RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO EXECUTE A CONTRACT WITH WRIGHT BROTHERS CONSTRUCTION FOR SOIL CAP RESTORATION ON THE BROWNFIELD SITE OF THE CLOSED 36TH STREET LANDFILL, IN THE AMOUNT OF NINETY-SIX THOUSAND EIGHT HUNDRED SIXTY-SIX AND 96/100 DOLLARS ($96,866.96).

_____

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Director of General Services to execute a contract with Wright Brothers Construction for soil cap restoration on the Brownfield site of the closed 36th Street Landfill, in the amount of $96,866.96.

ADOPTED: _____, 2013

/mms

City of Chattanooga

Resolution Request Form

(This form is only required for resolutions requiring expenditure of City funds)

Date Prepared: 2/11/13

Preparer: Dan Thornton **Department: GSA**

Brief Description of Purpose for Resolution: Resolution Number (if approved by Council):

A resolution authorizing the Director of General Services to sign a contract with Wright Bros. Construction in the amount of $96,866.96 for soil cap restoration on the Brownfield site of the closed 36th Street Landfill.

The property is located in District 7.

Name of Vendor/Contractor/Grant, etc.	Wright Bros. Construction	New Contract/Project? (Yes or No)	YES
Total project cost	$ 96,866.96	Funds Budgeted? (YES or NO)	YES
Total City of Chattanooga Portion	$	Provide Fund	8315
City Amount Funded	$	Provide Cost Center	A31005
New City Funding Required	$	Proposed Funding Source if not budgeted	
City's Match Percentage	%	Grant Period (if applicable)	

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)
$	
$	
$	

Agency Grant Number

CFDA Number if known

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Approved by:

Reviewed by: FINANCE OFFICE DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, accounting, City Attorney, City Finance Officer and Deputy Administrator Finance

GS-1Cd

Standard Form of Agreement Between Owner and Contractor

THIS AGREEMENT, is between the City of Chattanooga, Tennessee, a municipal corporation in the state of Tennessee, hereinafter called **Owner**, and

Wright Brothers Construction Co., Inc.,

hereinafter called **Contractor**.

WHEREAS it is the intention of the Owner to employ the Contractor to complete the scope of work for the following project:

Project Title:	Soil Cap Restoration at the Closed 36th Street Landfill in Chattanooga, Tennessee,
Location:	3500 Dorris Street, Chattanooga, TN
Project Description:	Restoration of the soil cap and installation of permanent vegetation at the closed 36th Street landfill located at 3500 Dorris Street in Chattanooga, TN

hereinafter called **Project**.

NOW, THEREFORE, the Owner and the Contractor, for the consideration set forth herein, agree to the following:

1. **EFFECTIVE DATE**
   The effective date of this Agreement shall be _____, 20___.

2. **GOVERNING LAW**
   This Agreement shall be governed by the laws of the State of Tennessee and the codes of the City of Chattanooga.

3. **WORK TO BE COMPLETED BY CONTRACTOR**
   Contractor shall complete the scope of work described in **Attachment A,** hereinafter called **Work**, in accordance with the drawings and specifications for the Project,

4. **COMPENSATION**
   Owner shall pay Contractor in accordance with the **Attachment B**, Compensation.

5. **OWNER'S RESPONSIBILITIES**
   Owner shall be responsible for all matters described in **Attachment C**, Owner's Responsibilities.

6. **SUPPLEMENTAL AGREEMENTS**
   The provisions set forth in **Attachment D**, Supplemental Agreements, shall be incorporated into this Agreement

7. **PROJECT SCHEDULE**
   The provisions set forth in the **Attachment E**, Project Schedule, shall be incorporated into this Agreement.

8. **RATE SCHEDULE**
   The Contractor shall provide a schedule of unit prices, as required, for all portions of the Work. This schedule shall be incorporated into the agreement as **Attachment F**.

9. INVOICING

The Contractor will use the format established in **Attachment G,** Standard Invoice, for all requests for payment submitted for work on the Project and shall clearly indicate:

a. The Contract Sum
b. Amount of any adjustments to the Contract Sum
c. The Contractor's percentage complete on each portion of the Work and the amount of the Contract Sum allocated to that portion of the Work
d. Contract cost of materials and equipment delivered and stored at the site or approved location for incorporation into the Work
e. Retainage(s) on previous and current requests for payment
f. The Contractor's requested amount for payment.

The Contractor's requested amount for progress payments shall be computed as the sum of the following:

a. Contractor's percentage complete on each portion of the Work multiplied by the amount of the Contract Sum allocated to that portion of the Work, less a retainage of **five percent (5%)**.
b. Contract cost of materials and equipment delivered and stored at the site or approved location for incorporation into the Work, less a retainage of **five percent (5%).**
c. **Less** previous progress payments by the Owner, and
d. **Less** reduction of previous progress payments amounts due to incomplete or non-conforming work or work that is subject to claims or litigation by the Owner.

All requests for payment shall be subject to review and approval by the Architect or the Owner's representative and shall not be considered for payment by the Owner until such approval has been received, however, upon the Owner's receipt of such approval the entire amount approved shall be due and payable within **thirty (30) days**.

