



SHELBY COUNTY GOVERNMENT

160 N. Main Street, 5th Floor, Purchasing
 MEMPHIS, TENNESSEE 38103
 (901) 222-2250

Purchase Order No.
 S013195

Issue Date
 03/25/21

Purchase Order COPY

Vendor No.	Delivery Required	Terms	Ship Via	F O B	Requisition No
A0616	03/25/21	N30		DEST	

Issued **BARNES & BROWER, INC.**
 To 3787 OLD GETWELL ROAD
 MEMPHIS, TN 38118

Ship **SHELBY COUNTY ROADS & BRIDGES**
 To 6449 HALEY ROAD
 MEMPHIS, TN 38134

EOC #: EOC-C-0822-30105
 Buyer: SONJA WORTHY

IF MATERIAL SAFETY DATA SHEETS ARE
 REQUIRED ON PRODUCT(S) THAT YOU WILL BE
 PROVIDING. PLEASE SUBMIT SAME WITH
 PRODUCT(S) DELIVERED.

Item	Quantity	U/M	Description	Unit Price	Extended Price
1			CONSTRUCTION OF THE BIG CREEK PARK - PHASE 1 CIVIL PACKAGE OF THE NATIONAL RESILIENCE DISASTER CA2100505 COMMODITY: 912/23 ACCOUNT DISTRIBUTION: 297-271271-7076	5998359.49000	5998359.49
Total of Purchase Order					5998359.49

I hereby certify that the goods/services in attached invoice(s)
 have been received and that payment is in order.
 This is a Partial payment Final payment on this P.O.
 Payment amount approved: \$ _____
 Signature _____ Date _____

ORDER SUBJECT TO TERMS AND CONDITIONS ON REVERSE SIDE
 BILLING INSTRUCTIONS: SHOW PURCHASE ORDER NUMBER
 ON ALL INVOICES. NOTE: PAYMENTS MAY BE DELAYED UNLESS
 BILLING INSTRUCTIONS ARE FOLLOWED EXACTLY.

SEND ORIGINAL INVOICE TO:
 SHELBY COUNTY ROADS & BRIDGES
 6449 HALEY ROAD
 MEMPHIS, TN 38134
 901-222-7705

Christin L. Webb
 APPROVED: ADMINISTRATOR OF PURCHASING

03/25/21
 Date Authorized Signature

**SHELBY COUNTY GOVERNMENT
CONTRACTS ADMINISTRATION
160 N. MAIN, SUITE 950
MEMPHIS, TN 38103
(901) 222-2140 PHONE
(901) 222-2062 FAX**

DEPARTMENTAL COMMUNICATION

TO: Jason Morris
Roads, Bridges, & Engineering

FROM: Glenda Pearson
Contracts Administration

DATE: March 24, 2021

SUBJECT: Barnes & Brower, Inc.
Contract Number: CA2100505

Attached please find one (1) fully executed copy of the above-referenced contract that has been executed by Lee Harris, Shelby County Mayor, for Shelby County Government. Please retain a copy for your files and forward a copy to *Barnes & Brower, Inc.*, along with a “*Notice to Proceed*” for the described services of the contract.

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

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

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

Attachment
Contract: (1)
PO: (Provided Upon Receipt)

CONTRACT

This contract (the "Contract") entered into this 24th day of March, 2020, and between SHELBY COUNTY GOVERNMENT, (hereinafter referred to as "COUNTY") and BARNES & BROWER, INC. (hereinafter referred to as "CONTRACTOR").

WITNESSETH

WHEREAS, COUNTY has the need for construction services for the Big Creek Resiliency project; and

WHEREAS, COUNTY issued Sealed Bid Number I000622A, Big Creek Park Construction - Phase 1 Civil Package on August 28, 2020 which is attached hereto as Exhibit "A" and incorporated herein by reference as if stated verbatim, and CONTRACTOR responded to said RFQ on October 6, 2020 which is attached hereto as Exhibit "B" and incorporated herein by reference as if stated verbatim; and

WHEREAS, COUNTY awarded the Sealed Bid to CONTRACTOR on October 19, 2020; and

WHEREAS, COUNTY AND CONTRACTOR negotiated the scope of work and fee to provide value engineering and keep the project within budget; and

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

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

I. SCOPE OF WORK

1. CONTRACTOR shall provide the services as outlined within COUNTY's Sealed Bid #1000622A and CONTRACTOR's response and mutually agreed scope of work and fee schedule hereto attached hereto as Exhibit "C" and incorporated herein by reference as if stated verbatim (the "Services").

