

PUBLIC WORKS CONTRACT

The City of Ashville and _____

THIS AGREEMENT, entered into as of this ____ day of _____, between the CITY OF ASHVILLE (herein called the CITY) and _____ (herein called the CONTRACTOR). Agreement concerns maintenance of the City's water tanks. (herein called the PROJECT or the SERVICES).

WITNESSETH THAT:

WHEREAS, the CITY desires to engage the CONTRACTOR to render technical, professional and construction services, hereinafter described in connection with the PROJECT.

NOW, THEREFORE, the CITY and the CONTRACTOR do mutually agree as follows:

Section 1. CONTRACTOR

The CITY agrees to engage the CONTRACTOR and the CONTRACTOR hereby agrees to perform the Services hereinafter set forth, within this agreement and the accompanying documents for the CITY, in a proper manner as determined by the CITY. CONTRACTOR must supply to the CITY the documents listed below and any others as required by the State of Alabama Bid Law prior to commencing work:

- A) Performance and Payment bonds as required by Title 39; and
- B) Certificate of Insurance (with unconditional cancellation clause)

Section 2. Scope of Services

The CONTRACTOR shall provide construction and other professional and technical services to the CITY to include, but not necessarily be limited to, performing all the services set forth in the Scope of Services attached hereto as Attachment A and in compliance with CITY laws, rules, regulations and consistent with industry standards.

The Bid Solicitation documents including but not limited to the Schedule(s) of Work and Standard Specifications set forth therein are expressly made a part of this Contract as if fully and completely set forth herein.

Section 3. Time of Performance

The Services to be provided are ongoing in nature and shall commence upon execution of this contract and will continue for a period of three (3) years as set forth in the bid specifications.

Section 4. General Provisions

(a) *Personnel*. The CONTRACTOR warrants that it has the professional personnel capable of performing the services, as called for herein, in a satisfactory and proper manner, or will secure the services of such personnel as may be required to perform such services.

(b) *Office Space*. The CONTRACTOR agrees to provide and maintain the office space and facilities required to perform all services as called for under this Agreement, at no expense to the CITY.

(c) *Subcontracts*. None of the work or services covered by this contract shall be subcontracted without the prior approval of the CITY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this contract.

(d) *Changes.* The CITY may, from time to time, request changes of the CONTRACTOR in the scope of services to be performed hereunder. Such changes, to be administered in accordance with the contract documents, including any increase or decrease in the amount of the CONTRACTOR's compensation, which is mutually agreed upon by and between the CITY and the CONTRACTOR, shall be incorporated in written amendments to this contract. The contract can be extended under mutually agreed provisions, through a written amendment to this document. Execution of any change order(s) applicable to the above shall be final and conclusive evidence of a change to this contract and shall constitute evidence of the totality of said change; no additional sums of money or increases in time shall be due the Contractor other than as conspicuously identified on the applicable change order(s).

(e) *Assignability.* The CONTRACTOR shall not assign any interest on this contract, and shall not transfer any interest in the same whether by assignment or novation, without the prior written consent of the CITY provided, however, that claims for money by the CONTRACTOR from the CITY under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be promptly furnished to the CITY.

This Agreement shall be binding upon and inure to the benefit of any successor to CITY and such successor shall be deemed substituted for CITY under the terms of this Agreement. As used in this Agreement, the term "successor" shall include any person, firm, employer or other business entity which at any time, whether by merger, purchase or otherwise, which assumes or is assigned responsibility of CITY for the covered project. This Agreement shall also be binding upon and inure to the benefit of the CONTRACTOR, his heirs, executors and administrators.

(f) *Reports and Information.* The CONTRACTOR, at such times and in such forms as the CITY may require, shall furnish to the CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

(g) *Findings Confidential.* All of the reports, information, data, etc., given to or prepared or assembled by the CONTRACTOR under this contract are confidential and the CONTRACTOR agrees that they shall not be made available to any individual or organization without the prior written approval of the CITY.

