

CITY COUNCIL SPECIAL CALLED MEETING

MUNICIPAL MINUTES CITY OF TUPELO

STATE OF MISSISSIPPI

AUGUST 23, 2022

Be it remembered that a special called meeting of the Tupelo City Council was held in the Council Chambers in the City Hall building on Tuesday, August 23, 2022, at 4:00 p.m. with the following in attendance: Council Members Chad Mims, Lynn Bryan, Nettie Davis, Buddy Palmer, Janet Gaston and Rosie Jones; Ben Logan, City Attorney and Missy Shelton, Clerk of the Council. Council Member Travis Beard was absent. Council President Lynn Bryan called the meeting to order at 4:00 p.m.

ROUTINE AGENDA

IN THE MATTER OF AWARD OF PROFESSIONAL SERVICES CONTRACT TO ESI FOR ARPA FUNDS

Council Member Davis moved, seconded by Council Member Palmer, to award an 'AGREEMENT FOR ENGINEERING SERVICES FOR CITY OF TUPELO ARPA WATER, WASTEWATER AND STORM WATER' to Engineering Solutions Inc. for the following projects:

Storm Water:

Cooper Tire reshape and rip rap ditch
 Haven Acres reshape and rip rap ditch
 Mitchell Road pipe drain upgrade and replacements
 Gun Club Road box culvert upgrades
 Barnes Crossing box culvert upgrades
 Medical Park pipe replacement
 Danielle Cove replace pipe and rip rap downstream.

Of those present, the vote was unanimous in favor to award the Engineering Contracts for ARPA funds for the projects listed above. The signed agreement is attached to these Minutes as APPENDIX A.

IN THE MATTER OF PROFESSIONAL SERVICES CONTRACT TO COOK COGGIN ENGINEERS FOR ARPA FUNDS

Council Member Davis moved, seconded by Council Member Jones, to award an 'AGREEMENT FOR ENGINEERING SERVICES FOR CITY OF TUPELO ARPA WATER, WASTEWATER AND STORM WATER' to Cook Coggins Engineers, Inc. for the following projects:

Water:

Replace 12" Water Line from Lumpkin to Thomas on West Jackson Street

Waste Water:

Replace concrete sewer outfall line from Highway 45 to North Gloster Street
 Replace Pressure Sewer Line from SW Pump Station to South Gloster Street

Storm Water: (possible combination with wastewater improvements)

Rip rap/Gabion from Lumpkin to Kings Creek

Of those present, the vote was unanimous in favor to award the Engineering Contracts for ARPA funds for the projects listed above. The signed agreement is attached to these Minutes as APPENDIX B.

IN THE MATTER OF AWARD OF PROFESSIONAL SERVICES CONTRACT TO DUSTIN DABBS FOR ARPA FUNDS

Council Member Davis moved, seconded by Council Member Palmer, to award an 'AGREEMENT FOR ENGINEERING SERVICES FOR CITY OF TUPELO ARPA WATER, WASTEWATER AND STORM WATER' to Dabbs Corporation for the following projects:

Storm Water:

Robins Field Cooper Tire reshape and rip rap ditch
 Holly Hill pipe project
 Gum Tree Park pipe project
 Ford Circle pipe project
 City Park pipe project
 Van Buren pipe project
 Ridgeway Drive pipe replacement

Of those present, the vote was unanimous in favor to award the Engineering Contracts for ARPA funds for the projects listed above. The signed agreement is attached to these Minutes as APPENDIX C.

EXECUTIVE SESSION

Council Member Jones moved, seconded by Council Member Palmer to determine the need for an executive session. Attorney Ben Logan said the session will be for acquisition of property under Miss. Code Anno. 25-41-7 (b) (1972 as amended). Of those present, the vote was unanimous in favor.

Council Member Gaston moved, seconded by Council Member Mims, to enter executive session for discussion of acquisition of property under Miss. Code Anno. 25-41-7 (b) (1972 as amended). Of those present, the vote was unanimous in favor.

After discussion in executive session, Council Member Palmer moved, seconded Council Member Davis to leave Executive Session @ 4:55 p.m. Of those present, the vote was unanimous in favor.

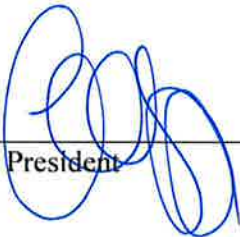
IN THE MATTER OF APPROVAL OF AN ORDER AUTHORIZING THE MAYOR AND CITY CLERK TO PURCHASE A PORTION OF REAL PROPERTY LOCATED AT 405 CLAYTON AVENUE FROM INSPIRATIONAL COMMUNITY BAPTIST CHURCH AND TO

AUTHORIZE THE MAYOR AND CITY CLERK TO ENTER INTO A PURCHASE AGREEMENT WITH THE SAME

Council Member Davis moved, seconded by Council Member Palmer, to approve ORDER AUTHORIZING THE MAYOR AND CITY CLERK TO PURCHASE A PORTION OF REAL PROPERTY LOCATED AT 405 CLAYTON AVENUE FROM INSPIRATIONAL COMMUNITY BAPTIST CHURCH AND TO AUTHORIZE THE MAYOR AND CITY CLERK TO ENTER INTO A PURCHASE AGREEMENT WITH THE SAME. This Order gives the Mayor and City Clerk to execute all documents necessary to effectuate the purchase of the subject property. The contract and acceptance of deed will be ratified subsequent to closing. Of those present, the vote was unanimous in favor of the approval of the order. APPENDIX D

ADJOURNMENT

There being no further business to come before the Council at this time, Council Member Palmer moved, seconded by Council Member Gaston to adjourn the meeting at 4:56 p.m. The vote was unanimous in favor.



Lynn Bryan, President
City Council

ATTEST:



Missy Shelton, Clerk of the Council



Todd Jordan, Mayor

9-16-2022

Date

AGREEMENT FOR ENGINEERING SERVICES
CITY OF TUPELO ARPA WATER, WASTEWATER & STORM WATER

This agreement, made by and between the City of Tupelo, Mississippi, hereinafter referred to as the "OWNER," and Engineering Solutions, Inc., hereinafter referred to as the "ENGINEERS."

The OWNER intends to implement the proposed Group 3 Storm Water Infrastructure Improvements (see Exhibit A) and has employed the ENGINEERS to perform the various professional engineering services associated with the design and construction of each project as stated in Section A and Section B herein;

WITNESSETH:

That for and in consideration of the mutual covenants and promises contained herein, the parties hereto agree that the Scope of Work for this Agreement shall be the same written and issued by the OWNER and included in the City of Tupelo Request for Qualifications for Engineering Services for ARPA Water, Wastewater and Storm Water Infrastructure – RFQ 2022-031PW. To accomplish this Scope the work shall be completed as follows:

SECTION A – PLANNING AND DESIGN ENGINEERING SERVICES

That the ENGINEERS shall furnish Planning and Design Engineering Services as follows:

1. The ENGINEERS will perform the necessary design investigations, accomplish the design and prepare the construction plans, specifications and contract documents. Design investigations will be limited to those required to perform the design and to prepare the plans and specifications.
2. The ENGINEERS will prepare an opinion of probable cost based on the construction plans and specifications. However, since the ENGINEERS have no control over the cost of labor, materials, equipment, services provided by others or over contractors' pricing methods, or over market conditions or competitive bidding, the opinion of probable cost will be based on the ENGINEERS' professional experience and judgment; but the ENGINEERS cannot and do not guarantee that proposals, bids or the construction cost will not vary from opinions of probable cost prepared by them.
3. Prior to the advertisement for bids, the ENGINEERS will provide the necessary copies of plans, specifications, and contract documents for the OWNER and the appropriate Federal, State and local agencies from whom approval of the project must be obtained.
4. The ENGINEERS will furnish additional copies of the plans, specifications and contract documents as required by prospective bidders, material suppliers, and other interested parties, but will charge the prospective bidders for such copiers. After award of each contract, the ENGINEERS will furnish the OWNER the necessary contract documents for execution.