II. TERM AND COMPENSATION

1. The term of this Contract (the "Term") will commence upon written notice to proceed from COUNTY and continue for 540 calendar days.
2. COUNTY agrees to compensate CONTRACTOR for the provision of the Services the sum total not to exceed FIVE MILLION SEVEN HUNDRED TWELVE THOUSAND SEVEN HUNDRED TWENTY THREE AND 32/100 (\$5,712,723.32) Dollars (the "Fee") during the term of this Contract.
3. The Fee shall be paid in accordance with the CONTRACTOR's response.
4. CONTRACTOR shall submit invoices to COUNTY on a monthly basis for Services performed during the preceding month. Invoices shall be submitted in electronic format to the attention of Chris Masin at chris.masin@shelbycountyttn.gov and Jason Morris at jason.morris@shelbycountyttn.gov. COUNTY shall pay such invoices within thirty (30) days of its receipt and approval of said invoices. COUNTY is not obligated to pay, and will withhold from payment, any amounts COUNTY has in dispute with CONTRACTOR based on CONTRACTOR'S non-performance or negligent performance of any of the Services under this Contract.
5. CONTRACTOR shall not be permitted or authorized to incur costs beyond the extent that purchase orders have been issued on approved contracts and/or purchases prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of County contracts or purchases without prior, expressly written, appropriate authorization pursuant to County purchasing procedures and rules and regulations. County is not obligated to pay nor shall CONTRACTOR be entitled to receive payments for contract fees and expenses incurred in violation of this provision

III. GENERAL CONDITIONS

The parties further agree as follows:

1. CONTROL

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

2. CONTRACTOR'S PERSONNEL

CONTRACTOR certifies that it presently has adequate qualified personnel to perform all Services required under this

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

3. INDEPENDENT STATUS

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

4. REPORTS

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

5. TERMINATION OR ABANDONMENT

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

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

6. COMPENSATION FOR CORRECTIONS

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

7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

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

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

8. CONFLICT OF INTEREST

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

9. CONTINGENT FEES

CONTRACTOR warrants that it has not employed or retained any company or person other than a bona fide employee working

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

10. NON-PUBLIC INFORMATION

CONTRACTOR, for the purpose of securing a special privilege, benefit, or exemption for itself or others, including but not limited to the award of this Contract, has not sought and will not seek the disclosure or use of information from any COUNTY official, employee, or appointee that was gained by said COUNTY official, employee, or appointee by reason of his or her official COUNTY position and not available to the public generally.

11. ACCESS TO RECORDS

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

12. DISPUTE RESOLUTION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between CONTRACTOR and COUNTY will be referred to the Shelby County Contracts Administrator or its duly authorized representative, whose decision regarding same will be final. Nothing herein shall be interpreted so as to prevent either party from pursuing available remedies in a court of competent jurisdiction.

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

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

14. GENERAL COMPLIANCE WITH LAWS

- a. CONTRACTOR certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it

shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.

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

15. NON-DISCRIMINATION

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

16. ENTIRE AGREEMENT

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

17. AMENDMENT

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

18. SEVERABILITY

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

19. NO WAIVER OF CONTRACTUAL RIGHT

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

20. MATTERS TO BE DISREGARDED

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

21. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds

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

22. MILEAGE EXPENSES

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

23. NON-LIABILITY FOR CONTRACTOR EMPLOYEE TAXES

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

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

24. INCORPORATION OF OTHER DOCUMENTS

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

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

25. RIGHT TO REQUEST REMOVAL OF CONTRACTOR'S EMPLOYEES

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

26. EMPLOYMENT OF ILLEGAL IMMIGRANTS

CONTRACTOR hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. CONTRACTOR shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event CONTRACTOR fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this Agreement may be canceled, terminated or suspended in whole or in part by the County, and CONTRACTOR may be prohibited from contracting to supply goods and/or services to the County for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with COUNTY.

27. INCORPORATION OF WHEREAS CLAUSES

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

28. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by

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

29. ORGANIZATION STATUS AND AUTHORITY

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

30. INSURANCE REQUIREMENTS

- a. CONTRACTOR shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from claims which may arise out of or result from the CONTRACTOR's operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the CONTRACTOR or subcontractor may be liable.
- b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government,

its elected officials, appointees, employees and members of boards, agencies, and commissions shall be named as additional insureds. All policies will provide for thirty (30) days written notice to COUNTY of cancellation or material change in coverage provided. If policy terms and conditions do not allow for notice to COUNTY, CONTRACTOR will immediately notify COUNTY and provide evidence of replacement coverage with no lapse. CONTRACTOR will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements:

- i. Commercial General Liability Insurance - \$1,000,000.00 limit per occurrence bodily injury and property damage/\$1,000,000.00 personal and advertising injury/\$2,000,000.00 General Aggregate/\$2,000,000.00 Products-completed Operations Aggregate, indicating the coverage is provided on a claims-made or on an occurrence basis. The insurance shall include coverage for the following:
 1. Premises/Operation;
 2. XCU coverage, where applicable;
 3. Products/Completed Operations;
 4. Contractual Liability;
 5. Independent Contractors;
 6. Broad Form Property Coverage;
 7. Personal Injury.
- ii. Workers Compensation and Employers' Liability Insurance - Including coverage for sole proprietors, officers, and partners, regardless of requirement by Tennessee State Statute. Policy is to be specifically endorsed to include these individuals for coverage. This policy should include Employers' Liability Coverage for \$1,000,000.00 per accident. Certificate of Insurance should include a waiver of subrogation against Shelby County for any and all workers' compensation claims.
- iii. Business Automobile Liability Insurance - \$1,000,000.00 each accident for property damage and personal injury. Coverage is to be provided on all owned/leased autos, non-owned autos and hired autos.
- iv. For Contracts over \$5,000,000:

