



# TUPELO REGULAR CITY COUNCIL MEETING

MAY 07, 2024 AT 6:00 PM  
COUNCIL CHAMBERS | CITY HALL

## AGENDA

---

- INVOCATION:** COUNCIL MEMBER CHAD MIMS
- PLEDGE OF ALLEGIANCE:** COUNCIL MEMBER TRAVIS BEARD
- CALL TO ORDER:** COUNCIL PRESIDENT TRAVIS BEARD

### **CONFIRMATION OR AMENDMENT TO THE AGENDA AND AGENDA ORDER**

### **PROCLAMATIONS, RECOGNITIONS AND REPORTS AGENDA**

#### PROCLAMATIONS

1. IN THE MATTER OF AQUATIC MONTH PROCLAMATION AF
2. IN THE MATTER OF PROCLAMATION FOR L.C. SIMS DAY

#### RECOGNITION GIRL/BOY SCOUTS

#### EMPLOYEE RECOGNITION

#### PUBLIC RECOGNITION

#### MAYOR'S REMARKS

(CLOSE REGULAR MEETING OPEN PUBLIC AGENDA)

### **PUBLIC AGENDA**

#### PUBLIC HEARINGS

#### APPEALS

#### CITIZEN HEARING

(CLOSE PUBLIC AGENDA AND OPEN REGULAR SESSION)

**ACTION AGENDA**

3. IN THE MATTER OF APPROVAL FOR A SAFE HAVEN BABY BOX AT FIRE STATION 3 **BR**
4. IN THE MATTER OF MONETARY DONATION FOR SAFE HAVEN BABY BOX **BR**

**ROUTINE AGENDA**

5. IN THE MATTER OF APPROVAL OF MINUTES OF APRIL 16, 2024 COUNCIL MEETING
6. IN THE MATTER OF BILL PAY **KH**  
  
Chad Mims  
Buddy Palmer  
Rosie Jones
7. IN THE MATTER OF ADVERTISING AND PROMOTIONAL ITEMS **KH**
8. IN THE MATTER OF THE 2025 BUDGET CALENDAR **KH**
9. IN THE MATTER OF PLANNING COMMITTEE MINUTES OF FEBRUARY 5, 2024 **TN**
10. IN THE MATTER OF LIEN RESOLUTION FOR UNPAID PROPERTY CLEANING COSTS **TN**
11. IN THE MATTER OF APPROVAL OF MISSISSIPPI STATE DEPARTMENT OF HEALTH GRANT APPLICATION AWARD FOR FORMATION OF THE MAYOR'S HEALTH COUNCIL **TN**
12. IN THE MATTER OF AN ORDER AUTHORIZING THE PURCHASE OF REAL PROPERTY LOCATED AT 200 DOZIER STREET AND AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT FOR PURCHASE **TN**
13. IN THE MATTER OF REJECTING REVERSE BID #2024-014PD - TWO 1500 CHEVROLET SILVERADO CREW CAB TRUCKS (SSV) **JQ**
14. IN THE MATTER OF APPROVING THE ADDITION OF ITEM REMOVED FROM ASSET LIST AT NORTH MS NARCOTICS UNIT **JQ**