The Contractor shall keep records on the basis of generally accepted accounting practice of costs and expenses which records shall be available for inspection at all reasonable times.

Upon final completion, acceptance of the Work and settlement of all claims or disputes, the Contractor shall submit a final request for payment of the remainder of the Contract Sum, including any adjustments provided by written changes or supplements to this Agreement.

10. STANDARD OF CARE

Contractor shall exercise a reasonable degree of care, skill, and diligence in the performance of the Work for the Project.

11. INDEMNIFICATION

Contractor hereby agrees to fully indemnify and hold harmless Owner and any of its departments, divisions, agencies, officers, employees and elected officials from all loss, damage, cost, or expenses specifically including attorneys' fees and other expenses of litigation incurred by or on behalf of the Owner and any of its officers, employees or elected officials arising out of Contractor's actual negligent performance of the Work under this Agreement, including errors or omissions.

Owner hereby agrees to fully indemnify and hold harmless Contractor and any of its officers, employees, or designated agents from all loss, damage, cost, or expenses specifically including attorneys' fees and other expenses of litigation incurred by or on behalf of the Contractor and any of its officers, employees or designated agents arising

out of Owner's negligence to the extent provided by the Tennessee Governmental Tort Liability Act, T.C.A. 29-20-201 et seq.

12. INSURANCE

The Contractor and their Subcontractors, Consultants or Material Suppliers shall not commence work on the Project prior to providing, to the Owner's satisfaction, written evidence of conformance with all insurance requirements set forth herein. Insurance shall be placed by the Contractor with one or more insurance carriers licensed to do business in the State of Tennessee. Each insurance policy shall be renewed **ten (10) days** before the expiration date of the policy.

Certificates of insurance shall be filed with the City of Chattanooga prior to commencement of the Work. These certificates shall contain a provision that coverage's afforded under the policies will not be changed or canceled unless at least **fifteen (15) days**' written notice has been given to the City. The Contract shall not be binding upon the Owner until the insurance coverage required herein has been obtained and certificates have been filed with the City.

Adequate insurance coverage shall be maintained by the Contractor at all times. Failure to maintain adequate coverage shall not relieve the Contractor of any responsibilities or obligations under these Contract Documents. In the event any insurance coverage is canceled or allowed to lapse, the Contractor will not be permitted to prosecute the work until adequate and satisfactory insurance has been obtained and certificates of insurance furnished to the City. Failure to keep insurance policies in effect will not be cause for any claims for extension of time under these Contract Documents.

All such policies shall be subject to approval by the City Attorney. Should the City Attorney at any time in his sole discretion determine that the insurance policies and certificate provided may not be sufficient to protect the interests of the City because of the insolvency of the insurance company or otherwise, the Contractor shall replace such policies with policies meeting his approval.

The Contractor shall procure and maintain at his own expense, during the Contract Time, insurance as hereinafter specified:

a. **Workmen's Compensation Insurance** that shall protect the Contractor against all claims under applicable state workmen's compensation laws shall be maintained. The Contractor shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a workmen's compensation law. This policy shall also include an endorsement providing coverage in all states in which work is performed. The Contractor shall require all the Subcontractors to provide similar Workmen's Compensation Insurance for the entire Subcontractors' employees on the Work unless such employees are covered by the protection afforded by the Contractor. The liability limits shall not be less than that required by the statute.
b. **General Public Liability and Property Damage Insurance** that shall be written in comprehensive form and shall protect the Contractor against all claims arising from injuries including death, to members of the Public or damage to property of others arising out of any act or omission of the Contractor or his agents, employees, or Subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the successful bidder to defend and indemnify the City of Chattanooga against such claims or suits.

   The general public liability and property damage insurance shall carry an endorsement in form satisfactory to the Owner to the effect that the Contractor shall save harmless the Owner from any claims and damage whatsoever, including patent infringement. General public liability and property damage insurance shall be kept

in force at all times during the course of the Work until such time as the Work covered by these Contract Documents has been completed and accepted by the Owner.

c. To the extent that the Work may require blasting, explosive conditions or underground operation, the **Comprehensive General Public Liability And Property Damage Coverage** shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.
    i. The comprehensive general public liability and property damage coverage shall also protect the Contractor against all claims resulting from damage to:
        1. Private driveways, walks, shrubbery, and plantings
        2. Public utility facilities
        3. United States Government monuments
    ii. The liability limits shall not be less than:
        1. Bodily Injury $500,000 each person
           $1,000,000 each occurrence
        2. Property Damage $250,000 each occurrence
           $500,000 aggregate

d. **Comprehensive Motor Vehicle Liability and Property Damage Insurance** that shall be written in comprehensive from and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.
    i. The liability limits shall not be less than:
        1. Bodily Injury $250,000 each person
           $500,000 each occurrence
        2. Property Damage $100,000 each occurrence

e. The Contractor shall purchase and maintain until Substantial Completion **Builder's Risk Insurance** (not All Risk Insurance) in the amount of the initial Contract Sum plus any amounts added by Change Order. The insurance shall list and include as named insured the City of Chattanooga, the Contractor, and all Subcontractors A.T.I.M.A. The deductible amount shall be $1,000.00 for each occurrence, which shall be paid by the Contractor. The Builder's Risk Insurance shall also provide coverage for portions of the Work in transit and for temporary storage of portions of the Work to the value approved by the Owner in the Certificate for Payment.