5. The ENGINEERS will attend the bid opening, tabulate the bid proposals, make an analysis of the bids and furnish information for the OWNER's use in awarding the contracts for construction. The notice of award and the notice to proceed shall also be prepared by the ENGINEERS for execution by the OWNER.
6. The ENGINEERS will prepare exhibits and/or descriptions of needed land and easement rights and assist with land and easement acquisition efforts.

SECTION B – CONSTRUCTION ENGINEERING SERVICES

That the ENGINEERS shall furnish Construction Engineering Services as follows:

1. The ENGINEERS will provide general construction overview of the work of the Contractor as construction progresses by making site visits at intervals appropriate to the various stages of construction as the ENGINEERS deem necessary, in order to observe as an experienced and qualified professional, the progress and quality of the Work. Such visits and observations are not intended to be exhaustive but rather shall consist of visual observation of materials, equipment, or construction work for the purpose of ascertaining that the work is in substantial conformance with the contract documents and with the design intent. Such overview shall not be relied upon by others as acceptance of the work nor shall it be construed to relieve the Contractor in any way from his obligations and responsibilities under the construction contract.

Based on ENGINEERS' visits and observations, the ENGINEERS shall keep the OWNER informed about the progress of the work and shall endeavor to guard against deficiencies and unnecessary delays in the work.

2. The ENGINEERS will review for general conformance with the design concept necessary shop and working drawings furnished by the Contractor.
3. The ENGINEERS will provide bench marks and/or reference points to be used by the Contractor in staking the construction.
4. The ENGINEERS will promptly verify and recommend payment of all the Contractor's progress estimates; shall check the quantities of all materials incorporated in the project; and will make prompt submission of the Contractor's final estimate and supporting documents to the OWNER for approval.
5. The ENGINEERS will make final review of the completed construction and provide a written record of such to the OWNER.
6. The ENGINEER will prepare change orders as and when necessary and required, and submit to the Owner for approval by the Tupelo City Council at a regular meeting.
7. The ENGINEERS will provide the OWNER with one set of record drawings. Record drawings will be developed from the construction plans based upon information provided

by the Contractor. Because these drawings are based on unverified information provided by other parties which will be assumed to be reliable, the ENGINEERS cannot and do not warrant their accuracy.

8. The ENGINEERS will conduct field and laboratory testing of soil, asphalt, concrete as required for quality assurance.

SECTION C – OWNER OBLIGATIONS

That OWNER agrees to perform certain duties as follows:

1. The OWNER shall provide access to and make all provisions for the ENGINEERS to enter upon public and private lands as required for the ENGINEERS to perform such work as surveys and inspections in the development of the Project(s); and the OWNER will indemnify the ENGINEERS from any claims of trespass with respect thereto to the fullest extent permitted by law.
2. The OWNER will negotiate for land rights and easements as necessary.

SECTION D – COMPENSATION FOR PLANNING, DESIGN, AND CONSTRUCTION ENGINEERING SERVICES

The OWNER shall compensate the ENGINEER for Planning and Design Services at a percentage of the total actual construction contract amount for each individual project per negotiated fees.

The compensation for Planning and Design services shall be payable in the following manner:

1. A sum equal to ninety-five percent (95%) of the total compensation for Planning and Design Services based on the approved Engineer's Construction Cost Estimate after completion and submission of the construction plans, specifications, cost estimates, and contract documents.
2. A sum equal to five percent (5%) of the total compensation for Planning and Design Services based on the Construction Contract Amount (Bid) after the ENGINEER makes recommendations for awarding the contract.

Payment under this section will be adjusted after the construction contracts are awarded such that the aggregate of all sums paid to the ENGINEER under this section shall equal 100% of the compensation determined as based on the actual construction contract amount.

If the work is not let for public contract, compensation will be based on the Engineers Construction Cost Estimate.

The OWNER shall compensate the ENGINEER for Construction Engineering Services at a percentage of the total actual construction cost for each individual project per negotiated fees.

The compensation for Construction Engineering services shall be payable in the following manner:

1. A sum equal to a percentage of the total compensation for Construction Engineering Services based on the Construction Contract Amount will be billed based on the amount of construction completed.

If the work is accomplished in separate parts, each phase shall be considered a separate project for the purpose of determining compensation for all types of engineering services.

SECTION E – SPECIAL SERVICES

That the ENGINEERS shall furnish or obtain from others Special Services of the following type which will be paid for by the OWNER as indicated below.

1. Preparation or review of environmental assessments and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, the CLIENT's schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond the ENGINEER's control.
3. Services in connection with Change Orders to reflect changes requested by the CLIENT if the resulting changes in compensation for Design Engineering Services is not commensurate with the additional services rendered, and services resulting in significant delays, changes or price increases occurring as a direct result of material, equipment, or energy shortages.
4. Additional or extended services during construction made necessary by prolongation of the contract time of any prime contract by more than thirty days or acceleration of the work schedule involving services beyond normal working hours.
5. Preparing to serve or serving as a consultant or witness for the CLIENT in any litigation, arbitration, public hearing or other legal or administrative proceeding involving the Project.
6. Additional services in connection with the Project, including services normally provided by the CLIENT and services not provided for in this Agreement.

7. Property or topographic surveys, plats, descriptions of necessary land and easement rights with maps, plans or estimates related thereto; assistance in negotiating for land and easement rights.

Payment for the special services specified in this section shall be based on the Special Services Fee Schedule as set forth in (Exhibit B) which is attached hereto and made a part hereof by reference. The ENGINEERS will render to the OWNER an itemized bill for such services; however, in no event shall ENGINEERS be entitled to payment for Special Services in excess of the per day liquidated damages to which Owner is entitled as set forth in the contract between OWNER and the construction contractor for each project. (It is understood by the parties hereto that construction contracts with project contractors have not yet been entered but that the terms thereof as to per day liquidated damages shall apply to this Section upon execution of each.)

SECTION F – GENERAL CONSIDERATIONS

1. The standard of care for engineering services performed or furnished by the ENGINEERS under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. The ENGINEERS make no warranties, express or implied, under this Agreement, or otherwise, in connection with the ENGINEERS' services. The ENGINEERS may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.
2. The ENGINEERS shall not at any time supervise, direct or have control over any contractor's work, nor shall the ENGINEERS have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, nor for any failure of any contractor to comply with laws and regulations applicable to the contractor's work.
3. The ENGINEERS neither guarantee the performance of any contractor nor assume responsibility for any contractor's failure to furnish and perform work in accordance with the contract between the OWNER and such contractor.
4. The ENGINEERS have no authority to exercise any control over any construction contractor in connection with their health or safety precautions. The ENGINEERS' construction engineering services do not include any administration of job site safety which is the sole responsibility of the contractor. Any reference to safety in the contract document shall not create any duty of job site safety administration or oversight by the ENGINEERS. Neither the professional activities of the ENGINEERS, nor the presence of the ENGINEERS at a job site shall relieve any contractor of their obligations and responsibilities for superintending or coordinating any health or safety precautions required by any regulatory agencies.

5. In the event that it shall be necessary for either party to retain legal counsel to resolve a dispute or to enforce either's respective rights hereunder, the party prevailing upon resolution of such disputes or enforcements of such rights shall be entitled to recover payment of all reasonable attorney's fees, expenses and costs incurred therewith.