15. IN THE MATTER OF APPROVING SEIZED VEHICLE TO NMNU ASSET LIST **JQ**
16. IN THE MATTER OF APPROVAL OF NMNU SURPLUS **JQ**
17. IN THE MATTER OF SURPLUS OF TWO FIRE APPARATUS FOR SALE **BR**
18. IN THE MATTER OF SURPLUS 2009 NISSAN VERSA FOR AUCTION – MUNICIPAL COURT **RC**
19. IN THE MATTER OF APPROVAL OF CADENCE BANK ARENA MINUTES OF MARCH 18, 2024 **KK**
20. IN THE MATTER OF APPROVAL OF SURPLUS ITEM **JT**
21. IN THE MATTER OF AWARD OF BID # 2023-065WL FOR THE LABOR AND MATERIALS AT THE NORTH GREEN STREET SUBSTATION **JT**
22. IN THE MATTER OF APPROVAL OF CONTRACT WITH POWER GRID COMPANY FOR BID # 2023-065WL (LABOR AND MATERIALS AT THE NORTH GREEN STREET SUBSTATION) **JT**
23. IN THE MATTER OF AN EMERGENCY PURCHASE OF THREE (3) 500 kVA THREE PHASE PADMOUNT TRANSFORMERS **JT**
24. IN THE MATTER OF REQUEST TO REJECT BID NO. 2024-012WL (WATER MATERIALS) **JT**
25. IN THE MATTER OF APPROVAL OF THE TRAFFIC COMMITTEE MINUTES OF MAY 2, 2024 **JT**
26. IN THE MATTER OF APPROVAL OF THE 2024 CITY OF TUPELO AND ITAWAMBA COUNTY INMATE HOUSING INTERLOCAL COOPERATION AGREEMENT AND TO AUTHORIZE THE PRESIDENT OF THE CITY COUNCIL AND THE MAYOR TO EXECUTE ON BEHALF OF THE CITY **SR**
27. IN THE MATTER OF APPROVAL OF AN EXECUTED CONTRACT WITH CENTURY CONSTRUCTION GROUP, INC. FOR THE PROVISION OF DEBRIS REMOVAL SERVICES IN ACCORDANCE WITH RFP 23-055PW **SR**
28. IN THE MATTER OF APPROVAL OF AN EXECUTED ALTERNATE CONTRACT WITH ASHBRIIT FOR THE PROVISION OF DEBRIS REMOVAL SERVICES IN ACCORDANCE WITH RFP 23-055PW **SR**
29. IN THE MATTER OF THE APPROVAL OF AN EXECUTED CONTRACT WITH DEBRIS TECH FOR THE PROVISION OF DEBRIS MONITORING SERVICES IN ACCORDANCE WITH RFP 23-056PW **SR**

**(CLOSE REGULAR SESSION)**

**STUDY AGENDA**

[S1.](#) IN THE MATTER OF DEVELOPMENT CODE AMENDMENT – SIGNS **BL**

[S2.](#) IN THE MATTER OF DEVELOPMENT CODE AMENDMENTS TA-23-01 **BL**

**EXECUTIVE SESSION**

**ADJOURNMENT**





## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Todd Jordan, Mayor  
**DATE** April 17, 2024  
**SUBJECT:** IN THE MATTER OF AQUATIC MONTH PROCLAMATION **AF**

---

**Request:**

For your approval.



OFFICE OF THE MAYOR

# AQUATIC MONTH PROCLAMATION

**WHEREAS**, Tupelo Aquatic Center is vital to the happy lives of all our citizens: and education, athletic and recreation programs throughout the State of Mississippi encompass a multitude of activities that can result in personal accomplishments, self-satisfaction and family unity for all citizens, regardless of their background, ability level, or age; and

**WHEREAS**, citizens of The City of Tupelo should recognize the vital role that swimming and aquatic-related activities relate to good physical and mental health and enhance the equality of life for all people; and

**WHEREAS**, the staff of Tupelo Aquatic Center recognizes the ongoing efforts in educating the public on pool safety issues and initiatives by the pool, spa, water park, recreation and parks industries.

**WHEREAS**, the City of Tupelo is extremely proud of the swimming facilities, aquatic programming and other related activities in Tupelo and their contribution to providing to all ages a healthy place to recreate, a place to learn and grow, to swim, build self-esteem, confidence and sense of self worth which contributes to the quality of life in our community.;

**NOW THEREFORE**, I, Todd Jordan, Mayor of The City of Tupelo, do hereby proclaim the month of May 2024 as

## AQUATIC MONTH

in the city of Tupelo, and I do hereby encourage all citizens to recognize and promote the importance of acknowledging and adopting positive water safety habits and routines, especially as May will mark Aquatic Water Safety Month.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Tupelo, Mississippi, to be affixed this the 7th day of May, 2024.

\_\_\_\_\_  
Todd Jordan, Mayor

**ATTEST:**

\_\_\_\_\_  
Kim Hanna, City Clerk



## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Scott Costello, Communications Director  
**DATE:** March 27, 2024  
**SUBJECT:** IN THE MATTER OF PROCLAMATION FOR L.C. SIMS DAY

---

**Request:**

Mayor Jordan will present a proclamation for Luther Cunningham (L.C.) Sims Day.