13. PERFORMANCE AND PAYMENT BONDS (SURETY)

Performance and Payment Bonds are required for all public work (construction) contracts with a construction cost in excess of $25,000 and Contractor shall, within **ten (10) days** of notification of Bid acceptance, furnish:

a. Payment Bond in the amount of **One Hundred Percent (100%)** of the Contract Sum
b. Performance Bond in the amount of **One Hundred Percent (100%)** of the Contract Sum

Performance and Payment Bonds shall be submitted on an approved form, made out to the City of Chattanooga, and shall serve as security for the faithful performance of the contractual agreement. The surety thereon must be certified by a surety company authorized and licensed to transact business in the State of Tennessee.

14. REUSE OF DOCUMENTS

All documents, including, but not limited to calculations, drawings, specifications, and computer software prepared by the Architect or Engineer for the Project are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Contractor or others on extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by the Architect or Engineer for the specific purpose intended will be at Contractor's sole risk and without liability or legal exposure to the Owner, Architect, or

Engineer.

15. RECORDS RETENTION AND AUDIT PROVISION

The term "Contractor" is used interchangeably to describe signatories to contracts, grants, and agreements with the City and applies to reflect the relationship with the City (Contractor, Contractor, Licensee, Supplier, Vendor, Consultant, Grant Recipient, etc.).

a. All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor or the Contractor's subcontractors, shall be made available for inspection and copying upon written request to the Owner. Additionally, said records shall be made available, upon request by the Owner, to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design and its construction. Said records expressly include those documents reflecting the time expended by the Contractor and its personnel to perform the obligations of this Agreement and the records of expenses incurred by the Contractor in its performance under said Agreement. The Contractor shall maintain and protect these records for no less than **seven (7) years** after the completion of the Project, or for any longer period of time as may be required by applicable law, and upon notice during the pendency of any claims or litigation arising from the Project.

b. The Owner or its assign may audit all financial and related records (including digital) associated with the terms of the "Contract" (or Agreement) including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Contractor. The Owner may further audit any contractor records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest.

c. The Contractor shall at all times during the term of the Contract, and for a period of **seven (7) years** after the end of the contract, keep and maintain records of the work performed pursuant to the Contract. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Contractor. Documents shall be maintained by the Contractor necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Contractor shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the Owner at all reasonable times and without prior notice.

d. The obligations of the Contractor as set forth under these Audit Provisions shall be explicitly included in the Contractor's contracts with their subcontractors, consultants, or material suppliers to the extent that those contracts relate to the fulfillment of the Contractor's obligations to the Owner.

e. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the Owner unless the audit identifies significant findings that would benefit the City. The Contractor shall reimburse the Owner for the total costs of an audit that identifies significant findings that would benefit the City.

f. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the Owner may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

16. TERMINATION

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The nonperforming party shall have **fifteen (15) calendar days** from the date of the termination notice to cure or to submit a plan for cure acceptable to the

other party.

Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Contractor. If termination or suspension is for Owner's convenience, Owner shall pay Contractor for all Work performed prior to the date of the termination notice. Upon restart, an adjustment acceptable to Owner and Contractor shall be made to the Project Schedule, Contract Time and Contract Sum.

In the event of the termination of the Agreement as a result of the Contractor's substantial failure to perform in accordance with the terms of this Agreement, the Owner may at its sole discretion:

1. Award the contract to the next lowest bidder, if such bidder is willing to enter the contract
2. Cover in the open market
3. Seek any other remedy provided by the Tennessee Uniform Commercial Code
4. Hold the Contractor liable for all damages provided by law, including cost of cover.

17. DELAY IN PERFORMANCE

Neither Owner nor Contractor shall be considered in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonconforming party, nor shall either party be liable for damages for delay in the Contractor's performance of the Work when such delay is the result of abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, or other civil disturbances; sabotage; judicial restraint; discovery of unanticipated hazardous wastes; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency or by any other circumstances beyond their control. Should such circumstances require the Contractor to stop the Work for a period of **thirty (30) consecutive days**, the Owner, upon written request of the Contractor, shall negotiate a reasonable adjustment to the Contract Time. However, should such circumstances cause either the Contractor or the Owner to be unable to reasonably provide the supplies, materials, equipment, or services required, or perform the Work according to the requirements of the Agreement, the Owner may, at its sole discretion, terminate the Agreement.

For delays in performance by Contractor caused by circumstances which are within its control, and when such delays in performance meet at least one of the following conditions: 1) the total of all such delays in sum equals or exceeds the Contract Time for completion as set forth in **Attachment E**, Project Schedule or 2) such delays result in stoppage of the Work for a period of **thirty (30) consecutive days**, the Owner may, at its own discretion, provide a written notice to the Contractor of its substantial failure to perform the Work in accordance with the Agreement, and such delay shall be documented on the Contractor's Project Performance Evaluation form. Said form shall be completed at the conclusion of Project and acknowledged by both Owner and Contractor. Completed form shall be retained by Owner for a period of **seven (7) years** and reviewed prior to selection for City projects.