SECTION G – TERMINATION, ASSIGNMENT AND SPECIAL PROVISIONS

The OWNER and the ENGINEERS further agree to the following conditions:

1. Either the OWNER or the ENGINEERS may terminate this Agreement at any time with or without cause upon giving the other party 30 calendar days prior written notice. The OWNER shall within 30 calendar days of termination pay the ENGINEERS for services rendered and costs incurred to the date of termination in accordance with the compensation provisions of this contract.
2. The OWNER acknowledges the ENGINEERS' construction documents, including electronic files, as instruments of professional service. Nevertheless, the final construction documents (record drawings) prepared under this Agreement shall become the property of the OWNER upon completion of the services and payment in full of all monies due to the ENGINEERS. The OWNER shall not reuse or make any modification to the construction documents without the prior written authorization of the ENGINEERS. The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEERS, its officers, directors, employees and sub consultants against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the OWNER or any person or entity that acquires or obtains the construction documents from or through the OWNER without the written authorization of the ENGINEERS.
3. The ENGINEERS have not offered any fiduciary service to the OWNER and no fiduciary responsibility shall be owed to the OWNER by the ENGINEERS or any of the ENGINEERS' consultants as a consequence of this Agreement.
4. This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the OWNER and the ENGINEERS respectively and its partners, successors, assigns, and legal representatives. Neither the OWNER nor the ENGINEERS shall have the right to assign, transfer or sublet his interest of obligations hereunder without written consent of the other party.
5. In the use of pronouns throughout this agreement where appropriate, the singular shall include the plural, the plural the singular.

SECTION H - MANDATORY PROVISIONS FOR ALL CITY OF TUPELO CONTRACTS

The City of Tupelo (TUPELO), despite any contrary provision contained in any contract to which TUPELO is a party, does not waive any rights, benefits, or prohibitions that may be provided under any law, statute(s), regulation(s), or policies. All provisions to the contrary in any contract to which TUPELO is a party are hereby null, void and deleted. Not intended to be an exhaustive list, the following are examples of such matters and shall be exceptions to any contrary provision(s) in any contract to which TUPELO is a party.

1. TUPELO does not indemnify or hold harmless any party.
Miss. Const. Art. 4, § 100; Miss AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
2. TUPELO does not make any warranty.
Miss. Const. Art. 4, § 100; Miss AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
3. TUPELO does not waive any claim; past, present, or future.
Miss. Const. Art. 4, § 100; Miss AG Op; Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
4. TUPELO does not waive its sovereign immunity. TUPELO shall only be responsible for liability resulting from the actions of its officers, agents, and employees acting within the course and scope of their official duties.
Miss. Code Ann. § 11-46-1, et seq.
5. TUPELO does not waive its Constitutional Eleventh (11th) Amendment immunity.
U.S. Const. Amend. XI.
6. TUPELO does not agree to the application of laws of another state.
U.S. Const. amend XI; Miss. Code Ann. 11-11-3; Miss. Code Ann. 11-45-1; *City of Jackson v. Wallace*, 196 So. 223 (1940)
7. TUPELO does not limit the tort liability of another party to the amount of the contract or to any other set amount.
Miss. Const. Art. 4, § 100; Miss AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002); Miss. AG Op., Hathorn (May 28, 1992); Miss. AG Op., Davis (March 3, 1993).
8. TUPELO does not agree to waive warranties of merchantability, fitness for a particular purpose, or any common law warranties to which TUPELO is entitled.
Miss. Const. Art 4, § 100; Miss Code Ann. § 75-2-719; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).

9. TUPELO does not agree that a party may represent, prosecute or defend legal actions in the name of TUPELO. (CITATION NEEDED.)
10. Provisions that limit the time for TUPELO to pursue legal actions are deleted and void.
Miss. Const. Art. 4, § 104; Miss. Const. Art. 4, § 100; Miss Code Ann. § 15-1-5; Miss AG Op; Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
11. TUPELO does not agree to submit to binding arbitration.
Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
12. TUPELO will make payments for all amounts owed under a contract agreement in accordance with state law.
Miss. Code Ann. § 31-7-305.
13. TUPELO advises for all contracts entered into, the provisions of the contract which will contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information, and shall be available for examination, copying or reproduction.
Miss. Code § 25-61-9 (7).
14. TUPELO must comply with Mississippi public records law. Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.
Miss. Code § 25-61-9 (1).
15. Data processing software obtained by TUPELO under a licensing agreement that prohibits its disclosure and which software is a trade secret as defined in Miss. Code Section 75-26-3, and data processing software produced by a public body which is sensitive must not be subject to inspection, copying or reproduction under Mississippi public records law. "Sensitive" means only those portions of data processing software, including the specifications and documentation, used to:
(a) Collect, process, store, and retrieve information which is exempt; (b) Control and direct access authorizations and security measures for automated systems; (c) Collect, process, store, and retrieve information disclosure of which would require a significant intrusion into the business of the public body.
16. In compliance with the Mississippi Accountability and Transparency Act of 2008, all payments made by TUPELO will be posted on a public website. The

information posted will include: the date of payment, vendor name, vendor's city and state and the payment amount. The release of any such information supersedes any applicable non-disclosure or confidentiality obligations of TUPELO.

Miss. Code Ann. §§ 27-104-151 to 159.

17. Any Contractor/Seller of TUPELO shall ensure compliance with the Mississippi Employment Protection Act. Miss. Code Ann. § 71-11-1, et seq. The provisions and requirements of the Mississippi Employment Protection Act supersede all conflicting contract provisions and requirements.

18. Any Contractor/Seller of TUPELO shall ensure compliance with the Mississippi Employment Protection Act.

Miss. Code Ann. § 71-11-1, et seq. The provisions and requirements of the Mississippi Employment Protection Act supersede all conflicting contract provisions and requirements.

19. TUPELO is prohibited from binding its successors in office to contracts, including leases, which result in taking away one successors' rights and powers conferred by law, unless there is specific statutory authority to enter into such contract. In the absence of specific statutory authority, such contracts are voidable by the successors in office.

MS AG Ops., Barton (January 8, 2014) and Barton (July 15, 2011) (both relying on Biloxi Firefighters Assoc. v. City of Biloxi, 810 So.2d 589 (Miss. 2002)).

20. TUPELO does not have the power to grant to any person, firm or corporation any exclusive franchise or any exclusive right to use or occupy the streets, highways, bridges, or public places in such municipality for any purpose. TUPELO cannot grant, renew, or extend any such franchise, privilege or right, without compensation for any longer period than twenty-five years.

Miss. Code Anno. 21-27-1

21. All contracts must be approved by the City Council of TUPELO, subject to the veto power of the Mayor of TUPELO.

MS AG Ops. 2012-00013

In witness whereof, the parties hereto have made and executed this Agreement the 23rd day of August, 2022.

OWNER: CITY OF TUPELO

ENGINEERS: ENGINEERING SOLUTIONS, INC.

