents;
 5. If Contractor disobeys applicable law; or
 6. Otherwise commits a violation of a material provision of this Agreement.
- C.** If Williamson County exercises the right to take possession of the Project, then the Contractor shall not be paid further until all Work is completed and all obligations contained in the Contract Documents have been satisfied.
- D.** After Final Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to Williamson County of completing the Work, including all costs and expenses of every nature incurred, has been deducted by Williamson County, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole Williamson County for such cost. This obligation for payment shall survive the termination of this Agreement and shall only be limited to applicable statute of limitations. In the event the employment of the Contractor is terminated by Williamson County for cause and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Agreement and as such, the Contractor will be reimbursed as if the Agreement was terminated for convenience.
- E.** Should funding for this Agreement be discontinued, Williamson County shall have the right to terminate the Agreement or any designated part thereof upon written notice to Contractor.

ARTICLE XIX TERMINATION BY THE CONTRACTOR

If Williamson County repeatedly fails to perform its material obligations to the Contractor for a period of 30 calendar days after receiving written notice from the Contractor of its intent to terminate this Agreement, the Contractor may terminate its Work under this Agreement by providing written notice to Williamson County. In such an event, the Contractor shall be entitled to recover from Williamson County as though Williamson County had terminated the Contractor's performance for convenience.

ARTICLE XX OWNERSHIP OF PROPERTY

- A.** **The following shall remain the property of Williamson County:**
1. All documents which make up the Contract Documents;
 2. All other documents furnished by Williamson County;
 3. All shop drawings and other submittals by Contractor; and
 4. All other original works of authorship, whether created by Williamson County or Contractor, embodied in any tangible medium of expression, including, without limitation, pictorial, graphic, sculptural works, two dimensional works and three dimensional works.
- B.** The Contractor shall have the right to keep 1 copy of the aforementioned documents upon completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any portion of the aforementioned on other projects without Williamson County's prior written authorization and execution of an indemnification agreement as Williamson County may provide.

ARTICLE XXI HAZARDOUS MATERIALS

- A.** Unless otherwise specified in the plans and specifications, it is the responsibility of Contractor to remove and dispose of any hazardous materials that are discovered during the construction of the Project.

Williamson County shall be responsible for the removal and disposal of any Hazardous Waste that the County knows was located at the project site prior to the execution of this Agreement.

B. The term "Hazardous Materials" shall be defined as any and all toxic or hazardous materials, substances, pollutants, compounds, wastes, or mixtures, and shall include, without limitations, asbestos containing materials, polychlorinated, January 6, 2006 biphenyls, petroleum products or byproducts, or other hydrocarbon substances. The term "Hazardous Material" shall also include any and all substances defined or listed as hazardous waste, hazardous substance, toxic substance, toxic pollutant, or similarly identified, prohibited, or regulated materials, substances, pollutants, compounds, wastes or mixtures, by, in or pursuant to any Environmental Laws or Regulations.

ARTICLE XXII HEALTH AND SAFETY

A. The Contractor will be solely and completely responsible for the condition of the job site as a result of the Contractor's work, including the health and safety of all persons, including employees, agents, subcontractors and all property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours.

B. Health and safety provisions will conform to the following: U. S. Department of Labor, Occupational Safety and Health Act; all other applicable Federal, State, County and local laws, ordinances, codes, landfill regulations; and any other regulations as may be cited in the bid document. When any of these are in conflict, the more stringent regulation/requirement will be followed. The Contractor's failure to thoroughly familiarize himself/herself with the aforementioned safety provisions will not relieve him/her from his/her responsibility to comply with the safety provisions.

C. If death, serious injuries or serious property damages are caused, the accident or loss will be reported verbally and immediately to Williamson County Government, Risk Management Division at (615) 790-5466 during business hours and at (615) 791-6200 after business hours. In addition, the Contractor must promptly report in writing to Williamson County Government, Risk Management Division within 24 hours of all accidents or incidents of loss whatsoever arising out of or in connection with the performance of work whether on or adjacent to the site, giving full details.