In the event Contractor is delayed in the performance of the Work because of delays caused by Owner, Contractor shall have no claim against Owner for damages or contract adjustment other than an extension of time.

18. HAZARDOUS MATERIALS

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. The Owner and Contractor agree that the discovery of unanticipated hazardous materials constitutes a changed condition and, prior to proceeding with the Work, the Contractor shall submit to the Owner a written request for a Change Order to reflect the change in the scope of work created by the discovery of the hazardous materials. Owner and Contractor also agree that the discovery of unanticipated hazardous materials may make it necessary for the Contractor to take immediate measures to protect health and safety and will compensate Contractor for any

equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials.

Contractor agrees to notify Owner when unanticipated hazardous materials or suspected hazardous materials are encountered. Owner agrees to make any disclosures required by law to the appropriate governing agencies, and agrees to hold Contractor harmless for any and all consequences of disclosures made by Contractor which are required by governing law. In the event the project site is not owned by Owner, the Owner agrees to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials.

19. COMMUNICATIONS

Any communication required by this Agreement shall be made in writing to the address specified below:

Contractor: Wright Brothers Construction Co., Inc.
1500 Lauderdale Memorial Highway
PO Box 437
Charleston, TN 37310
Phone: (423) 336-2261
Fax: (423) 336-2079

Owner: City of Chattanooga
General Services
100 East 11th Street, Suite 101
Chattanooga, TN 37402
(423) 757-5454

Nothing contained in the Article shall be construed to restrict the transmission of routine communications between representatives of Contractor and Owner.

Engineer: Terracon Consultants, Inc.
51 Lost Mound Drive, Suite 135
Chattanooga, TN 37406
Phone: (423) 499-6111
Fax: (423) 499-8099

The Engineer shall provide complete administration of this Agreement and shall be the Owner's representative for the Project including the following portions of the Work:

1. Review of the Contractor's applications for payment and issuing the Engineer's certification of the amount due the Contractor
2. Review of submittals, such as shop drawings, material selections and proposed substitutions to determine conformance with the design intent and either approving, rejecting, or requesting additional information to support the submittal.
3. Revising, correcting or issuing clarifications to the contract documents by supplemental instructions or change orders, together with all correspondence, and clerical work in connection therewith.
4. Provide on-site project observations during construction to guard against nonconformity of the work with the Contract Documents and to observe and report on the Contractor's compliance with the Project Schedule.
5. The Engineer's Construction Administrator with a representative of each of the Engineer's Consultants shall

attend all progress meetings.

6. Upon request by the Contractor, the Engineer and its Consultants, with a representative of the Owner present, shall make a Substantial Completion inspection of the Work and submit to the Owner and Contractor, a written report of items necessary to complete the project in accordance with the Contract Documents. Prior to issuing a Certificate of Substantial Completion, the Engineer shall verify that all items required by the Contract Documents are substantially complete.
7. When the Contractor has completed the Work as specified in the Contract Documents and issued to the Engineer a Notice of Final Completion of the Work, the Engineer and its Consultants, with designees of the Owner present, shall conduct a Final Completion Inspection and verify, to the best of the Engineer's knowledge, information and belief, to the Owner that the completion of the Work is in compliance with the Contract Documents and issue a Final Certificate for Payment to the Owner.
8. During the **one (1) year** period after the date of Substantial Completion of the Work, the Engineer shall assist the Owner in securing remedy of any of the Work that the Engineer has determined non-conforming with the Contract Documents and at the end of the one year period, the Engineer and its Consultants shall perform a one year inspection of the Work and submit to the Owner and Contractor, in writing, a report of non-conforming work to be corrected by the Contractor.

The Engineer shall not issue any oral or written orders for changes to the Contract Documents until approved in writing by the Owner. Furthermore, the Contractor shall have no claim against the Owner nor shall the Owner be liable for any cost, delay, or damages to the Project or any other party as a result of the Engineer's oral or written orders for changes to the Contract Documents.

20. WAIVER

A waiver by either Owner or Contractor of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

21. DISPUTE RESOLUTION

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 mediation in Chattanooga, Tennessee, in accordance with the following provisions:

a. The mediation shall be conducted by a mediator mutually acceptable to both parties.
b. The parties agree to share equally in the expenses of mediations.
c. Such mediation may include the Contractor or any other person or entity who may be affected by the subject matter of the dispute.
d. Unless the parties agree otherwise, mediation shall be a condition precedent to the exercise of any legal remedy other than a proceeding seeking an immediate injunction or restraining order to protect the rights of a party pending litigation. Notwithstanding the issuance of an injunction or restraining order or the refusal of a court to issue such an order, the dispute shall continue to be subject to mediation.

22. SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions

of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

23. INTEGRATION

This Agreement represents the entire and integrated agreement between Owner and Contractor. All prior and contemporaneous communications, representations, and agreements by Contractor, whether oral or written, relating to the subject matter of this Agreement, as set forth in **Attachment D**, Supplemental Agreements, are hereby incorporated into and shall become a part of this Agreement

24. SUCCESSORS AND ASSIGNS

Owner and Contractor each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.