By: Todd Jordan
Todd Jordan, Mayor

By: John White
John White, PE, PS
Principal

Date: 8-23-22

Date: 8-23-22

ATTEST:

Franklin A. Bore

Date: 8-23-22

EXHIBIT A**GROUP 1****Water:**

Replace 12" Water Line from Lumpkin to Thomas on West Jackson Street.	\$ 600,000
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Wastewater:

Replace concrete sewer outfall line from Highway 45 to North Gloster Street	\$2,100,000
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Replace Pressure Sewer Line from SW Pump Station to South Gloster Street	\$5,000,000
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Storm Water (Possible combination with wastewater improvements):

Rip Rap/Gabion from Lumpkin to Kings Creek	\$1,200,000
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GROUP 2**Storm Water:**

Robins Field arched pipe repairs	\$ 475,000
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Holly Hill pipe project	\$ 200,000
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Gum Tree Park pipe project	\$ 200,000
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Ford Circle pipe project	\$ 200,000
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City Park pipe project	\$ 500,000
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Van Buren pipe project	\$ 425,000
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Ridgeway Drive pipe replacement	\$ 150,000
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GROUP 3**Storm Water:**

Cooper Tire reshape and rip rap ditch	\$1,250,000
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Haven Acres reshape and rip rap ditch	\$1,350,000
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Mitchell Road pipe drain upgrade and replacements	\$ 300,000
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Gun Club Road box culvert upgrades	\$ 450,000
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Barnes Crossing box culvert upgrades	\$ 750,000
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Medical Park pipe replacement	\$ 200,000
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Danielle Cove replace pipe and rip rap downstream	\$ 450,000
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EXHIBIT BSTANDARD RATES AND CHARGES FOR
ENGINEERING SERVICES

<u>Classification</u>	<u>Charge</u>
Principal/Project Manager	\$168
Professional Engineer	\$115
Engineer Intern	\$ 75
Sr. Engineering Designer	\$ 75
Drafting Technician	\$ 60
Senior Construction Inspector	\$ 70
Construction Inspector	\$ 60
Clerical	\$ 40
Survey Crew:	\$120
Testing Technician	\$ 60
Field Density Test	\$38/ea
Soil Classification	\$275/ea
Standard Proctor Test	\$350/ea
Concrete Cylinder Breaks	\$25/ea
Concrete Mix Design	\$325/ea
Elevated Tank Climb	\$225/ea

REIMBURSABLE EXPENSES

1. Travel from office at \$0.58 per mile, plus actual out-of-pocket cost, plus time at above rates for both ways, for time spent on Additional Services. *Note: this does not apply to normal project activities.*
2. Actual cost of mileage (at \$0.58/mile), subsistence and lodging if required by travel outside a 50-mile radius of Project location.
3. Actual costs of special tests and services of special consultants.

AGREEMENT FOR ENGINEERING SERVICES

This agreement, made by and between **CITY OF TUPELO**, located in **LEE** County, Mississippi, hereinafter referred to as the Owner and Cook Coggin Engineers, Inc., a Mississippi corporation, hereinafter referred to as the Engineers.

The Owner intends to construct water, sewer and drainage improvements and has employed the Engineers, who agree to perform the various professional engineering services required for the design and construction of the work, as stated herein;

WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

SECTION A - PLANNING AND DESIGN ENGINEERING SERVICES

That the Engineers shall furnish Planning and Design Engineering Services as follows:

1. The Engineers will perform the necessary design investigations, accomplish the design and prepare the construction plans, specifications and contract documents. Design investigations will be limited to those required to perform the design and to prepare the plans and specifications.
2. The Engineers will prepare an opinion of probable cost based on the construction plans and specifications. However, since the Engineers have no control over the cost of labor, materials, equipment, services provided by others or over contractors' pricing methods, or over market conditions or competitive bidding, the opinion of probable cost will be based on the Engineers' professional experience and judgment; but the Engineers cannot and do not guarantee that proposals, bids or the construction cost will not vary from opinions of probable cost prepared by them.
3. Prior to the advertisement for bids, the Engineers will provide the necessary copies of plans, specifications, and contract documents for the Owner and the appropriate Federal, State, and local agencies from whom approval of the project must be obtained.
4. The Engineers will furnish additional copies of the plans, specifications and contract documents as required by prospective bidders, material suppliers, and other interested parties, but will charge the prospective bidders for such copies.
5. The Engineers will attend the bid opening, tabulate the bid proposals, make an analysis of the bids and furnish information for the Owner's use in awarding the contracts for construction.

6. After award of each contract, the Engineers will furnish the Owner the necessary contract documents for execution. The notice of award and the notice to proceed shall also be prepared by the Engineers for execution by the Owner.

SECTION B - CONSTRUCTION ENGINEERING SERVICES

That the Engineers shall furnish Construction Engineering Services as follows:

1. The Engineers will provide general construction overview of the work of the Contractor as construction progresses by making site visits at intervals appropriate to the various stages of construction as the Engineers deem necessary, in order to observe as an experienced and qualified professional, the progress and quality of the Work. Such visits and observations are not intended to be exhaustive but rather shall consist of visual observation of materials, equipment, or construction work for the purpose of ascertaining that the work is in substantial conformance with the contract documents and with the design intent. Such overview shall not be relied upon by others as acceptance of the work, nor shall it be construed to relieve the Contractor in any way from his obligations and responsibilities under the construction contract.
2. The Engineers will review for general conformance with the design concept necessary shop and working drawings furnished by the Contractor.
3. The Engineers will provide bench marks and/or reference points to be used by the Contractor in staking the construction.
4. The Engineers will review the Contractor's estimates for progress and final payments.
5. The Engineers will make final review of the completed construction and provide a written record of such to the Owner.
6. The Engineers will prepare the summary change order.
7. The Engineers will provide the Owner with one set of record drawings. Record drawings will be developed from the construction plans based upon information provided by the Contractor. Because these drawings are based on unverified information provided by other parties which will be assumed to be reliable, the Engineers cannot and do not warrant their accuracy.

SECTION C- OWNER OBLIGATIONS

That Owner agrees to perform certain duties as follows:

1. The Owner shall provide access to and make all provisions for the Engineers to enter upon public and private lands as required for the Engineers to perform such work as surveys and inspections in the development of the Project; and the Owner will indemnify the Engineers from any claims of trespass with respect thereto.
2. The Owner will provide property surveys, property plats and legal descriptions.
3. The Owner will negotiate for land rights and easements as necessary.
4. The Owner will provide topographies, soils investigations, environmental assessments, wetlands and flood plains determination as required, except as provided for elsewhere in this agreement.
5. The Owner will arrange for field and laboratory testing for quality control such as density and material tests as necessary, except as provided for elsewhere in this agreement.

SECTION D - COMPENSATION FOR PLANNING & DESIGN AND CONSTRUCTION ENGINEERING SERVICES

That the Owner shall compensate the Engineers for planning & design and construction engineering services at a fee to be negotiated and agreed upon by both parties at a later date.

SECTION F - SPECIAL SERVICES

That, the Engineers shall furnish or obtain from others Special Services of the following types which will be paid for by the Owner as indicated below.

1. Services provided in conjunction with the Clearing House Environmental Reporting, Environmental Review Process and related reporting, which may include, but not limited to, Cultural Resource Survey; Preliminary Wetland Delineation....etc.
2. Provisions of topographies, soils investigations, environmental assessments, stormwater pollution prevention plans and permit applications, wetlands and flood plains determination.
3. Provision of property surveys, plats, descriptions of needed land and easement rights with maps or plans related thereto; assistance in negotiating for land and easement rights.
4. Provision of roadway and railroad permit applications and assistance in administration of permit requirements and making changes to active permits.

5. Preparing to serve or serving as a consultant or witness for the Owner in any litigation, arbitration, public hearing or other legal or administrative proceeding involving the Project.
6. Services associated with preparation of Anti-degradation Report and NPDES Permit Application.
7. Development of hydraulic assessments and/or hydraulic models and conducting hydraulic simulations to assess existing system deficiencies and to determine improvements needed to satisfy minimum regulatory requirements and/or system specific design criteria.
8. Design engineering services in connection with change orders to reflect modifications of the ongoing project.
9. Field and laboratory testing for quality control such as soil density and construction material tests.
10. Additional or extended services during construction made necessary by prolongation of the contract time of any prime contract by more than thirty days, or acceleration of the work schedule involving services beyond normal working hours.
11. Planning and design engineering services as set out under Section A to modify the construction documents for re-bid processes.
12. Services rendered in conjunction with start-up, operator training and preparation of operation and maintenance manuals.
13. Services in connection with preparing, re-formatting modifying or editing the construction documents for electronic or online bidding purposes.
14. Additional services in connection with the Project not otherwise provided for in this Agreement.