OFFICE OF THE MAYOR

**LUTHER CUNNINGHAM (L.C.) SIMS DAY  
PROCLAMATION**

**WHEREAS**, Luther C. Sims is a lifelong resident of Tupelo, Mississippi, born on May 14, 1924; and

**WHEREAS**, Mr. Sims served as a supply clerk for the U.S. Army from March 1943 to February 1946, serving in the Pacific Theater during World War II and winning the following medals— Asiatic-Pacific Theater Operations Medal, the Philippine Liberation Ribbon with a Bronze Star and World War II Victory Medal; and

**WHEREAS**, after graduation from George Washington Carver High School and training at Okolona Industrial School, Mr. Sims joined his father as a brick mason, supporting construction on landmarks such as Reed’s Department Store, the old Woolworth Building, the U.S. Post Office, Tupelo Hardware, the Bank of Mississippi and Leake and Goodlett; and

**WHEREAS**, Mr. Sims was married to the late Gloria E. Rogers Sims for 70 years and the couple were parents to seven children, grandparents of nine and great grandparents of 17;

**NOW THEREFORE**, be it resolved that, I, Todd Jordan, Mayor of the City of Tupelo, Mississippi, do hereby proclaim Tuesday, May 14, 2024, as

**LUTHER CUNNINGHAM (L.C.) SIMS DAY**

in Tupelo, Mississippi, and encourage all citizens to help Mr. Sims celebrate his 100<sup>th</sup> birthday on Tuesday, May 14, 2024.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Tupelo to be affixed this the 7<sup>th</sup> day of May 2024.

\_\_\_\_\_  
Todd Jordan, Mayor

**ATTEST:**

\_\_\_\_\_  
Kim Hanna, City Clerk



## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Brad Robinson, Fire Chief  
**DATE** April 16, 2024  
**SUBJECT:** IN THE MATTER OF APPROVAL FOR A SAFE HAVEN BABY BOX AT  
FIRE STATION 3 - BR

---

**Request:**

This is an agreement to lease a Safe Haven Baby Box and agree to maintain this Baby Box to the standards as required in the lease Agreement. This is a safe way to surrender a child as Mississippi State Law states, within the first 45 days of birth. This will give a safe and climate – controlled environment for the child and discreet way for the parent(s) to surrender a child. This will be placed at Fire Station 3 located at 902 S Veterans Blvd. The expenses of this will be paid from an outside group that will make a donation to the City of Tupelo.

## LEASE AND SERVICE AGREEMENT

**THIS LEASE AND SERVICE AGREEMENT** (“Agreement”) is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 202\_, by and between Safe Haven Baby Boxes, Inc., an Indiana nonprofit corporation (“SHBB”) and \_\_\_\_\_, Mississippi (“Provider”).

### RECITALS

**WHEREAS**, SHBB is a nonprofit educational organization that provides information and services related to child welfare, safe haven laws, initiation and implementation of newborn safety devices (“Safety Device”), and awareness related to preventing child abandonment;

**WHEREAS**, Provider desires to install a Safety Device on Provider’s premises and SHBB wishes to lease a Safety Device to Provider at Provider’s premises as defined herein;

**WHEREAS**, Mississippi Code ANN. §§ 43-15-201 – 43-15-209, the Baby Drop off Law, provides certain protections by way of limited immunity for safe haven sites and their staff;

**WHEREAS**, Provider desires to lease a Safety Device from SHBB and have it installed on Provider’s premises (the “Premises”);

**WHEREAS**, SHBB is agreeable to placing a Safety Device on the Provider’s premises and undertaking certain services in relation thereto;

**WHEREAS**, Provider has consulted its legal, financial, and insurance related advisors and has confirmed that its location and operation is acceptable under the laws and regulations of its jurisdiction for the placement of a Safety Device.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals which are incorporated by reference and made a part of this Agreement, the mutual terms and promises contained herein and for other good and valuable consideration, the parties agree as follows:

**Section 1. Installation.** SHBB shall provide to Provider one (1) Safety Device for installation by Provider on the Premises located at **(Insert location information and address)**. Delivery of the Safety Device shall be the expense of the Provider. SHBB has the option at any time to oversee the installation of the Safety Device and advise as to installation on the appropriate placement to maximize awareness and implementation of its educational objectives as set forth in this Agreement and on the operation of and protocols for the Safety Device. SHBB and Provider agree to cooperate with respect to the appropriate third-party contractors for the placement of the Safety Device and to ensure that such third-party has the appropriate skill and knowledge for constructing improvements to Provider’s facility. Provider is to pay for all installation costs and expenses for labor and/or materials. Provider is responsible for compliance with all applicable federal, state, and municipal or local laws, rules, and regulations, and all laws, rules, and regulations pertaining to permitting requirements for the installation of the Safety

Device. Provider further agrees to abide by the policies and procedures for installation, operation, and maintenance of the Safety Device as outlined in Exhibit “A” (the “Policies and Procedures”) of this Agreement, which is hereby incorporated herein and made a substantive part of this Agreement by reference.

**Section 2. Services by SHBB.** SHBB shall provide annual services related to the performance of this Agreement. Such services shall include:

- A. Providing educational materials to Provider and policies and procedures relating to the maintenance of the Safety Device to Provider;
- B. Operating a toll-free phone number for the general public to utilize in emergency situations involving abandoned children or issues related thereto;
- C. Educating emergency services personnel related to use of the Safety Device;
- D. Providing educational information to the general public regarding the location and awareness of the Safety Device at the Provider’s facility as well as other educational resources related to child welfare advocacy and safe haven law awareness;
- E. Provide at minimum an annual inspection and perform maintenance on the Safety Device; and;
- F. Exclusively repair or replace parts if/when the Safety Device is malfunctioning at expense of Provider as set forth under Section 4 of this Agreement and as otherwise provided in this Agreement (collectively Subsections A-F hereinafter referred to as the “Services”).

**Section 3. Lease and Service Term.** The term of this Agreement shall be for five (5) years (“Term”) and shall renew for successive five (5) year terms upon the mutual agreement of the parties to the terms, fees, and conditions, unless terminated in accordance with the terms of this Agreement or as otherwise agreed to by the Parties.

**Section 4. Consideration.** In consideration for leasing the Safety Device and providing the Services described under Sections 1 and 2 above, Provider agrees to pay SHBB an initial fee of Fifteen Thousand and 00/100 Dollars (\$15,000.00), unless otherwise agreed to by the parties under Section 3 of this Agreement. Provider shall pay a renewal fee of Five Hundred and 00/100 Dollars (\$500.00) for each successive Term under this agreement, due within thirty (30) days of the start of each successive Term. Additionally, Provider shall pay an annual fee of Five Hundred and 00/100 Dollars (\$500.00) and other associated expenses as determined from time to time by SHBB on January 1 of every year that this Agreement is in force. The foregoing fees and expenses include, but are not limited to, the services and expenses listed in the Services, Fees, and Expenses Schedule attached hereto as Exhibit “B” which is hereby incorporated herein made a substantive part of this Agreement by reference.

**Section 5. Obligations of Provider.** In addition to any and all other obligations of the

Provider set forth herein, Provider shall:

- A. Follow all policies and procedures governing the use of the Safety Device as provided by SHBB, which may change from time to time. SHBB shall provide at least thirty (30) days prior written notice to Provider for any changes or additions to its policies and/or procedures. Provider shall have thirty (30) days to review any changes to the policies and/or procedures relating to this Agreement and to notify SHBB if Provider accepts such updated/new policies/procedures. If Provider does not tender written Notice to SHBB that it does not agree to the new changes within thirty (30) days of receipt of same, then Provider agrees to said changes and any such changes shall become a substantive part of this Agreement. Provider and SHBB agree to negotiate any rejected changes or additions to the extent possible. Any revised changes or additions to the policies and/or procedures must comply with the then current laws of the State of Mississippi. For any rejected changes/additions to the policies and/or procedures arising herein or relating to this Agreement that cannot be negotiated/agreed to after a good faith attempt to do so, the pre-existing version shall remain in effect or this Agreement may be terminated. Such policies and procedures are included as Exhibit A to this Agreement and, by way of Provider's signature hereto, shall evidence Provider's acknowledgment and receipt of the Policies and Procedures.
- B. Provider agrees to comply with Mississippi and Federal law pertaining to the operation, maintenance, installation, and removal of the Safety Device.
- C. Provider agrees to maintain the Safety Device in good working order, the costs of which are to be borne by Provider.
- D. Provider agrees to not change, add to, subtract from, alter, rebrand, or otherwise modify the Safety Device and accompanying signage as set forth in Exhibit A in any manner whatsoever without the prior written approval of SHBB.
- E. Provider agrees to use best efforts to prevent any third parties from adding to, subtracting from, altering, rebranding, or otherwise modifying the Safety Device and accompanying materials/signage as set forth in Exhibit A in any manner whatsoever without prior written approval by SHBB.
- F. Provider agrees to immediately notify SHBB of any damage, alteration, and/or modification to the Safety Device.
- G. Provider shall refer to the Safety Device as a "Safe Haven Baby Box" or "Baby Box."
- H. Provider agrees to accept complete liability for any and all damages attributed to any and all unapproved alterations and/or modifications to the Safety Device made by Provider and