25. ASSIGNMENT

Neither Owner nor Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Contractor from employing independent consultants, associates, and subcontractors to assist in the performance of the Work; however, other agreements to the contrary notwithstanding, in the event Contractor employs independent consultants, associates, and subcontractors to assist in performance of the Work, Contractor shall be solely responsible for the negligent performance of the independent consultants, associates, and subcontractors so employed.

26. THIRD PARTY RIGHTS

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Owner and Contractor.

27. RELATIONSHIP OF PARTIES

Nothing contained herein shall be construed to hold or to make the Owner a partner, joint venturer, or associate of Contractor, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.

28. NON-DISCLOSURE

Contractor agrees not to disclose or to permit disclosure of any information designated by the Owner as confidential, except to the Contractor's employees and subcontractors who require such information to perform the Work specified in this agreement.

29. NON-DISCRIMINATION

Contractor agrees to comply with all federal, state, and local non-discrimination laws and regulations. Contractor, in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, creed, color, age or national origin, or handicap, or sex, nor otherwise commit an unfair employment practice. Contractor further agrees that this article will be incorporated by Contractor in all contracts entered into with suppliers of materials or services, contractors and sub-contractors and all labor organizations,

furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor, services, or work in connection with this contract.

30. DRUG FREE WORKFORCE

Contractor certifies that it will provide a drug-free workplace and agrees to comply with the applicable requirements of the Drug-Free Workplace Act of 1988.

31. FEDERAL OR STATE FUNDING

In the event that the Project is funded in whole or in part by Federal or State grants, Contractor agrees to abide by all applicable Federal and State laws, regulations, grant conditions and procedures including the provisions of the Davis-Bacon and Related Acts (DBRA) and the Contract Work Hours and Safety Standards Act (CWHSSA).

For all contracts in excess of $2,000 for the construction, alteration, and/or repair of public buildings or public works, including painting and decorating, where the United States or the District of Columbia is a direct party to the contract, all contractors and subcontractors shall pay the various classes of laborers and mechanics employed on the site of the Work the wage rates and fringe benefits determined by the current Davis-Bacon contract wage determination for Hamilton County, Tennessee, incorporated herein as **Attachment H**.

32. STORMWATER REQUIREMENT

Per the City of Chattanooga Municipal Separate Storm Sewer (MS4) National Pollutant Discharge Elimination System (NPDES) permit No. TNS068063 issued by the State of Tennessee, contractors involved in municipal maintenance activities shall comply with all federal, state and local stormwater requirements including stormwater control measures or best management practices (BMPs), facility-specific stormwater management regulations and related standard operating procedures (SOPs).

Municipal maintenance activities covered by this requirement includes but not limited to:

i. Vehicle maintenance and washing activities
ii. Buildings and other facilities maintenance
iii. Right-of-Way maintenance
iv. Activities that disturb dirt
v. Activities that generate by-products, wastes or wastewater, etc.

Examples of BMPs include: 1) proper erosion and sediment control practices, 2) proper handling and disposal of wastewater and wasted materials, and 3) good housekeeping measures, etc. For additional guidance contact the City Water Quality Program at (423) 643-5877.

Note that failure to comply with stormwater regulations would result in enforcement actions that include court citation and/or civil penalty assessment up to $10,000 per day per violation.

33. CHANGES TO THE AGREEMENT

No alterations or variations in the terms of this Agreement shall be valid or binding upon the Owner, nor shall Contractor have any claim against the Owner or hold the Owner liable for any cost, delay, or damages to the Project or any other party as a result of oral or written orders for changes to the Work, Contract Documents, Project Schedule, Contract Sum or any other requirements of the Agreement unless such changes are made in writing as set forth herein.

Changes to the Work, including revisions to the Contract Documents, Project Schedule and Contract Time, and Contract Sum shall be made by written Change Order issued by the Owner or their designated representative for Construction Administration and shall be signed by the City Attorney. Change Orders shall: 1) clearly demonstrate the changes to the Work, 2) the amount of adjustment to the Project Schedule and Contract Time, if any, and 3) the amount of adjustment to the Contract Sum, if any.

Changes, alterations or variations in the terms of this Agreement other than changes to the Work shall be made by Supplemental Agreement and shall be attached as set forth in **Attachment D**, Supplemental Agreements, and shall be made in writing and signed by the City Attorney

TESTING AND INSPECTIONS

The Contractor shall, unless otherwise specified, make all inspections, tests, certifications, and approvals of the portions of the Work as specified in the Contract Documents and as required by applicable laws, statutes, ordinances, codes, and regulations. Tests, inspections, certifications, and approvals shall be performed by an independent testing laboratory or firm acceptable to and approved by the Owner. The cost of such inspections, tests, certifications, and approvals shall be paid by the Contractor.

DELIVERIES

Contracts for the delivery of materials or supplies will remain in force for the entire Contract Time and until all equipment and materials ordered within the Contract Time have been satisfactorily delivered and accepted and thereafter until all requirements and conditions of the Agreement have been met. Nothing specified herein shall limit the Owner's right to terminate the Agreement prior to the completion of the Contract Time as allowed herein.