Payment for the special services specified in this section shall be based on the current per diem rate table and invoiced at an hourly rate by labor classification for hours worked only. The Engineers will render to the Owner an itemized bill for such services.

SECTION G - GENERAL CONSIDERATIONS

1. The standard of care for engineering services performed or furnished by the Engineers under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. The Engineers make no warranties, express or implied, under this Agreement, or otherwise, in connection with the Engineers' services. The Engineers may use or rely

upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

2. The Engineers shall not at any time supervise, direct or have control over any contractor's work, nor shall the Engineers have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, nor for any failure of any contractor to comply with laws and regulations applicable to the contractor's work.
3. The Engineers neither guarantee the performance of any contractor nor assume responsibility for any contractor's failure to furnish and perform work in accordance with the contract between the Owner and such contractor.
4. The Engineers have no authority to exercise any control over any construction contractor in connection with their health or safety precautions. The Engineers' construction engineering services do not include any administration of jobsite safety which is the sole responsibility of the contractor. Any reference to safety in the contract document shall not create any duty of jobsite safety administration or oversight by the Engineers. Neither the professional activities of the Engineers, nor the presence of the Engineers at a jobsite shall relieve any contractor of their obligations and responsibilities for superintending or coordinating any health or safety precautions required by any regulatory agencies.

SECTION H - TERMINATION, ASSIGNMENT AND SPECIAL PROVISIONS

The Owner and the Engineers further agree to the following conditions:

1. Either the Owner or the Engineers may terminate this Agreement at any time with or without cause upon giving the other party 30 calendar day prior written notice. The Owner shall within 30 calendar days of termination pay the Engineers for services rendered and costs incurred to the date of termination in accordance with the compensation provisions of this contract.
2. The Owner acknowledges the Engineers' construction documents, including electronic files, as instruments of professional service. Nevertheless, the final construction documents (record drawings) prepared under this Agreement shall become the property of the Owner upon completion of the services and payment in full of all monies due to the Engineers. The Owner shall not reuse or make any modification to the construction documents without the prior written authorization of the Engineers. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineers, its officers, directors, employees and subconsultants against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the Owner or any person or entity that acquires or obtains the

construction documents from or through the Owner without the written authorization of the Engineers.

- 3. The Engineers have not offered any fiduciary service to the Owner and no fiduciary responsibility shall be owed to the Owner by the Engineers or any of the Engineers' consultants as a consequence of this Agreement.
- 4. This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the Owner and the Engineers respectively and its partners, successors, assigns, and legal representatives. Neither the Owner nor the Engineers shall have the right to assign, transfer or sublet his interest of obligations hereunder without written consent of the other party.
- 5. This Agreement may be amended with mutual consent to conform to funding agency requirements.
- 6. In the use of pronouns throughout this agreement where appropriate, the singular shall include the plural, the plural the singular.

In witness whereof the parties hereto have made and executed this Agreement the 23rd day of August, 2022.

Owner: City of Tupelo

By: Todd Jordan

Todd Jordan, Mayor
Type Name & Title

Attest: Kim Hanna

Kim Hanna, CFO
Type Name & Title

Engineer: Cook Coggin Engineers, Inc.

By: John Mark Weeden

John Mark Weeden, Principal
Type Name & Title

Physical Address: 71 East Troy Street
Tupelo, MS 38804

Mailing Address: 71 East Troy Street
Tupelo, MS 38804

Phone: (662) 841-6513
FAX: (662) 840-2075
Email: todd.jordan@tupeloms.gov

Physical Address: 703 Crossover Road
Tupelo, MS 38801

Mailing Address: P. O. Box 1526
Tupelo, MS 38801

Phone: (662) 842-7381
FAX: (662) 844-4564
Email: mweeden@cookcoggin.com

City of Tupelo, Mississippi
Professional Services Agreement For
ARPA MCWI Grant Program – General Program Services
Agreement

PROJECT NUMBER: 1007-2203

DATE: August 23, 2022

A. GENERAL

This Agreement is for professional services by Dabbs Corporation (1050 N. Eason Blvd., Tupelo, MS 38804), after this called “DC”, to be provided to City of Tupelo Public Works Department (604 Crossover Rd., Tupelo, MS 38801), after this called the “City”, to include professional services related to the development, planning, grant application, environmental evaluation, design and construction phases for the referenced projects in regards to the ARPA Municipal Water and Infrastructure (MCWI) Grant Program for the City of Tupelo, Mississippi. The MCWI Grant Program has been developed by the State of Mississippi (MDEQ / MDH) related to water, wastewater and storm drainage infrastructure projects to be funded as part of the American Rescue Plan Act (ARPA).

The project will include the development of design related criteria, environmental information, and other project related data, including cost estimates, project schedules, etc., to assist the City in the development of project data to be submitted by the City for MCWI grant applications for each respective project. Furthermore, the project will also include additional phases of work as necessary to provide the required permitting, survey, design information, etc. to solicit bids for the future construction of each respective project. Construction inspection / representation will also be provided by DC as defined for each individual project.

This Agreement shall provide the basis for the services to be provided by DC as related to the ARPA MCWI Grant Program and related projects. Specific services and related information will be defined under future Delivery Orders issued to the City by DC for each subsequent phase of the program and / or for specific services related to individual projects that will be made part of this Agreement. Delivery Orders shall be approved under this Agreement providing that each individual Delivery Order meets the general terms of this General Program Services Agreement. Should services be required by the City that are outside the terms and related scope of this Agreement, the City may be required to provide future approval for an amended Agreement/Delivery Order, Additional Services and/or a separate agreement.

DC shall provide the necessary professional services as directed by the City of Tupelo Public Works Department for the projects defined within Paragraph B – Scope of Work herein and, if necessary, any Additional Services that may be directed by the City, per the terms identified

in Paragraph D – Payment for Services.

B. SCOPE OF WORK

1.0 INTRODUCTION

1.1 Project: ARPA MCWI related services will be provided by DC as defined within this Agreement and subsequent Work Orders for the following infrastructure improvements projects:

1.1-1 Robins Field Arch Pipe Repairs/Improvements

1.1-2 Holly Hill Drainage Pipe Project

1.1-3 Gum Tree Park Drainage Pipe Project

1.1-4 Ford Circle Drainage Pipe Project

1.1-5 City Park Drainage Pipe Project

1.1-6 Van Buren Drainage Pipe Project

1.1-7 Ridgeway Drive Drain Pipe Replacement

1.2 Purpose: The purpose of this Scope of Work (SOW) is to provide professional services related to the development of planning, environmental and engineering data as related to the applications, design, bidding/contacting and construction of proposed infrastructure projects via the ARPA MCWI Grant Program. DC will assist the City in the development and implementation of projects in a manner that meets the terms and requirements of the ARPA MCWI Grant Program.

1.3 Project Location: All work shall be within the existing Tupelo City Limits and shall be defined more specifically in subsequent Delivery Orders that are issued by the City to DC as part of this Agreement.

2.0 SCOPE OF SERVICES: The general Project Services shall include the following:

2.1 *Planning Components* – DC shall provide preliminary design and related services to the City as required to provide the necessary project data / information to complete the ARPA MCWI Grant Program applications. The ARPA MCWI online application portal is set to be open from September 1 – 30, 2022 for the City to provide the necessary project information to complete the applications.

