

**AGREEMENT BETWEEN TOWN OF THOMPSON'S STATION, TENNESSEE
AND CONTRACTOR FOR PAVING OF PANTALL ROAD**

This agreement is made between **Town of Thompson's Station, Tennessee** called "Town" and _____ called "Contractor," as follows:

Section I. Description of Work

The contractor shall perform the following described work, in accordance with the contract plans and specifications, referred to here as "contract documents." This is a road repair and paving contract on Pantall Road as further described in the Bid Documents and Specifications for **April 2017** prepared by the Town Engineer ("engineer") and specifically incorporated herein by reference. This is a public project and is subject to all ordinances and statutes applicable thereto.

Section II. Contract Sum or Agreed Payment to Contractor

The Town agrees to pay the Contractor for the work described above for a **lump sum** in the amount \$ _____. Payment of this amount and according to these terms may be subject to additions, deductions or changes for unit pricing as set forth in the contract documents.

Section III. Certificate of Completion; Final Payment

When the Contractor has completed the work, it shall notify the Town in writing. Within five (5) days after receipt of such notice, the Town shall inspect the work and, if the work is satisfactory, shall issue a final certificate stating that it has accepted the work as fully performed under the terms of the contract and that the final payment, consisting of the entire balance of the contract price, is due to the Contractor. The Town shall make the final payment within thirty (30) days after the issuance of such a certificate. The Contractor, by accepting final payment, waives all claims except those which it has previously made in writing, and which remain unsettled at the time of acceptance.

Section IV. Starting and Completion Dates

Construction under this contract shall begin on or before _____, and be completed by _____.

Section V. Contract Documents

The contract documents on which the agreement between the Town, engineer, and Contractor is based, which contain the plans and specifications in accordance with which the work is to be done, and which provide for the method of payment of the contract sum, are as follows:

(a) This agreement, with supplementary agreements and attached conditions;

(b) The plans and specifications, with addenda attached, issued before execution of this agreement, including the Bid Documents and Specifications, Bid Form, Performance Bond and Payment Bond Requirements, Insurance Requirements and Certificates and Drug-Free Workplace Affidavit, and any amendments subsequently to be made to any of the above documents;

(c) Written interpretations of the contract documents and directives to be made from time to time by the engineer; and

(d) Work change orders issued, or to be issued; and

(e) Notice of surety bond requirements including pursuant to Tenn. Code Ann. § 12-4-201.

The contract documents are to be separately executed, in duplicate by the Town and contractor. The Contractor, by executing the documents, represents that it has inspected and is familiar with the work site and the local conditions under which the work is to be performed. If by inadvertence any of the contract documents are not signed, the engineer shall identify them. The contract documents together form the contract for the work described in this agreement. The parties intend that the documents include provisions for all labor, materials, equipment, supplies, and other items necessary for the execution and completion of the work, and all terms and conditions of payment. The documents also include all work and procedures not expressly indicated thereto but necessary for proper execution of this project.

In the event of any conflict between the provisions of this Agreement and any of the attachments, exhibits, or other documents attached to or incorporated into it by reference, the terms and conditions of this Agreement shall control.

Section VI. Duties and Rights of Contractor

The Contractor's duties and rights in connection with the project are as follows:

(a) *Responsibility for and Supervision of Construction.* The Contractor shall be solely responsible for all construction under this contract, including the techniques, sequences, procedures, and means, and for coordination of all work. It shall supervise and direct the work to the best of its ability, and give the work all attention necessary for such proper supervision and direction.

(b) *Furnishing of Labor, and Materials.* The Contractor shall provide and pay for all labor, materials, and equipment, including tools, construction equipment, and machinery, utilities, including water, transportation, and all other facilities and services necessary for the proper completion of work on the project in accordance with the contract documents.

(c) *Payment of Taxes; Procurement of Licenses and Permits.* The Contractor shall pay all taxes required by law in connection with work on the project in accordance with this contract including sales, use, and similar taxes, and shall secure all licenses and permits necessary for proper completion of the work.

(d) *Compliance With Construction Laws and Regulations.* The Contractor shall comply with all laws and ordinances, and the rules, regulations, or orders of all public authorities relating to the performance of the work. If any of the contract documents are at variance with any such requirements, the contractor shall notify the engineer promptly on discovery of such variance.