The Contractor shall be responsible for the materials, supplies and equipment covered by the Agreement until they are delivered and accepted at the destination point, and the Contractor shall bear all risk on rejected material or supplies after notice of rejection. Rejected materials, supplies and equipment shall be promptly removed by the Contractor upon notification of rejection. In the event that public health and safety require immediate destruction or disposal of a rejected delivery, the Owner may, at their discretion and upon notification of the Contractor, arrange for such destruction or disposal and invoice the cost of such to the Contractor.

Inspection and acceptance of materials, supplies and equipment will be made after delivery. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials, supplies and equipment will be made by the Owner in a timely manner, however, the Owner's failure to inspect and accept or reject materials, supplies and equipment, as set forth herein, shall not impose liability on the Owner for such materials, supplies and equipment that are determined non-conforming to the Specifications. All deliveries shall be accepted subject to inspection and physical count.

All Shipments or Deliveries shall be accompanied by Packing Slips or Delivery Tickets, and shall contain the following information for each item delivered:

i. The Purchase Order Number
ii. The Name of the Article and Stock Number (Supplier's)
iii. The Quantity Ordered
iv. The Quantity Shipped
v. The Quantity Back Ordered
vi. The Name of the Contractor

Deliveries will be accepted between 8:30a.m. and 4:00p.m. on weekdays only. No deliveries will be accepted on Saturdays, Sundays or Holidays.

Failure to comply with these conditions SHALL BE CONSIDERED SUFFICIENT REASON FOR REFUSAL TO ACCEPT THE GOODS.

OPEN RECORDS

a. Pursuant to provisions in the Tennessee Open Records Act, and the policies adopted by the Office of Open Records Counsel (OORC), municipal record custodians are required to provide some response to public records requests no later than **seven (7) business days** after receipt of a records request. Pursuant to the Tennessee Open Records Act, the municipal record custodian must respond within **seven (7) days** and either:
    i. provide the requested records for review, or
    ii. provide a written explanation of why the records will not be made available and /or
    iii. provide communication that record production will take longer than **seven (7) days** to compile/research the data. In this event the municipal record custodian will provide an estimated length of time necessary before production or requested records will occur.

b. There is no charge to view documents which are determined to be public records. However, as provided by the written policies adopted by the OORC, applicable charges for expenses incurred by the municipality to respond to a public records request many include:
    i. The cost of employee(s) time in excess of one hour to compile/research/redact the documents requested and
    ii. If copies of the documents are requested, the copying cost is $.15 for b/w and $.50 for color on 8 1/2" X 11" pages.

c. The Schedule of Fees and the Policy on Frequent and Multiple requests of copies of public records as established by the OORC are attached. Pursuant to the policies adopted by the OORC, municipalities are permitted to charge for any labor in excess of one hour that is required to compile documents for citizens' review. In the event that more than four (4) requests are made by any citizen per calendar month, records custodians are also permitted to stop providing a free hour of labor beginning with the fifth (5th) request for records. See the policy on Frequent and Multiple Requests for Copies of Public Records adopted by the OORC on January 9, 2009. If a records custodian reasonably believes a group of individuals are acting in concert and chooses to group together their requests for copies for purposes of charging for labor, the records custodian must file a Notice of Aggregation with the OORC.

WARRANTY

Unless otherwise specified, the Contractor shall unconditionally guarantee the Work on the Project, including materials and workmanship on all equipment provided, for a period of **one (1) year** from date of Final Completion and acceptance of the Work, or the guarantee period, whichever is longer. If, within this period, any defects or signs of deterioration are noted, which, in the opinion of the Owner are due to faulty design, installation, workmanship or materials, upon notification, the Contractor at his own expense, shall repair, replace, or adjust the Work, equipment or parts thereof, to correct the condition to the complete satisfaction of the Owner. These repairs, replacements or adjustments shall be made only at such time as will be designated by the Owner at least detrimental to the daily operations of the Owner, normal City business, tenant(s), or other parties as may be reasonably affected by such work.

IN WITNESS WHEREOF, Owner and Contractor have executed this Agreement.

Contractor Date	Director of General Services Date
Contractor Date	Director of Purchasing Date

Reviewed by City Attorney's Office _____ _____
Initial Date

ATTACHMENT A

Owner: City of Chattanooga, Tennessee

Contractor: Wright Brothers Construction Co., Inc..