2.2 *Environmental Review Services* – Headwaters, Inc. will offer pre-permitting services to include the schematic evaluation of projects and related potential environmental considerations for each project. Headwaters shall provide assessment of potential permitting and related information to the City as necessary / required to complete the applications.

2.3 *Environmental Permitting Services* – Based on preliminary environmental assessment services and individual project conditions, Headwaters, Inc. will environmental and

related permitting services only as required for each project. Headwaters shall provide assessment of potential permitting and related information to the City as necessary / required to complete the applications.

- 2.4** *Topographic Survey* – DC will provide topographic survey information to support the planning, design and construction phases of the projects that are defined in section 1.1 herein.
- 2.5** *Geotechnical / Materials Testing Services* – DC will provide the necessary geotechnical information and materials testing, if required, to support the planning, design and construction phases of the projects that are defined in section 1.1 herein.
- 2.6** *Design Phase Services* – DC will provide design information, including the development of contract documents, project drawings as required for each project, technical specifications, and related information as required for the projects that are defined in section 1.1 herein.
- 2.7** *Bidding / Contracting Services* – DC will assist the City in the development of bid documents and related information as required for the solicitation of bids/price quotes for the procurement of contractors as required for the projects that are defined in section 1.1 herein.
- 2.8** *Construction Services* – DC will provide construction management and inspection for the duration of the construction contracts as required for the projects that are defined in section 1.1 herein.
- 2.9** Services for this Agreement is based on the premise that all Project areas for each individual projects lie within existing easements, ROWs, fee-simple property, etc. owned and maintained by the City of Tupelo. This scope of services does not include boundary survey or property/easement preparation related to the procurement of ROWs, easements, etc.
- 3.0** **DELIVERY ORDERS / SPECIAL CONSIDERATIONS:**
- 3.1** As part of this Agreement, DC shall submit Delivery Orders for specific services as required for the City to meet the requirements of the ARPA MCWI Grant Program. Delivery Orders shall define specific services, project schedules, fees, etc. based on the terms of this Agreement for specific services and/or specific projects. Delivery Orders shall be submitted and approved by the City under this Agreement and shall be provided based on the specific needs/improvements as required to meet the requirements, terms, goals and objectives of the City of Tupelo and the MCWI Grant Program.
- 3.2** All original materials, visual aids, materials, and text developed in performance of the tasks listed herein will be the property of the OWNER, and will not be used, distributed, or published without the specific authorization of the OWNER.

- 3.3** The Consultant may provide additional professional services if directed by the City. As these or other specific professional services are required by the Owner, a new agreement, or supplemental agreement, shall be completed between the Owner and Consultant. Services related to the specific tasks for each subsequent phase of the Project shall be completed under the schedule and terms of payment defined in each individual Delivery Order or separate agreement.
- 4.0 SCHEDULE OF WORK:** Upon the execution of this Agreement, DC shall initiate the services necessary to complete the tasks related to the data collection and corresponding professional services as instructed by the City. DC shall provide the planning, pre-permitting environmental assessment, survey and related information to the City within 30 days as required to submit the pertinent project data to the City to complete the Grant Program applications prior to September 30, 2022. Project and related schedules for subsequent services shall be defined under each Work Order based on the scope of services included therein.
- 5.0 ADDITIONAL SERVICES:**
- 5.1** The City may request/direct DC to provide Additional Services not included herein and/or solicit services outside of this Agreement in order to facilitate necessary and/or critical design or construction improvements related to individual projects and services.
- 5.2** Additional Services shall only be provided by DC as directed in writing, including email directives, by the City and shall be completed in accordance with associated fee compensation methods and fee amounts that are approved by the City for each additional service.

C. PROJECT TERM / PAYMENT FOR SERVICES

The Agreement shall include services to be provided by DC as defined herein for the period beginning with the execution of the Agreement by the City until the final closeout of construction phase work for each individual project included in section 1.1 herein unless amended in writing by both parties.

Professional services completed under this Agreement shall be provided either via (1.) Time and Materials Basis and/or (2.) Fixed Fee Basis for the services included herein. Specific formats of payment for services and related fees shall be defined under each individual Delivery Order based on the services defined therein. Any additional services shall be provided on a Time and Materials basis per the terms of this Agreement.

Fixed Fee based fees shall be determined as required and included in individual Delivery Orders based on the terms agreed to by DC and the City. As part of the planning components and application phase, DC shall assist the City in providing project data, including project schedules and estimated project construction costs. For Delivery Orders that are completed via Fixed fee basis, the total fee for engineering design and construction phase services shall not exceed 15% of the estimated construction cost unless approved by

the City. Fixed fee Delivery Orders with total design and construction engineering fees at or below 15% of the estimated construction cost for each project shall be approved as part of this Agreement.

Planning Components and Environmental Services Delivery Orders shall be completed via Time and Materials based services and shall be in accordance with *Exhibit B – Rate Schedules* for any services provided by DC and/or Headwaters, Inc. as part of this Agreement and all related work orders. *Time and Materials Rate Schedules may be adjusted annually in January of each year given that this program may be a multi-year program.*

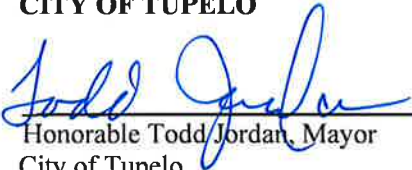
Direct expenses and/or material costs, including printing, reproducible drawings, equipment, other consultants, etc. shall be reimbursed at the actual cost of such expense. The Owner agrees to pay DC in accordance with the included hourly rates and the assessed time and expense backup data to be provided by DC on a monthly basis. Payment shall be made within 30 days of receipt of invoice and shall be based on no other consideration other than DC’s ability to provide the services as defined herein.

D. ATTACHMENTS – The following attachments are made part of this Agreement:

- 1.0 Exhibit A – General Terms and Conditions**
- 2.0 Exhibit B – Rate Schedules for Time & Materials / Additional Services**


E. ACCEPTANCE OF AGREEMENT

CITY OF TUPELO



Honorable Todd Jordan, Mayor
City of Tupelo

DABBS CORPORATION



Dustin Dabbs, PE
President

EXHIBIT A
GENERAL TERMS AND CONDITIONS

1. **Relationship Between Consultant and Client.** Consultant shall serve as Client's professional project management and/or engineering consultant in those phases of the Project to which this Agreement applies. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other. The Consultant shall not be considered to be the agent of the Client.

2. **Responsibility of the Consultant.** Consultant will **strive** to perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between the Client and any other party concerning the Project, the Consultant shall not have control of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction; or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Consultant be responsible for the acts or omissions of the Client, or for the failure of the Client, any contractor or subcontractor, or any other engineer, architect or consultant not under contract to the Consultant to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project.

Consultant shall determine the amounts owing to the construction contractor and recommend in writing payments to the contractor in such amounts. By recommending any payment, the Consultant will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made to check the quality or quantity of the contractor's work.

3. **Responsibility of the Client.** Client shall provide all criteria and full information as to his requirements for the Project, including budgetary limitations. Client shall arrange for Consultant to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project.

Client shall give prompt written notice to the Consultant whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services, or any defect or nonconformance in the work of any construction contractor.

Client shall examine all documents presented by Consultant, obtain advice of an attorney or other consultant as Client deems appropriate for such examinations and provide decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.

4. **Designation of Authorized Representatives.** Each party shall designate one or more persons to act with authority in its behalf with respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the party.

5. **Ownership of Documents.** Drawings, specifications, reports and any other documents prepared by Consultant in connection with any or all of the services furnished hereunder shall be the property of Client. Consultant shall have the right to retain copies of all documents and drawings for its files.