(e) *Responsibility for Negligence of Employees and Subcontractors.* The Contractor agrees to assume

full responsibility for acts, negligence, or omissions of all its employees on the project, for those of its subcontractors and their employees, and for those of all other persons doing work under a contract with contractor.

(f) *Warranty of Fitness of Equipment and Materials.* The Contractor represents and warrants to the Town and the engineer that all equipment and materials used in the work, and made a part of the structures, or placed permanently in connection with the work, will be new unless otherwise specified in the contract documents, of good quality, free of defects, and in conformity with the contract documents. It is understood between the parties that all equipment and materials not so in conformity are defective.

(g) *Clean-Up.* The Contractor agrees to keep the work premises and adjoining ways free of waste material and rubbish caused by its work or that of its subcontractors. The Contractor further agrees to remove all such waste material and rubbish on termination of the project, together with all its tools, equipment, machinery and surplus materials. The Contractor agrees, on terminating its work at the site, to conduct general clean-up operations, including the cleaning of all glass surfaces, paved streets and walks, steps, and interior floors and walls.

(h) *Indemnity and Hold Harmless Agreement.* The Contractor agrees to indemnify and hold harmless the Town, and their agents and employees, from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees arising out of performance of the work, which are (1) for bodily injury, illness, or death, or for property damage, including loss of use, and (2) caused in whole or in part by the Contractor's negligent act or omission, or that of a subcontractor, or that of anyone employed by them or for whose acts the Contractor or subcontractor may be liable.

(i) *Payment of Royalties and License Fees; Hold Harmless Agreement.* The Contractor agrees to pay all royalties and license fees necessary for the work, and to defend all actions and settle all claims for infringement of copyright or patent rights, and to save the Town harmless.

(j) *Safety Precautions and Programs.* The Contractor has the duty of providing for and overseeing all safety orders, precautions, and programs necessary to the reasonable safety of the work. In this connection, Contractor shall take reasonable precautions for the safety of all work employees and other persons whom the work might effect, all work and materials incorporated in the project, and all property and improvements on the construction site and adjacent areas, complying with all applicable laws, ordinances, rules, regulations and orders.

Section VII. Time of Essence; Extension of Time

All times stated in this agreement or in the contract documents are of the essence in this agreement. The contract times may be extended by a change order from the engineer for such reasonable time as it may determine, when in the engineer's opinion the contractor is delayed in work progress by changes ordered, labor disputes, fire, prolonged transportation delays, injuries, or other causes beyond contractor's control or which justify the delay.

Section VIII. Subcontracts

The Contractor agrees to furnish the engineer and the Town, prior to the execution of this

contract, a list of names of subcontractors to whom Contractor proposes to award the principal portions of the work to be subcontracted. A subcontractor, for the purposes of this Contract, shall be a person with whom the Contractor has a direct contract for work at the project site. The Contractor agrees not to employ a subcontractor to whose employment the engineer or Town reasonably objects. All contracts between the Contractor and subcontractor shall conform to the provisions of the contract documents, and shall have incorporated in them the relevant provisions of this contract.

Section IX. Insurance

(a) *Contractor's Liability Insurance.* The Contractor agrees to keep in force at its own expense during the entire period of construction on the project such liability insurance as will protect it from claims, under workers' compensation and other employee benefit laws, for bodily injury and death, and for property damage, that may arise out of work under this contract, whether directly or indirectly by the contractor, or directly or indirectly by a subcontractor. The minimum liability limits of such insurance shall not be less than the limits specified in the contract documents or by law for that type of damage claim. Such insurance shall include contractual liability insurance applicable to the Contractor's obligations under this contract. Proof of such insurance shall be filed by the Contractor with the Town within a reasonable time after execution of this contract.

(b) *Town's Liability Insurance.* The Town agrees to maintain in force its own liability insurance during the construction on this project, and reserves the right to purchase such additional insurance as in its opinion is necessary to protect it against claims arising out of the Contractor's operation, without diminishing Contractor's obligation to carry the insurance specified herein on contractor's part to be carried.

(c) *Property Damage Insurance on Work Site.* The Town agrees to maintain at its expense during construction of the project property damage insurance on the work at the site to its full insurable value, including interests of the Town, Contractor, and subcontractors, against fire, vandalism, and other perils ordinarily included in extended coverage. Losses under such insurance will be adjusted with and made payable to the Town as trustee for the parties insured as their interests appear. The Town shall file a copy of all such policies with the Contractor within a reasonable time after construction begins.