D. If a claim is made by anyone against the Contractor on account of any accident or incident of loss, the Contractor will promptly report the facts in writing to Williamson County Government, Risk Management Division, giving full details of the claim.

ARTICLE XXIII INDEMNIFICATION AND HOLD HARMLESS

A. Contractor shall indemnify and hold harmless Williamson County, its officers, agents and employees from:

1. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Contractor, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the Agreement;

2. Any claims, damages, penalties, costs and attorney fees arising from any failure of Contractor, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, copyright law, labor laws, and minimum wage laws; and

3. Any claims, damages, penalties, costs and attorney fees arising from any action brought against Williamson County by any of Contractor's officers, employees and/or agents arising out of any injury incurred by such officer, employee and/or agent in the course of the performance of this Agreement, regardless of the cause of such injury.

B. Williamson County will not indemnify, defend or hold harmless in any fashion the Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that the Contractor may provide.

C. Contractor shall pay Williamson County any expenses incurred as a result of Contractor's failure to fulfill any obligation in a professional and timely manner under this Agreement.

**ARTICLE XXIV
SUBCONTRACTORS**

Upon execution of this Agreement, the Contractor shall identify to Williamson County, in writing, any subcontractor not previously identified on the Project. Williamson County shall, in writing, state any objection Williamson County may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with reference to whom Williamson County objects. Should a proposed subcontractor that was provided by Contractor in its initial Bid Response or subsequent Contract Document be disapproved after the execution of this Agreement, and the Contractor provides proof that the replacement subcontractor will charge Contractor a higher price than the disapproved subcontractor, then the Contract Price may be adjusted at a rate equal to the difference between the price charged Contractor by the new subcontractor and the price charged by the disapproved subcontractor. Failure of Williamson County to object to the subcontractor shall not impose on Williamson County any liability or responsibility for the performance or character of said subcontractor.

**ARTICLE XXV
INSURANCE REQUIREMENTS**

Without limiting its liability under this contract, the Contractor will procure and maintain at his/her expense during the life of the contract any/all applicable insurance types and in the minimum amounts stated as follows:

1. General Liability– Must be on an Occurrence Form, Claims Made is Not Acceptable, and will include:
 - a) Per Occurrence limit of not less than \$ 1,000,000
 - b) General Aggregate will not be less than \$ 2,000,000
 - c) Medical Expense Limit will not be less than \$ 5,000 on any one person.
 - d) Completed Operations, including ongoing operations in favor of the Additional Insured
 - e) Contractual Liability
 - f) Personal Injury

2. Business Auto Liability(including owned, non-owned and hired vehicles)
 - a) Combined Single Limit \$ 1,000,000 or
 - b) Split Limit:
Bodily Injury: \$ 1,000,000 Each Person, \$ 1,000,000 Each Accident
Property Damage: \$ 1,000,000 Each Accident

3. Umbrella Excess Liability
 - a) \$ 1,000,000 over primary insurance

4. Workers Compensation
 - a) State: Statutory
 - b) Employer's Liability:
\$ 1,000,000 per Accident
\$ 1,000,000 Disease, Policy Limit
\$ 1,000,000 Disease Each Employee

The Commercial General Liability policy will name Williamson County Government as an Additional Insured with respect to the contract only. Said insurance will be written by a company or companies licensed to do business in the State of Tennessee and satisfactory to Williamson County Government Risk Management. Before commencing any work hereunder, a Certificate of Insurance evidencing the maintenance of said insurance will be furnished to Williamson County Government Risk Management.

Any subcontractor of the Contractor will be required to procure and maintain during the life of the subcontract,

the identical insurance required of the Contractor and comply with all provisions of this Article.