6. **Reuse of Documents.** All documents, including drawings and specifications furnished by Consultant pursuant to this Agreement, are intended for use on the Project only. They should not be used by Client or others on extensions of the Project or on any other project. Any reuse, without written verification or adaptation by Consultant, shall be at Client's sole risk, and Client shall indemnify and hold harmless Consultant from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.

7. **Opinions of Cost.** Since the Consultant has no control over the cost of labor, materials, equipment or services furnished by the contractor, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, the Consultant cannot and does not guarantee that proposals, bids or actual construction costs will not vary from his opinions or estimates of construction costs.

8. **Changes.** Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments; and Consultant and Client shall negotiate appropriate adjustments in fee and/or schedule acceptable to both parties to accommodate any changes.

9. **Delays.** If the Consultant's services are delayed by the Client, or for other reasons beyond the Consultant's control, for more than one year, the fee provided for in this Agreement shall be adjusted equitably.

10. **Subcontracts.** Consultant may subcontract portions of the services, but each subcontractor must be approved by Client in writing.

11. **Suspension of Services.** Client may, at any time, by written order to Consultant, require Consultant to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Client,

however, shall pay all costs associated with suspension including all costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension of work

order. Consultant will not be obligated to provide the same personnel employed prior to suspension when the services are resumed in the event the period of any suspension exceeds 30 days. Client will reimburse Consultant for the costs of such suspension and remobilization.

12. **Termination.** This Agreement may be terminated by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Consultant either before or after the termination date shall be reimbursed by Client.
13. **Notices.** Any notice or designation required to be given by either party hereto shall be in writing and, unless receipt of such notice is expressly required by the terms hereof, it shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereinafter furnish to the other party by written notice as herein provided.
14. **Indemnification.** Consultant shall indemnify and hold harmless Client from Client's loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage arising out of the sole negligent act, error or omission of Engineer.

In the event of joint or concurrent negligence of Consultant and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties) which caused the personal injury or property damage.

Client shall not be liable to the Consultant, and the Consultant shall not be liable to the Client, for any special, incidental or consequential damages, including, but not limited to, loss of use and loss of profit, incurred by either party due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the Client or the Consultant or their employees, agents or subcontractors, by reason of services rendered under this Agreement.

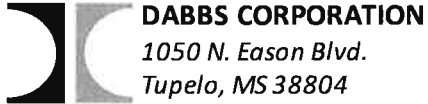
15. **Legal Proceedings.** In the event Consultant's employees are at any time required by Client to provide testimony, answer interrogatories or otherwise provide information ("testimony") in preparation for or at a trial, hearing, proceeding on inquiry ("proceeding") arising out of the services that are the subject of this Agreement, where Consultant is not a party to such proceeding, Client will compensate Engineer for its services and reimburse Consultant for all related direct costs incurred in connection with providing such testimony. This provision shall be of no effect if the parties have agreed in a separate agreement or an amendment to this Agreement to terms which specifically

supersede this provision, nor shall this provision apply in the event Client engages Consultant to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.

16. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
17. **Insurance.** Within the context of prudent business practices, Consultant shall endeavor to maintain workmen's compensation and unemployment compensation of a form and in an amount as required by state law; comprehensive general liability, automotive liability and professional liability insurance are procured as necessary and related information can be provided by Consultant if requested by Client. Client recognizes that insurance market is erratic and Consultant cannot guarantee to maintain the coverages identified above.
18. **Information Provided by the Client.** The Consultant shall indicate to the Client the information needed for rendering of services hereunder. The Client may elect to provide this information (including services by others) to the Consultant. In this case, the Client recognizes that the Engineer cannot assure the sufficiency of such information. Accordingly, the Consultant shall not be liable for any claims for injury or loss arising from errors, omissions or inaccuracies in documents or other information provided by the Client. In addition, the Client agrees to compensate the Consultant for any time spent or expenses incurred in defending such claim or in making revisions to his work as a direct or indirect result of information provided by the Client which is insufficient.
19. **Subsurface Conditions and Utilities.** Client recognizes that a comprehensive sampling and testing program implemented by trained and experienced personnel of Consultant or Consultant's subconsultants with appropriate equipment may fail to detect certain hidden conditions. Client also recognizes that actual environmental, geological and geotechnical conditions that Consultant properly inferred to exist between sampling points may differ significantly from those that actually exist. If tasked, Consultant will locate utilities which will affect the project from information provided by the Client and utility companies and from available surveys. In that these utility locations are based, at least in part, on information from others, Consultant cannot and does not warrant their completeness and accuracy.
20. **Hazardous Materials.** When hazardous materials are known, assumed or suspected to exist at a project site, Consultant is required to take appropriate precautions to protect the health and safety of his personnel, to comply with the applicable laws and regulations and to follow procedures deemed prudent to minimize physical risks to employees and the public. Client hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he will inform Consultant in writing prior to initiation of services under this Agreement.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Client agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. Engineer agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client waives any claim against Consultant and agrees to indemnify, defend and hold Consultant harmless from any claim or liability for injury or loss arising from Consultant's encountering unanticipated hazardous materials or suspected hazardous materials. Client also agrees to compensate Consultant for any time spent and expenses incurred by Consultant in defense of any such claim.

21. **Risk Allocation.** The Client recognizes that Consultant's fee includes an allowance for funding a variety of risks which affect the Consultant by virtue of his agreeing to perform services on the Client's behalf. One of these risks stems from the Consultant's potential for human error. In order for the Client to obtain the benefits of a fee which includes a lesser allowance for risk funding, the Client agrees to limit the Consultant's liability to the Client and all construction contractors arising from the Consultant's professional acts, errors or omissions, such that the total aggregate liability of the Consultant to all those named shall not exceed \$50,000 or the Consultant's total fee for the services rendered on this project, whichever is greater.
22. **Anticipated Change Orders.** Client recognizes and expects that a certain amount of imprecision and incompleteness is to be expected in construction contract documents; that contractors are expected to furnish and perform work, materials and equipment that may reasonably be inferred from the contract documents or from the prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for; and that a certain amount of change orders are to be expected. As long as Consultant provides services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions, client agrees not to make any claim against Consultant for cost of these change orders unless these costs become a significant part of the construction contract amount. In no case will Client make claim against Consultant for costs incurred if the change order work is a necessary part of the Project for which Client would have incurred cost if work had been included originally in the contract documents unless Client can demonstrate that such costs were higher through issuance of the change order than they would have been if originally included in the contract documents in which case any claim of Client against Consultant will be limited to the cost increase and not the entire cost of the change order.
23. **Payment.** Consultant shall submit monthly statements to Client. Payment in full shall be done upon receipt of the invoice. If payments are delinquent after 30 days from invoice date, the Client agrees to pay interest on the unpaid balance at the rate of one percent per month. Payment for Consultant's services is not contingent on any factor except Consultant's ability to provide services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.
24. **Force Majeure.** Neither Client nor Consultant shall be liable for any fault or delay caused by any contingency beyond their control, including, but not limited to, acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
25. **Compliance with Laws.** To the extent they apply to its employees or its services, the Consultant shall comply with all applicable United States, state, territorial and commonwealth laws, including ordinances of any political subdivisions or agencies of the United States, any state, territory or commonwealth thereof.
26. **Separate Provisions.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding.
27. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the principal place of business of the Engineer.
28. **Amendment.** This Agreement shall not be subject to amendment unless another instrument is executed by duly authorized representatives of each of the parties.
29. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and Consultant hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