any and all damages attributed to unapproved alterations and/or modifications to accompanying parts of the Safety Device, including required signage/materials made by Provider. Provider agrees to accept complete liability for modifications to the Safety Device which are the result of: its own actions, omissions, and/or failure to use best efforts to maintain the Safety Device in good working order or best efforts to prevent any modifications to the Safety Device by a third party.

- I. Provider shall procure and maintain twenty-four (24) hour alarm monitoring of the Safety Device at all times in accordance with directions for the same from SHBB and shall confirm with SHBB that such service is acceptable.
- J. Should the alarm monitoring service be disconnected for any reason, or should the Safety Device malfunction in any other way, Provider shall immediately notify SHBB of said malfunction and shall secure the Safety Device and ensure it is not available for public use by locking its exterior door and removing all signage and material related to its use and functionality. Further, should the Safety Device malfunction, Provider agrees that it will post signage that the Safety Device is presently unavailable and Provider agrees that it will keep the Safety Device secured and closed to the public until SHBB approves the Safety Device to be reopened to the public for public use as a Safety Device.
- K. Provider agrees that SHBB may, but is not required to, inspect the Safety Device at any time including, but not limited to: to ensure that it is in good working order, to ensure proper branding and signage is being displayed, and to conduct tests related to its functionality and monitoring and alarm systems.
- L. Provider acknowledges and agrees to maintain current knowledge of any changes to said Mississippi State Law or Federal law governing the Safety Device and acknowledges and agrees to operate and maintain the Safety Device in accordance with the most recent version of said State and Federal laws.
- M. Provider shall bear the cost of operating, maintaining, removing, repairing and/or otherwise modifying (modifications subject to approval of SHBB) the Safety Device.

**IT IS IMPERATIVE THAT ANY MALFUNCTION IDENTIFIED WITH RESPECT TO THE SAFETY DEVICE OR ANY DISCONNECTION IN THE SAFETY DEVICE MONITORING SYSTEM RESULT IN THE IMMEDIATE SECURING AND LOCKING OF THE SAFETY DEVICE SO THAT IT MAY NOT BE USED BY THE PUBLIC DURING THIS TIME PERIOD. FAILURE TO DO SO MAY RESULT IN A THREAT OF BODILY HARM OR DEATH TO AN INFANT PLACED IN THE SAFETY DEVICE DURING ANY PERIOD OF TIME IN WHICH THE SAFETY DEVICE IS MALFUNCTIONING OR NOT.**

#### **Section 6. Representations and Warranties.**

- A. Representations & Warranties of Provider. Provider represents and warrants that the

undersigned is a duly acting and authorized agent of Provider who is empowered to execute this Agreement with full authority of Provider. Further, Provider has undertaken a reasonable investigation into the laws and regulations governing the applicable jurisdiction within which it intends to place the Safety Device and has confirmed that such placement and administration of the Safety Device does not violate any provision of any law, ordinance, governmental regulation, court order, or other similar governmental controls.