(d) *Waiver of Work Site Property Damage Claims to Extent of Insurance Coverage.* The Town and Contractor hereby waive all claims against each other for fire damage or damages from other perils covered by insurance provided in Subdivision (c) of this paragraph. The Contractor agrees to obtain waivers of such claims by all subcontractors.

Section X. Correcting Work

When it appears to the Contractor, during the course of construction, that any work does not conform to the provisions of the contract documents, Contractor shall make necessary corrections so that such work will so conform, and in addition will correct any defects caused by faulty materials, equipment or workmanship in work supervised by it or by a subcontractor, appearing within one year from the date of issuance of a certificate of substantial completion, or within such longer period as may be prescribed by law or as may be provided for by applicable special guarantees in the contract documents.

Section XI. Work Changes

The Town reserves the right to order work changes including additions, deletions, or modifications, without invalidating the contract, and agrees to make corresponding adjustments in the contract price and time of termination. All changes will be authorized by a written change order signed by the Town or by the engineer as its agent. The change order will include conforming changes in the contract and termination time. Work shall be changed, and the contract price and termination time shall be modified only as set out in the written change order. Any adjustment in the contract sum resulting in a credit or a charge to the Town shall be determined by agreement of the parties, or by arbitration, before starting the work involved in the change.

Section XV. Early Termination for Breach of Contract

(a) *Contractor's Termination.* The Contractor may, on ten (10) day's written notice to the Town and engineer, terminate this contract before the termination date when for a period of 30 days after a progress payment is due, through no fault of the Contractor, the engineer fails to issue a certificate of payment, or the Town fails to make the payment.

(b) *Town's Termination.* The Town may terminate this contract before the termination date, and without prejudice to any other remedy it may have when the Contractor defaults in performance of any provision herein, or fails to carry out the construction in accordance with the provisions of the contract documents. On such termination the Town may take possession of the worksite and all materials, equipment, tools and machinery, and finish the work in whatever way it deems expedient. On such a default by the Contractor, the Town may elect not to terminate the contract, and in such an event it may make good the deficiency in which the default consists, and deduct the costs from the progress payment then or to become due to the contractor.

Section XVI. Miscellaneous

(a) *Applicable laws; jurisdiction; venue.* The laws of the State of Tennessee will govern this Agreement and the Chancery Court for Williamson County, Tennessee shall have jurisdiction and be the appropriate venue for action arising out of this Agreement

(b) *Severability.* If any provision of this Agreement is held unenforceable, the remaining portions shall remain in full force and effect.

(c) *Entire agreement.* This Agreement represents the entire agreement between the parties, and expressly replaces, supersedes, and cancels any prior oral or written agreement or communications on this subject matter.

(d) *Captions and headings.* The various captions and section headings in this Agreement are included for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. References in this Agreement to any Section are to such Section of this Agreement or Other Contract Documents.

(e) *Amendments; Waiver.* Other than as specified herein, this Agreement may only be supplemented, modified, or waived in a writing signed by all parties. The waiver by a party of any

performance by the other party, or of any of a party's rights hereunder, shall not be, and shall not be deemed to be, a waiver of any subsequent obligation of performance, default, or right of the same or similar kind.

(f) *Assignment.* Except as provided elsewhere in this Agreement, Contractor may not assign this Agreement or any of its rights or obligations hereunder to any third party or entity, and this Agreement may not be involuntarily assigned or assigned by operation of law, without the prior written consent of the Town,

(g) *Force Majeure.* Neither party shall be responsible to the other for any delay in performance or non-performance due to any cause such as flood, fire, explosion, natural disaster, act of God, act of terror, or any other cause beyond its control, providing such delay or non-performance could not be avoided by the reasonable endeavors of the party seeking relief by reason thereof.

(h) *Civil Rights.* The Contractor understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Specifically,

- i. *Nondiscrimination* – Title VI of the Civil Rights Act. The Contractor agrees to: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, and (2) Comply with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.;
- ii. *Equal Employment Opportunity.* (1) The Contractor agrees to prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with all applicable Executive Orders related to Equal Employment Opportunity; (c) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing; and
- iii. *General.* The Contractor agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, and (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations

IN WITNESS WHEREOF the parties have executed this agreement at Thompson's Station,
TN on _____.

TOWN OF THOMPSON'S STATION, TENNESSEE

Corey Napier, Mayor

Date

CONTRACTOR

Date