(h) *Waiver of Trial by Jury.* The parties to this Agreement desire to avoid the additional time and expense related to a jury trial of any disputes arising hereunder. Therefore, it is mutually agreed by and between the parties hereto, and for their successors and assigns, that they shall and hereby waive trial by jury of any claim, counterclaim, or third-party claim, including any and all claims of injury or damages, brought by either party against the other arising out of or in any way connected with this Agreement and the relationship which arises here from. The parties acknowledge and agree that this waiver is knowingly, freely and voluntarily given, is desired by both parties, and is in the best interest of both parties.

(i) *Compliance with Local Laws.* The CONTRACTOR shall comply with all applicable laws, ordinances and codes of the U.S. Government, the State of Alabama, and the City of Ashville.

(j) *Interest of Members of the CITY and Other Local Public Officials.* No officer, member or employee of the CITY and no member of its governing body, and no other public official of the governing body of the locality of localities in which the project is situated or being carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, direct or indirect, in this contract or the proceeds thereof. The CONTRACTOR shall take appropriate steps to assure compliance.

(k) *Interest of the CONTRACTOR.* The CONTRACTOR covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. The CONTRACTOR further covenants that in the performance of this contract, no person having any such interest shall be employed.

(l) *Immigration.* 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.

Section 7. Additional Services of CONTRACTOR

If authorized in writing by the CITY and subject to applicable law, including applicable Alabama bid law, the CONTRACTOR may be asked to furnish additional services which are not considered as an integral part of the Scope of Services herein. Under this Agreement, all costs for additional services will be negotiated as to activities and compensation. Upon mutual agreement between the CITY and the CONTRACTOR, and written authorization from the CITY to proceed, the CONTRACTOR will provide with the additional service.

Section 8. Tax Responsibilities of CONTRACTOR

The parties to this Agreement agree that the CONTRACTOR is an independent firm or person and that the relationship created by this agreement is that of an independent CONTRACTOR. Further, the parties agree that the CONTRACTOR is not an employee of CITY, and will not be treated as such for federal income tax purposes. In this regard the CONTRACTOR acknowledges and accepts all tax responsibilities imposed by federal income tax laws, and any applicable state income tax laws, on self-employed persons, including but not limited to the responsibility of withholding from income the required amounts for federal income taxes, Social Security taxes, federal unemployment tax and applicable state and local income taxes.

Section 9. Independent CONTRACTOR Relationship

In the performance of the work, duties and obligations evolving under this Agreement, it is mutually understood and agreed that the CONTRACTOR is at all times serving as an independent CONTRACTOR providing CITY with services as a contractor and or independent contractor. Amounts paid to the CONTRACTOR by CITY as compensation for providing said services are for services purchased, and amounts paid to the CONTRACTOR shall be deemed to be fees for services to an independent CONTRACTOR and shall not be subject to any withholding. It is expressly understood that CITY is interested only in the results to be achieved, and the conduct and control of the work will be the sole responsibility of the CONTRACTOR. CONTRACTOR is not considered to be an agent or employee of CITY for any purpose and the CONTRACTOR will not be eligible to participate in any benefits CITY provides for its own employees. It is further understood and agreed that CITY does not agree to use CONTRACTOR exclusively. It is further understood and agreed that, except as provided herein, CONTRACTOR is free to contract for similar services to be performed for others during the term of this Agreement.

Section 10. Indemnification and Liability

The CITY shall not be liable to or for any injury to the person or property of any person, firm or corporation, and Contractor assumes full and complete responsibility therefore. Contractor shall remain insured under terms of a public liability insurance policy as described in the "Certificate of Insurance" attached hereto as Attachment "A" during the entire term of this contract and the performance of all work herein provided for. Contractor shall further indemnify CITY and hold CITY safe and harmless from any and all liability, lawsuits, judgments, attorney fees and other costs incurred by CITY in defending any claim or lawsuit made against CITY by any person, firm or corporation arising directly or indirectly out of any work performed

by Contractor pursuant hereto or any breach or alleged breach of duty or responsibility of Contractor related thereto.