- B. Representation & Warranties of SHBB. SHBB represents and warrants that the undersigned is a duly acting and authorized agent of SHBB who is empowered to execute this Agreement with full authority of SHBB. Further, SHBB has full ownership of the Safety Device. SHBB represents and warrants that the Safety Device is fit for use and will operate as a Safety Device in accordance with Safe Haven for Infants Act, NMSA 1978 Section 24-22-1.1.
- C. **SHBB REPRESENTS THAT THE SAFETY DEVICE IS NOT A MEDICAL DEVICE AND HAS CONFIRMED SUCH WITH THE FOOD AND DRUG ADMINISTRATION. SHBB REPRESENTS THAT THE SAFETY DEVICE IS NOT INTENDED AS A CONSUMER PRODUCT AND THUS IS NOT REGISTERED WITH THE CONSUMER PRODUCT SAFETY COMMISSION. SHBB FURTHER REPRESENTS THAT THE SAFETY DEVICE IS NOT REGISTERED WITH THE FEDERAL TRADE COMMISSION AND/OR THE FEDERAL COMMUNICATIONS COMMISSION. SHBB REPRESENTS THAT THE SAFETY DEVICE IS NOT TESTED BY NATIONALLY RECOGNIZED TESTING LABORATORIES PROGRAM.**

**Section 7. Insurance.** Provider agrees to procure and maintain in full force and effect at all times during the Term of this Agreement and any renewals thereof, at its own cost and expense, a policy or policies of comprehensive commercial general liability insurance on an occurrence basis, in the amount of \$1,000,000 per occurrence/\$2,000,000 aggregate and a \$2,000,000 limit umbrella coverage related to the Safety Device's placement and operation in or about Provider's facility against all loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in upon or about the Safety Device during the Term of this Agreement and all extensions thereof. This insurance policy need not be a separate policy solely because of this Agreement but, rather, will be part of the Provider's general liability and umbrella policies.

**Section 8. Indemnification.** Each party agrees to defend and indemnify, protect and hold harmless the other party, its officers, directors, employees, volunteers, independent contractors, agents, and all other persons and related entities thereof, against any loss, claim at law or equity, cause of action, expenses, damages or any other liability (collectively, "Claim") arising in relation to and to the extent of the indemnifying party's gross negligence or willful or wanton misconduct, whether acts or omissions, in the installation, placement, removal, use, and maintenance of the Safety Device in, on, or about Provider's facility or premises. No provision in this Agreement modifies or waives any provision of the Mississippi Tort Claims Act.

**Section 9. Termination.** Provider may terminate this Agreement upon sixty (60) days prior written notice from Provider to SHBB prior to the end of the Term, otherwise this Agreement shall renew for a successive Term. In accordance with the terms of this Agreement, Provider and/or SHBB may terminate this Agreement on notice of a change of policies and procedures by SHBB that Provider did not previously agree to after a good faith attempt has been made to negotiate the change or addition to the policies and/or procedures arising herein or relating to this Agreement; however, a required change of policy or procedure pursuant to compliance with a Mississippi State or Federal law shall not be grounds to terminate this Agreement. SHBB may terminate this Agreement for any reason specified under Section 10, below. At the point of termination of this Agreement, Provider shall secure and lock the Safety Device and remove all signage provided by SHBB. Provider shall place new visible signage denoting that the Safety Device is not functional and that any person desiring to utilize the Safety Device should instead contact emergency services. If Provider removes the Safety Device, then it shall make arrangements with SHBB for its conveyance or retrieval to SHBB. SHBB shall not be obligated to remove the Safety Device; however, at any time after this Agreement has terminated, SHBB may, at its sole discretion, notify Provider that it intends to remove and recover the Safety Device. Under such circumstances, Provider agrees to cooperate with SHBB in the retrieval of the Safety Device, the expenses of which shall be borne by SHBB, so long as expenses do not exceed \$500.00 and unless the termination of this Agreement was effectuated under Section 10 below, in which case the cost hereunder shall be borne by Provider.