EXHIBIT B - RATE SCHEDULES

<i>DIRECT SERVICES</i>	
<u>DESCRIPTION</u>	<u>RATE</u>
PRINCIPAL	\$150.00
PROJECT MANAGER / SR. ENGINEER	\$125.00
GEOTECHNICAL ENGINEER	\$125.00
PROFESSIONAL LAND SURVEYOR	\$130.00
DESIGN ENGINEER	\$100.00
FIELD TECHNICIAN	\$75.00
DESIGN TECHNICIAN	\$75.00
CONSTRUCTION INSPECTOR	\$50.00
TWO-MAN SURVEY CREW	\$140.00
ONE MAN SURVEY CREW	\$90.00
<i>REIMBURSEABLE SERVICES</i>	
<u>DESCRIPTION</u>	<u>RATE</u>
ATV / UTV PER DAY	\$150.00
PRINTING - Letter Size (B&W / Color)	\$0.50 / \$1.00
PRINTING - Half Scale Size (B&W / Color)	\$1.00 / \$2.00
PRINTING - Full Scale Size (B&W / Color)	print shop cost
Vehicle Mileage	\$0.60 / mile



Effective January 1, 2022

Rate Sheet	
Description	Fee
Principal	\$160.00/Hr.
Project Manager	\$135.00/Hr.
Operations Coordinator	\$135.00/Hr.
Environmental Coordinator	\$120.00/Hr.
GIS Manager	\$110.00/Hr.
GIS Specialist	\$100.00/Hr.
Environmental Specialist	\$100.00/Hr.
Assistant Project Manager	\$85.00/Hr.
GIS Technician	\$85.00/Hr.
Environmental Technician II	\$85.00/Hr.
Environmental Technician I	\$75.00/Hr.
Administrative Assistant	\$75.00/Hr.
UAV Pilot in Charge	\$110.00/Hr.
UAV Observer/Spotter	\$100.00/Hr.
UTV Expense	\$150.00/day
Vehicle Mileage Expense	\$0.625/mile
Printing Charges (black & white/color)	\$0.49/\$1.00 per copy
Environmental Supplies	\$50.00/project
Boat Expense	\$200.00/day

CORPORATE OFFICE:
 PO Box 2836 Ridgeland, Mississippi 39157-2836
 601-634-0097 | 601-630-9778 (f)

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TUPELO, MS BRANCH:
 PO Box 3658 Tupelo, Mississippi 38803-3658
 601-634-0097 | 601-630-9778 (f)

AN ORDER AUTHORIZING THE MAYOR AND CITY CLERK TO PURCHASE A PORTION OF REAL PROPERTY LOCATED AT 405 CLAYTON AVENUE FROM INSPIRATIONAL COMMUNITY BAPTIST CHURCH

WHEREAS, the governing authorities of the City of Tupelo are empowered to act with respect to the care, management and control of municipal affairs and its properties pursuant to Section 21-17-1, et seq. of the Mississippi Code Annotated (1972, as amended), including the authority to purchase such real property as determined by the city to be for a proper municipal purpose; and

WHEREAS, in compliance with the provision of Miss. Code Ann. § 43-37-3 (1972, as amended), governing the acquisition of real property using public funds, the City of Tupelo desires to purchase real property located at 405 Clayton Avenue from Inspirational Community Baptist Church (hereinafter “subject property”) for the best negotiated price of Twenty-two Thousand Dollars (\$22,000); and

WHEREAS, the subject property being purchased by the City of Tupelo is more particularly described as follows:

LYING AND BEING IN THE NE ¼ OF SECTION 36, TOWNSHIP 9 SOUTH, RANGE 5 EAST, CITY OF TUELO, LEE COUNTY, MISSISSIPPI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 9 SOUTH, RANGE 5 EAST; THENCE SOUTH FOR A DISTANCE OF 1088.0 FEET; THENCE WEST FOR A DISTANCE OF 25.0 FEET; THENCE NORTH ALONG THE WEST SIDE OF CLAYTON STREET FOR A DISTANCE OF 165.0 FEET, MORE OR LESS, FOR A POINT OF BEGINNING; THENCE WEST FOR A DISTANCE OF 241.0 FEET TO THE EDGE OF THE PROPERTY CONVEYED TO THE CITY OF TUPELO FROM THE NEIGHBORHOOD DEVELOPMENT CORPORATION BY INSTRUMENT NUMBER 2018012913 ON FILE IN THE OFFICE OF THE CHANCERY CLERK, LEE COUNTY, MISSISSIPPI; THENCE SOUTH ALONG THE CITY OF TUPELO PROPERTY FOR A DISTANCE OF 40.0 FEET; THENCE EAST FOR A DISTANCE OF 241.0 FEET TO THE WEST RIGHT OF WAY LINE OF CLAYTON STREET; THENCE NORTH 40.0 FEET TO THE POINT OF BEGINNING, AND CONTAINING 0.22 ACRES (9,640 SQ. FT.), MORE OR LESS; and

WHEREAS, the subject property adjoins property already owned by the city which was purchased for the purposes of blight removal and redevelopment: and

WHEREAS, the purchase of the subject property further serves the best interests of public health, safety and welfare by furthering the blight removal and redevelopment of this area; and

WHEREAS, the City of Tupelo has obtained an appraisal of the fair market value of the subject property located at 405 Clayton Avenue, and said appraisal valuing same at Twenty-two Thousand Dollars (\$22,000) (Exhibit “A”).

NOW, THEREFORE, let it be ordered by the City Council of the City of Tupelo as follows:

1. The prefatory findings of this Order are hereby accepted, incorporated herein and found to be in accordance with the necessary and warranted exercise of the authority of the City of Tupelo to purchase necessary interests in real property for the purpose of blight removal and redevelopment.
2. The City Council authorizes the purchase of the subject property from Inspirational Community Baptist Church for Twenty-two Thousand Dollars (\$22,000).
3. The Mayor and City Clerk for the City of Tupelo are hereby authorized by the City Council to enter into a purchase agreement with Inspirational Community Baptist Church for the purchase of the subject property described herein and to execute all documents necessary to effectuate the purchase of the subject property. The contract and acceptance of deed will be ratified subsequent to closing.

After a full discussion of this matter, Council Member _____ moved that the foregoing Order be adopted and said motion was seconded by Council Member _____ and upon the question being put to a vote, the results were as follows:

Councilmember Mims voted	_____
Councilmember Bryan voted	_____
Councilmember Beard voted	_____
Councilmember Davis voted	_____
Councilmember Palmer voted	_____
Councilmember Gaston voted	_____
Councilmember Jones voted	_____

The motion having received the affirmative vote of a majority of the members present, the President declared the motion carried and the order adopted.

WHEREUPON, the foregoing Order was declared, passed and adopted at a regular meeting of the Council on this the _____ day of _____, 2022.

CITY OF TUPELO, MISSISSIPPI

By: _____
LYNN BRYAN
City Council President

ATTEST:

MISSY SHELTON, Clerk of the Council

APPROVED:

TODD JORDAN, Mayor

DATE

APPRAISAL OF



LOCATED AT:

CLAYTON AVE.
TUPELO, MS, 38804

FOR:

BORROWER:

CITY OF TUPELO

AS OF:

August 19, 2022

BY:

ANDY SHORT

SHORT APPRAISAL FIRMcity of tupelo
File No. clayton lot

File Number: clayton lot

In accordance with your request, I have appraised the real property at:

CLAYTON AVE.
TUPELO, MS, 38804The purpose of this appraisal is to develop an opinion of the market value of the subject property, as vacant.
The property rights appraised are the fee simple interest in the site.

In my opinion, the market value of the property as of August 19, 2022 is:

\$22,000
Twenty-Two Thousand DollarsThe attached report contains the description, analysis and supportive data for the conclusions,
final opinion of value, descriptive photographs, limiting conditions and appropriate certifications.
ANDY SHORT