Project Name: Soil Cap Restoration at the Closed 36th Street Landfill in Chattanooga, Tennessee

SCOPE OF WORK

The scope of work for the Project will include, but not be limited to the following items:

1. The Contractor shall furnish all material, labor, equipment, and other incidentals for the construction of the Work shown on the Drawings and Specifications, less the specified Owner-supplied materials.
2. Construct and maintain, during the construction period, temporary and permanent erosion and sedimentation control devices in the effected construction area, soil stockpile and borrow areas as required to satisfy State and local regulatory erosion control requirements.
3. Maintain temporary and permanent access roads and ditches/channels necessary for performance of the Work. Temporary haul road locations will require approval by Owner.
4. Construct and maintain temporary dewatering devices as needed to prevent excessive construction delays due to saturation and ponding of water from storm events or seepage.
5. Supply, install, and maintain all erosion and sediment control BMPs as shown on the drawings.
6. Fine grade and dress existing soils to provide a suitable base for the cap restoration. Any waste encountered shall be disposed of in a Class I disposal facility.
7. Excavate, load, haul, and dispose of contaminated soils in soil removal areas outside of the landfill limits. Soil shall be disposed of in a Class I disposal facility.
8. Supply, haul, and place minimum 6-inch thick topsoil layer within the extents shown on the drawings. Topsoil shall be capable of sustaining a permanent stand of vegetation.
9. Supply and place permanent seeding and mulch as directed in the plans and specifications in all disturbed areas, including cap restoration areas and soil removal areas, and other areas disturbed by construction activity.

CONTRACT DOCUMENTS

Drawings:

Contract Drawings for the "Soil Cap Restoration at the Closed 36th Street Landfill in Chattanooga, Tennessee" prepared by Terracon Consultants, Inc., 51 Lost Mound Drive, Suite 135, Chattanooga, TN 37406, drawing sheets include:

DRAWING 1 Soil Cap Restoration Plan Dated: 1/7/13

Specifications:

Technical Specifications for "Soil Cap Restoration at the Closed 36th Street Landfill in Chattanooga, Tennessee" as prepared by Terracon Consultants, Inc., 51 Lost Mound Drive, Suite 135, Chattanooga, TN 37406, dated January 2013, sections include:

Section 01010	Summary of Work
Section 01025	Measurement and Payment
Section 01040	Coordination
Section 01050	Field Engineering
Section 01095	Definitions and Standards

Section 01400	Quality Control and Assurance
Section 01500	Temporary Facilities and Controls
Section 02120	Dust Control
Section 02200	General Earthwork
Section 02930	Revegetation (Seeding)

ATTACHMENT B

Owner: City of Chattanooga, Tennessee

Contractor: Wright Brothers Construction Co., Inc.

Project Name: Soil Cap Restoration at the Closed 36th Street Landfill in Chattanooga, Tennessee

COMPENSATION

For the Work covered by this Agreement, the Owner agrees to pay the Contractor as follows:

For the Scope of Work described in **Attachment A**, a Contract Sum of **Ninety Six Thousand Eight Hundred Sixty-Six and 96/100 dollars ($96,866.96)** including any adjustments to the Contract Sum provided by written changes or supplements to this Agreement.

ATTACHMENT C

Owner: City of Chattanooga, Tennessee

Contractor: Wright Brothers Construction Co., Inc.

Project Name: Soil Cap Restoration at the Closed 36th Street Landfill in Chattanooga, Tennessee

OWNER'S RESPONSIBILITIES

The Owner will provide the following as part of the Project:

1. The Owner will provide Contractor with access to all related plans and specifications for the Project.
2. The Owner will provide the Contractor with access to the Project during normal City business hours for the purpose of performing the Work under this Agreement.

ATTACHMENT D

Owner: City of Chattanooga, Tennessee

Contractor: Wright Brothers Construction Co., Inc.

Project Name: Soil Cap Restoration at the Closed 36th Street Landfill in Chattanooga, Tennessee

SUPPLEMENTAL AGREEMENTS

Owner and Contractor agree that the following communications, representations, and agreements by Contractor relating to the subject matter of the Agreement are hereby incorporated into and shall become a part of the Agreement.

NONE

ATTACHMENT E

Owner: City of Chattanooga, Tennessee

Contractor: Wright Brothers Construction Co., Inc.

Project Name: Soil Cap Restoration at the Closed 36th Street Landfill in Chattanooga, Tennessee

PROJECT SCHEDULE

Owner and Contractor recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the Work is not completed within the times stipulated herein, plus any extensions thereof. If Project is behind schedule, the reason shall be recorded.

Schedule:

1. It is understood and agreed that the Contractor shall start the performance of the Work within **ten (10) days** of receipt of a written Notice to Proceed and shall complete the Work within the Contract Time of **ninety (90) calendar days, or June 1, 2013, whichever is earlier.**

ATTACHMENT F

Owner: City of Chattanooga, Tennessee

Contractor: Wright Brothers Construction Co., Inc.

Project Name: Soil Cap Restoration at the Closed 36th Street Landfill in Chattanooga, Tennessee

RATE SCHEDULE

Unit Item #200 Type "C" Silt Fence: Supply and install wire-back silt fencing as depicted on the drawings. Item shall include maintaining silt fence until final vegetation has been established. Item shall include removal and dispoal of silt fence after completion of project. **$3.07 per LF**

Unit Item #201 Stone Pad Construction Exit: Supply and install stone pad construction exit as depicted on the drawings. Item shall include maintaining pad until final vegetation has been established. Item shall include removal of construction exit after completion of project. **$1,518.15 Each**

Unit Item #300 Soil Removal: Excavate, load, haul, and dispose of contaminated soil in the locations depicted on the Drawing. Soil shall be disposed of in a Class I disposal facility. **$50.32 per CY**