- Umbrella - \$2,000,000 per occurrence.
 - Builders Risk Insurance or Installation Floater- (as applicable) - This covers building structures and personal property, vandalism, malicious mischief and all risks associated with the construction project.
- c. CONTRACTOR shall provide County with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

Shelby County Government
 Contracts Administration -
 County Attorney's Office
 160 N. Main, Suite 950
 Memphis, TN 38103

- d. Upon termination or cancellation of any claims-made insurance currently in effect under this Contract, CONTRACTOR shall purchase an extended reporting endorsement and furnish evidence of same to the County.
- e. Any coverage applicable to COUNTY will apply as primary and non-contributory regardless of any insurance or self- insurance maintained by COUNTY.

31. NOTICE

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

COUNTY: Shelby County Roads, Bridges, &
 Engineering
 6449 Haley Road
 Memphis, Tennessee 38134
 Attn.: Darren Sanders, County Engineer

and

Shelby County Government
 Contract Administration -
 County Attorney's Office
 160 N. Main St., Suite 950
 Memphis, Tennessee 38103

VENDOR: Barnes & Brower Inc.
Mr. Jeff Barnes
3787 Old Getwell Road
Memphis, TN 38118

32. DATA SECURITY

CONTRACTOR warrants to COUNTY and State that it agrees to meet the spirit and intent of all compliance requirements relating to the content of data accessed. This includes but is not limited to Payment Card Industry (PCI) data, as defined by PCI Security Standard v3.1, Protected Health Information (PHI), as defined under the Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 160, Subpart A, §160.103 (45 C.F.R. §160.103), and Personally Identifiable Information (PII), as defined in the National Institute of Standards and Technology Special Publication 800-122 sections 2.1 and 2.2, in electronic and/or paper format. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and COUNTY in compliance, including, but not limited to, Data Security - Vendor Acknowledgement agreement and Acceptable Use Policy, and to abide by SCG ITS security policies including, but not limited to, the SCG Network Security and Information Security policies.

CONTRACTOR shall apply all vendor-issued security updates for system hardware and software components maintained by the CONTRACTOR within 30 days of issuance.

Upon notification by COUNTY, CONTRACTOR shall assure that all vulnerabilities specific to the systems maintained and identified by COUNTY Approved Scanning Vendor (ASV), using the common vulnerability scoring system (CVSS), as not meeting compliance requirements, including but not limited to PCI Data Security Standards (DSS) and Health Insurance Portability and Accountability Act (HIPAA), are patched, updated, or otherwise modified to assure they meet said compliance requirements.

CONTRACTOR shall promptly report to Information Technology Security Officer any breaches of Shelby County Government data and will implement immediate, appropriate corrective actions to contain and prevent recurrence.

- i) **HIPAA** -CONTRACTOR warrants to COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable

HIPAA requirements in the course of this Contract. CONTRACTOR warrants that it will cooperate with COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements.

- ii) **PCI-DSS**-CONTRACTOR warrants to the COUNTY that it is familiar with the requirements established by the Payment Card Industry Security Standards Council for PCI Data Security Standards (PCI-DSS) and will comply with all applicable PCI-DSS requirements in the course of this Contract. CONTRACTOR agrees to indemnify and hold COUNTY, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any breach of COUNTY or COUNTY customer credit card or identity information due to CONTRACTOR's actions.
- iii) **Personally Identifiable Information (PII)** - CONTRACTOR warrants to COUNTY that it will protect any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

33. LIVING WAGE

Shelby County government is an entity that pays a living wage to its employees. Shelby County also encourages those businesses contracting with the county to provide goods and services to also pay a living wage to their employees.

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

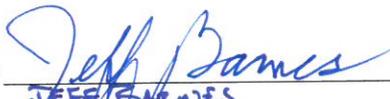
APPROVED AS TO FORM:
AND LEGALITY:

SHELBY COUNTY GOVERNMENT


Contract Administration/
Assistant County Attorney


Lee Harris, Mayor

Barnes & Brower Inc.

BY: 
JEFF BARNES
TITLE: PRESIDENT



CORPORATE ACKNOWLEDGMENT

STATE OF TN
COUNTY OF SHELBY

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

WITNESS my hand and official seal at office this 14 day of DECEMBER, 20.



Notary Public

My Commission Expires: 2-21-22