**Section 10. Remedies.**

- A. Option to Cure.** Any uncured breach of this Agreement by Provider, after written notice from SHBB to Provider and a thirty (30) day opportunity to cure, shall give SHBB the option of immediately terminating this Agreement and retrieving the Safety Device from Provider's facility at Provider's own cost and expense. If Provider is notified by SHBB that the Safety Device is not properly functional or lacks monitoring required by this Agreement, then SHBB may order the Safety Device secured and locked until further inspection. Provider shall have thirty (30) days to cure any lack of monitoring or improper functioning of the Safety Device. Such time may be extended by any delay attributable to SHBB. If Provider does not cure any lack of monitoring or improper functioning of the Safety Device within the initial thirty (30) day period upon SHBB's review and report, Provider may have an additional thirty (30) days to cure any breach. If Provider fails to cure any breach of this Agreement after two (2) attempts to cure as set forth above, SHBB may terminate this Agreement if it concludes in its sole discretion that Provider has not upheld its obligations under this Agreement. Any breach of this Agreement by Provider which has not been cured by Provider within thirty (30) days after notice received from SHBB shall give SHBB the option of terminating this Agreement and retrieving the Safety Device from Provider's facility at Provider's own cost and expense.
- B. Attorney's Fees.** Attorneys' fees, costs, and expenses shall be awarded to the prevailing party for any dispute relating to or arising from this Agreement. The term "*Prevailing Party*" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense.

**Section 11. Ownership of Safety Device.** Provider agrees and acknowledges that ownership of the Safety Device remains with SHBB and this Agreement is merely a services and lease agreement. Provider does not have any ownership interest in the Safety Device. Provider shall not lease, sell, or otherwise transfer the Safety Device during or after the term of this Agreement without the specific written consent of SHBB.

**Section 12. Disclaimer and Limitation of Warranties.** SHBB IS NOT THE MANUFACTURER OF THE SAFETY DEVICE AND MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, QUALITY, PERFORMANCE, OR NON-INFRINGEMENT OF THE SAFETY DEVICE. WITH RESPECT TO THE SAFETY DEVICE, PROVIDER ACCEPTS IT "AS IS." THE SAFETY DEVICE SHALL BE SUBJECT TO ANY WARRANTIES PROVIDED TO SHBB AND/OR PROVIDER BY THE SAFETY DEVICE MANUFACTURER AND/OR AVAILABLE BY THE SAFETY DEVICE'S COMPOSITE PARTS. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE TERM(S) OF THIS AGREEMENT, UNLESS OTHERWISE STATED OR PROVIDED FOR HEREIN OR PROVIDED BY LAW.

SHBB neither assumes nor authorizes any other business organization, entity, or person associated or related by legal right, corporate entity, governmental entity, or any other entity associated or related by legal right to assume it, or any other liability in connection with the construction, use, operation, installment, removal, maintenance, or lease of the Safety Device. There are no warranties which extend beyond the terms of this Agreement, unless otherwise stated or provided for herein or by law via preemption. These warranties shall not apply to the Safety Device or any and all improvements, restoration, repair, remodel, modifications, and/or any other construction work on the Safety Device of any kind, related to the Safety Device, or any other part thereof which has been subject to accident, negligence, alteration, abuse, use or misuse of same which are not approved of by SHBB and/or agreed to by SHBB. SHBB makes no warranty whatsoever with respect to accessories or parts not supplied by it.

**Section 13. Notice.** Any notices requests, demands, waivers and other communications given as provided in this Agreement will be in writing and will be deemed to have been given if delivered in person (including by Federal Express or other personal delivery service), or mailed by certified or registered mail, postage prepaid, and addressed to at the following addresses:

Notice to SHBB: Monica Kelsey  
P.O. Box 185  
Woodburn, IN 46797

Notice to Provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

**Section 14. Assignability.** This Agreement is binding and benefits the successors and assignees of the Provider, which includes any and all originations/entities or persons with which the Provider may dilute, merge or consolidate, or to which it may transfer substantially all of its assets or equity interests. Provider shall not transfer or assign this Agreement, however, without the specific written consent of SHBB, which consent shall not be unreasonably withheld.

**Section 15. Governing Law/Jurisdiction.** The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of Mississippi and Mississippi courts. Should any dispute arise out of or relating to this Agreement and any of its incorporated parts, Parties agree that said dispute may exclusively be litigated in state or federal court in of the State of Mississippi. Each Party waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each Party agrees and acknowledges that any term not defined herein shall be construed to have its every-day, contextual meaning as defined in the latest editions of the Merriam Webster Dictionary, and if a legal term, Black's Law Dictionary; and should any term, condition, or provision of this Agreement be deemed vague, ambiguous, or confusing, it shall not be construed in favor of either Party.