Unit Item #301 Structural Fill: Supply, load, haul, place, and compact structural backfill in accordance with drawings and specifications. Item shall include moisture conditioning soil to achieve compaction criteria. Soil shall be obtained from stockpile located at 1121 West 33rd Street, Chattanooga, TN. **$5.13 per CY**

Unit Item #302 6" Topsoil Layer: Supply, load, haul, and place 6" topsoil layer in accordance with drawings and specifications. Soil shall be capable of supporting a permanent stand of vegetation. Contractor shall maintain topsoil layer until vegetation is established. Item shall include regrading and dressing topsoil due to soil erosion. **$15.89 per CY**

Unit Item #400 Permanent Vegetation: Supply and apply seeding to all disturbed areas. Item shall include fertilizer, mulch, soil amendments, and other additives necessary to promote growth of permanent vegetation. Contractor shall be responsible for maintaining area until final vegetation has been established as defined in the specifications. **$1,392.16 per Acre**

ATTACHMENT G

STANDARD INVOICE

Indicates MANDATORY Item

CONSULTANT LETTERHEAD

****
INVOICE
****

ATTN: City Project Manager
REF: Project Name
CODE: Consultant Project Number
PO: City Project Number **in format S-02-001-101**

Provided by City

TERMS: Net 25 days
DUE: 08/01/03

Must be Sequential Number

Invoice Number 5
Dated 07/07/03

City Project Manager
City Project Manager Title
City of Chattanooga
Engineering Division/DRC
1250 Market Street, Suite 2100
Chattanooga TN 37402

Invoice Must show Billing Period.

For Professional Services from May 31 to June 27, 2003

This Breakdown must list each item of the Contract.

Consultant Project No.	Description	Fee	Fee Basis	Percent Work to Date	Amount Billed	Previous Billed	This Invoice Billed
C03009-01	01 - Design	$51,500.00	LS	55%	$28,325.00	$18,540.00	$9,785.00
	02 - Survey	$15,700.00	LS	0%	$0.00	$0.00	$0.00
C03009-02	Barton Avenue and Brown Acres Golf Course Design	$20,000.00	CP	12%	$2,391.02	$2,033.00	$358.02
C03009-03	Permitting/Easement Assistance	$5,000.00	CP	6%	$291.08	$0.00	$291.08
C03009-04	Bidding/Construction Assistance	$10,000.00	CP	0%	$0.00	$0.00	$0.00
C03009-05	Misc. As-Requested Services	$5,000.00	CP	7%	$363.85	$0.00	$363.85
	Total Contract Amount	$107,200.00			$31,370.95	$20,573.00	
	TOTAL THIS INVOICE						**$10,797.95**

Must Match Contract Amount

Prior invoices	$20,573.00
This invoice	$10,797.95
Payments	-$20,573.00
Balance on Account	$10,797.95

NOTE:
- There shall be only one invoice per contract per billing period.
- Any necessary details should be attached as backup.

ATTACHMENT G (Cont.)

U.S. Department of Labor
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

U.S. Wage and Hour Division
Rev. Dec. 2008

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐ | ADDRESS | OMB No.: 1235-0008 Expires: 01/31/2015

PAYROLL NO. | FOR WEEK ENDING | PROJECT AND LOCATION | PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE / HOURS WORKED EACH DAY							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS FICA	WITH-HOLDING TAX			OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that is will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)

ATTACHMENT G (Cont.)

Date _____

I, _____ _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____; that during the payroll period commencing on the
(Building or Work)

_____ day of _____, _____, and ending the _____ day of _____, _____,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Start. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

_____

_____

_____

_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ – in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ – Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

ATTACHMENT H

DAVIS-BACON ACT CONTRACT WAGE DETERMINATION

General Decision Number: TN120146 06/08/2012 TN146

Superseded General Decision Number: TN20100161

State: Tennessee

Construction Type: Heavy Including Water and Sewer Line Construction

Counties: Hamilton and Sequatchie Counties in Tennessee.

HEAVY CONSTRUCTION PROJECTS (including sewer/water construction).

Modification Number	Publication Date
0	01/06/2012
1	02/03/2012
2	06/01/2012
3	06/08/2012

ELEC0175-012 07/01/2011 - Hamilton County

	Rates	**Fringes**
Electrician	$28.08	11.6%+6.35

ELEC0429-008 06/01/2012 - Sequatchie County

	Rates	**Fringes**
Electrician	$23.35	10.72

*** ENGI0917-022 05/01/2012**

	Rates	**Fringes**
OPERATING ENGINEERS:		
Bulldozer and Crane	$24.94	9.40
Forklift	$22.89	9.40

LABO0846-001 05/01/2011

	Rates	**Fringes**
LABORER:		
Common or General	$13.50	4.75

SUTN2009-144 12/02/2009

	Rates	**Fringes**
LABORER:		
Flagger	$8.73	0.00
Pipelayer	$11.68	0.00
OPERATOR:		
Backhoe/Excavator/Trackhoe	$16.82	0.00
Loader	$13.50	0.00
TRUCK DRIVER:		
Dump Truck	$10.76	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.