Section 11. Insurance

Contractor shall provide evidence of insurance coverage in the no less than the following limits and naming the City as an additional insured for completed and ongoing operations:

- Commercial General Liability: \$1,000,000 per occurrence; \$2,000,000 in aggregate
- Automobile Liability: \$1,000,000
- Liability Umbrella of no less than \$5,000,000
- Workman’s Compensation: As required by law

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have caused this agreement to be executed by their duly authorized officers on the day and year first above written.

CITY OF ASHVILLE

By: Derrick Mostella, Mayor

Date

ATTEST:

Date

Insert contractor’s company name here

Date

By: (Print Name): _____

ATTEST:

Date

ATTACHMENT "A"
Scope of Services
City of Ashville Water Tank Maintenance Services

- 1) Prior to start of the Work, provide insurance certificate indicating insurance coverage acceptable to CITY. Please request the additional insured to read: CITY, its officers, agents, and employees, successors or assigns.
- 2) The contractor, person, firm, or corporation undertaking or contracting to undertake the herein described public works project agrees to use in the execution of the contract materials, supplies, and products manufactured, mined, processed, or otherwise produced in the United States or its territories, if the same are available at reasonable and competitive prices and are not contrary to any sole source specification implemented under [subsection \(f\) of Section 39-2-2](#), Code of Alabama(1975), as amended. In the event the contractor breaches the agreement to use domestic products, and domestic products are not used, there shall be a downward adjustment in the contract price equal to any realized savings or benefits to the contractor.
- 3) Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the I-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor's hiring practices to execute an affidavit to this effect on the form supplies by CITY and return the same to CITY. Contractor shall also enroll in the E-Verify Program prior to performing any work, or continuing to perform any ongoing work, and shall remain enrolled throughout the entire course of its performance hereunder, and shall attach to its affidavit the E-Verify Program for Employment Verification and Memorandum of Understanding and such other documentation as CITY may require to confirm Contractor's enrollment in the E-Verify Program. Contractor agrees not to knowingly allow any of its subcontractors, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially similar to the paragraph. If Contractor receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of CITY and shall comply with the Immigration Reform and Control Act of 186, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Contractor shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If Contractor violates any term of this provision, this Agreement will be subject to immediate termination by CITY. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless CITY from any and all losses, consequential damages, expenses included but not limited to, attorney's fees, 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 contained in

this paragraph. Additionally, contractor shall provide CITY proof that you are in compliance with the immigration law by including a notarized E-Verify Memorandum of Understanding and provide your subcontractors notice of their compliance obligations and obtain from each a notarized Affidavit of Immigration Law Compliance-Subcontractor.

- 4) Work must be coordinated with CITY.
- 5) Contract documents specifically include the Bid Solicitation Documents, specifically including but expressly not limited to the Schedule(s) of Work and Standard Specifications set forth therein.
- 6) By signing this contract, _____ 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.
- 7) Contractor must maintain work space clean and free of debris.
- 8) Debarment, Suspension and Other Responsibility Matters Form.

Debarment, Suspension and Other Responsibility Matters Form

As required by Executive Order 12549, Debarment and Suspensions, and implemented at 2 CFR Part 2867, for the prospective participants in primary covered transactions, as defined at 2 CFR Part 2867.20(a), the applicant certifies that it and its principals:

- A. Are not presently debarred, suspended, proposal for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department or agency:

- B. Have not within a three year period preceding this covered transaction been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) or private agreement or transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or receiving stolen property, making false claims, or obstruction of justice, or commission of any offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph B. of this certification; and

- D. Have not within a three year period preceding this transaction had one of more public transactions (federal, state or local) terminated for cause or default.

I/we hereby certify that I/we are in complete compliance with all of the provisions noted above as of this date _____, 20____.

Print: _____

Print: _____

Print: _____

Print: _____

Print: _____

Print: _____