**ARTICLE XXVI
GENERAL PROVISIONS**

- A. Resolution by Court of Law; Non-binding Mediation.** Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, shall be subject to and decided by a court of law. The parties can agree to nonbinding mediation prior to litigation.
- B. Arbitration.** Governmental entities in Tennessee are not permitted to agree to arbitrate disagreements without being granted that authority specifically by the state legislature. Any arbitration clause included in this Agreement or any other documentation related to this Agreement is void.
- C. Choice of Law.** The validity, construction and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed exclusively by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Contractor may provide. Any language specifying any other governing law included in this Agreement is void.
- D. Venue.** Any action between the parties arising from this Agreement shall be maintained exclusively in the courts of Williamson County, Tennessee.
- E. Attorney Fees.** Contractor agrees that, in the event either Party deems it necessary to take legal action to enforce any provisions of this Agreement, and in the event County prevails, Contractor shall pay all expenses of such action including attorney fees and court costs at all stages of litigation.
- F. Notices.**
1. **Delivery.** Except as otherwise provided herein, any notice or other communication between the parties regarding the matters contemplated by this Agreement may be sent by United States mail (first class, airmail or express mail), commercial courier, facsimile or electronic mail, in each case delivered to the address set forth below for the recipient.
 2. **Receipt.** Communications shall be deemed received, if by mail, on the earlier of receipt or the third calendar day after deposit in the mail with postage prepaid; if by courier, when delivered as evidenced by the courier's records; if by facsimile, upon confirmation of receipt by the sending telecopier; and if by electronic mail, when first available on the recipient's mail server. If received on a day other than a business day, or on a business day but after 4:30 p.m., recipient's local time, the communication will be deemed received at 9:00 a.m. the next business day.
 3. **Addresses.**
 - i. If to County: Williamson County, Tennessee
1320 West Main Street, Suite 125
Franklin, TN 37064
 - ii. If to Contractor: _____

- G. Assignment.** The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the Parties hereto. Assignment of this Agreement, or any of the rights and obligations of Contractor hereunder, in whole or in part, requires the prior written consent of County. Any such assignment shall not release Contractor from its obligations hereunder without the express written consent of County.
- F. Limitation of Legal Avenues.** County does not agree to any terms that limit its rights or opportunities to legal recourse in any way in a court of competent jurisdiction, including but not limited to, modification of the statute of limitations or binding arbitration. To limit the legal rights of the County granted by constitution or statute, may require legislation by the Williamson County Board of Commissioners and the Tennessee State Legislature.
- G. Tennessee Open Records Act.** Contractor understands that County is subject to the Tennessee Open Records Act. This may require the County to provide requested documents to members of the public or press including, but not limited to, a copy of this Agreement. Compliance by County with the Open Records Act shall not be a breach of this Agreement.
- H. Severability.** Should any court of competent jurisdiction declare any provision of this Agreement

invalid, then such provision shall be severed and shall not affect the validity of the remaining provisions of this Agreement.

I. *Entire Agreement.* The complete understanding between the Parties is set out in this Agreement, and this Agreement supersedes and voids all prior and contemporaneous understandings, proposals, letters, agreements, or conditions expressed or implied, oral or written, except as herein contained. Any amendment, modification, waiver, or discharge of any requirement of this Agreement will not be effective unless in writing signed by the Parties hereto or by their authorized representatives.

J. *Drug Free Work Place.* If applicable, Contractor agrees to abide by all requirements set forth in Tennessee Code Annotated, Section 50-9-113, by establishing a drug free workplace program and to execute the drug free affidavit, included herewith, evidencing Contractor's compliance.

K. *Employment Practices.* Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex or which is in violation of applicable laws concerning the employment of individuals with disabilities. Contractor, if applicable, agrees to execute the Fair Employment Affidavit included in this Agreement evidencing Contractor's compliance of this policy.

L. *Employment of Illegal Immigrants.* The Contractor shall not knowingly hire any unauthorized employees or fail to comply with record keeping requirements set forth in the Federal Immigration Reform and Control Act of 1986, Chapter 878 of the 2006 Tennessee Public Acts and all other applicable laws. Failure to comply with the requirements of these immigration laws or other applicable laws is considered a material breach of this Agreement and may lead to civil penalties and debarment or suspension from being a contractor or subcontractor under contracts with Williamson County.

M. *Relationship Between the Parties.* The relationship of the parties shall be that of an independent Contractor. No principal-agent or employer-employee relationship is created by this Agreement. The parties hereto shall not hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

N. *Authority of a Governmental Entity.* Williamson County cannot agree to any terms which limit its rights or opportunities to legal recourse in a court of competent jurisdiction, including but not limited to, modification of the statute of limitations or binding arbitration. To limit the legal rights of Williamson County granted by constitution or statute, may require legislation by the Williamson County Board of Commissioners and/or the Tennessee State Legislature. Any limitation described in this paragraph included in this Agreement or any other document provided by for the Contractor is void.

O. *Maintenance of Records.* Contractor shall maintain documentation for all charges against Williamson County. The books, records and documents of the Contractor, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of 3 full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice, by Williamson County or its duly appointed representatives. The books and records shall be maintained in accordance with generally accepted accounting principles.

P. *Anti-Deficiency Clause.* Nothing contained in this Agreement shall be construed as binding Williamson County to expend any sum in excess of appropriations made by its Legislative Body for the purposes of this Agreement, or as involving Williamson County in any contract or other obligation for the further expenditure of money in excess of such appropriations.

Q. *Time is of the essence.* Since this Project is funded by public money, the parties agree that time is of the essence for the satisfactory completion of all Services and Work within the time limitations defined by the County. Failure to complete the Services or Work within the time limitations shall subject the Contractor to reduction of the Fee paid to Contractor. This section does not limit any other remedy available to the County.

R. *Liens.* The Contractor understands and accepts that Tennessee Law forbids any liens being placed on governmental property. Contractor shall not place any liens on any property that is purchased as a result of this Agreement or in relation to any of the services purchased. The Contractor shall notify County immediately once it becomes aware of any action to place a lien on Williamson County initiated.

S. *Conflicting Terms.* The parties agree that should the language in this Agreement conflict with any language included in any documentation whether provided for by Contractor or not, then the language or terms of this Agreement shall be controlling.

T. *Headings.* The headings in this Agreement are for convenience and reference and are not intended to define or limit the scope of any provisions of this Agreement.

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

V. *Effective Date.* This Agreement shall not be binding upon the parties until it has been signed first by Contractor and then by the authorized representatives of the Williamson County government and has been filed in the office of the Williamson County Mayor. When it has been so signed and filed, this Agreement shall be effective as of the date first written above.

LAST ITEM ON PAGE

AFFIDAVITS AND SIGNATURE PAGE FOLLOWS

FAIR EMPLOYMENT PRACTICES AFFIDAVIT

State of _____ County of _____

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

And Further Affiant sayeth not:

By: _____ Title: _____

Address: _____

State of _____
County of _____

Before me, the undersigned, a Notary public in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the authorizing representative of _____, and that he/she as such authorizing representative executed the foregoing instrument for the purpose therein contained, by signing his/her name on behalf of _____.

WITNESS my hand and seal, at office in Franklin, Tennessee, this ____ day of _____, 20 ____.

Notary Public

My Commission Expires:

Ethical Standards Affidavit

State of _____

County of _____

Ethical Standards Affidavit. After first being duly sworn according to law, the undersigned ("Affiant") states that he/she has the legal authority to swear to this on behalf of _____, ("Contractor") that no part of any other governmental monies provided for the services or products contemplated in this Agreement which was received from the State of Tennessee or Williamson County shall be paid directly to an employee or official of the State of Tennessee or Williamson County as wages, compensation, or gifts in exchange for acting as a Contractor, officer, agent, employee, subcontractor, or consultant to the County or the Contractor in connection with any Services or Work contemplated or performed relative to this Agreement. Affiant and Contractor further swears that no Federal, State, or County appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, any employee of the State of Tennessee, or employee of Williamson County in connection with the awarding of any Federal, State, or County contract, the making or awarding of any government grant, the making of any government loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal, State or County contract, grant, loan, or cooperative agreement.

Affiant

By: _____

Title: _____

State of _____

County of _____

Before me, the undersigned, a Notary public in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the authorizing representative of _____, and that he/she as such authorizing representative executed the foregoing instrument for the purpose therein contained, by signing his/her name on behalf of _____.

WITNESS my hand and seal, at office in Franklin, Tennessee, this ____ day of _____, 20 ____.

Notary Public

My Commission Expires:

DRUG-FREE WORKPLACE AFFIDAVIT

STATE OF _____

COUNTY OF _____

The undersigned, principal officer of _____, an Employer of 5 or more employees contracting with Williamson County government to provide construction services, hereby states under oath as follows:

1. The undersigned is a principal officer of _____ (hereinafter referred to as the "Company"), and is duly authorized to execute this Affidavit on behalf of the Company.
2. The Company submits this Affidavit pursuant to *Tenn. Code Ann. § 50-9-113*, which requires each employer with no less than 5 employees receiving pay who contracts with the state or any local government to provide construction services to submit an affidavit stating that such employer has a drug-free workplace program that complies with Title 50, Chapter 9, of the *Tennessee Code Annotated*.
3. The Company is in compliance with *Tenn. Code Ann. § 50-9-113*.

Further affiant sayeth not.

Principal Officer

STATE OF _____
COUNTY OF _____

Before me personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the foregoing affidavit for the purposes therein contained.

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

Notary Public

My commission expires: _____

**IMMIGRATION ATTESTATION
AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT**

CONTRACTOR'S LEGAL ENTITY NAME _____

CONTRACTOR'S TENNESSEE LICENSE NUMBER _____

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of the Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of any Services under this Agreement.

By executing this affidavit, the undersigned person or entity verifies its compliance with the Tennessee Lawful Employment Act codified at *Tennessee Code Annotated, Section 50-1-701, et. seq.*, stating affirmatively that the Contractor which is contracting with Williamson County government has registered with and is participating in the federal work authorization program commonly known as E-Verify or has obtained and maintains copies of the required documents in accordance with the applicable provisions of the Tennessee Lawful Employment Act.

The Contractor further agrees that it will continue to comply with all provisions of the Tennessee Lawful Employment Act, and it will contract for the physical performance of services in satisfaction of such contract only with subcontractors who comply with the applicable provisions of the Tennessee Lawful Employment Act.

The undersigned person or entity further agrees to maintain records of the documents or of such compliance including documentation for all subcontractor(s) retained to perform such service on behalf of the Contractor for the minimum period provided in the Tennessee Lawful Employment Act.

BY: Authorized Officer or Agent Date
(Name of Person or Entity)

Title of Authorized Officer or Agent

Printed Name of Authorized Officer or Agent

State of Tennessee
County of Williamson

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the authorizing representative of _____, and that he/she as such authorizing representative executed the foregoing instrument for the purpose therein contained, by signing his/her name on behalf of _____.

WITNESS my hand and seal, at office in Franklin, Tennessee, this ____ day of _____, 201__.

Notary Public

My Commission Expires:

Business Tax and License Affidavit. The undersigned, ("Affiant"), states that he/she has the legal authority to swear to this on behalf of _____, ("Contractor"); that Contractor is not in any manner in violation of *Tennessee Code Annotated, Section, 5-14-108(l)* which provides that "(n)o purchase shall be made or purchase order or contract of purchase issued for tangible personal property or services by county officials or employees, acting in their official capacity, from any firm or individual whose business tax or license is delinquent." Affiant affirms and warrants that Contractor's licenses are currently valid and all business taxes have been paid and are current as of the date of this affidavit. Contractor is licensed and pays business taxes in _____ (County), Tennessee.

Affiant

By: _____

Title: _____

Date: _____

Witness: _____

Date: _____

IN WITNESS WHEREOF, the parties, through their authorized representatives, have affixed their signatures below.

WILLIAMSON COUNTY:

County Mayor

Purchasing Agent:

RECOMMENDED:
Department Head

Department:

APPROVED AS TO AVAILABILITY OF FUNDS:

Director of Finance

APPROVED AS TO INSURANCE:

Director of Insurance

APPROVED AS TO FORM AND LEGALITY:

Williamson County Attorney

FILED IN THE OFFICE OF THE WILLIAMSON COUNTY MAYOR:

Date: _____

CONTRACTOR:

By: _____

Title: _____

Sworn to and subscribed to before me, a Notary Public, this ____ day of _____, 20__, by _____, the _____ of Contractor and duly authorized to execute this instrument on Contractor's behalf.

Notary Public

My Commission Expires _____