**Section 16. Integration/Entire Agreement.** This Agreement, along with the attached Exhibits hereto represents the entire expression of the final agreement of the parties and supersedes all previous and contemporaneous communications or agreement regarding the subject matter hereof. Provider by its signature below hereby acknowledges that Provider agrees to be bound by the terms and conditions and policies and procedures set forth in this Agreement as may be updated from time to time and agreed to in accordance with the terms of this Agreement. Any additional terms or conditions contained in purchase orders or other forms not incorporated into this Agreement are expressly rejected by Provider and shall not be binding, unless Provider agrees to them in a writing signed by both parties.

**Section 17. No Oral Modification.** No change, modification, extension, termination, or waiver of this Agreement or any of its incorporated documents or parts, or any of the provisions contained, will be valid unless made in writing and signed by duly authorized representative of the parties.

**Section 18. Waiver.** No waiver of any of the provisions of this Agreement shall be valid and enforceable unless such waiver is in writing and signed by the parties to be charged and, unless otherwise stated, no such waiver shall constitute a waiver of any other provision or a continuing waiver.

**Section 19. Severability.** In the event that one or more of the provisions of this Agreement shall become invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained shall not be affected as a whole.

**Section 20. Time of the Essence.** The Parties expressly recognize that time is of the essence in the performance of their respective obligations under this Agreement and that each Party is relying on the timely performance by the other Party and will schedule operations and incur obligations to third parties in reliance upon timely performance by the other party.

**Section 21. Tort Claims Immunity.** Provider shall be subject in all cases to the immunities, provisions and limitations of the Mississippi Tort Claims Act §11-46-11.

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be executed and be effective on the date first written above.

**Safe Haven Baby Boxes, Inc.**

By: \_\_\_\_\_  
Monica Kelsey, Founder/CEO  
Safe Haven Baby Box, Inc.

**Provider**

**City of Long Beach Mississippi**

By: \_\_\_\_\_



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Brad Robinson, Fire Chief

**DATE:** April 16, 2024

**SUBJECT:** IN THE MATTER OF MONETARY DONATION FOR SAFE HAVEN BABY BOX

---

**Request:**

We are asking the City Council to accept this Donation in the amount up to \$22,500.00, to cover the costs associated with the Safe Haven Baby Box. This Donation is from a group of Citizens that have been working hard to get this started through donations from organizations, such as AFA (American Family Association), Hope Church, Tommy Morgan Realtors and Lawndale Presbyterian Church. This donation will cover the costs of the Safe Have Baby Box including signage, a provider kit, delivery fees for the baby box and annual fees for Inspection as detailed on Exhibit B document.

EXHIBIT B  
SAFE HAVEN BABY BOXES, INC.  
SERVICES, FEES, AND EXPENSES SCHEDULE

Initial Fee: \$15,000:

1. Baby Box including signage and provider kit.
2. "Pre-installation" Services:
  - a. Examination of location
  - b. Administrative/Legal resources
  - c. Consultation on programs
  - d. Assistance with raising funds to support the cost of the box (optional)
3. Installation Services:
  - a. Inspection of installation
  - b. Training to all emergency personnel
4. Post Installation Services:
  - a. Marketing of the box
  - b. 24/7 hotline available to the community
  - c. Advertising of the box
  - d. Efforts to support raising awareness on a local, state, and national level supporting the box in each community.

Annual Fee: \$500

1. Annual Fee Services
  - a. Recertification of the box by SHBB authorized personnel
  - b. Maintenance of box from expected use
  - c. Unlimited repairs and parts replacement as a result of a malfunction and not as a result of negligence or vandalism.

Term Renewal (every 5 years): \$500

1. Beginning five (5) years after the date of the original signed contract and every five (5) years thereafter.

OTHER FEES NOT INCLUDED IN INITIAL FEE: (Estimated at \$5,000-\$7,500)

*\*Fees vary based on location and/or services donated by local community members. The below items are estimates and not a guarantee of cost.*

1. Delivery: Minimum \$500.00. Cost based on location and transportation from Indiana. You can pick it up at our Woodburn IN manufacturing facility to waive the delivery charge. (Must be pre-scheduled)
2. Installation: Labor and materials~\$2,000-\$3,500 (Location may be able to get this donated)
3. Electrical and Alarm: hook up to internal alarm system (Internal alarm must go to 911 dispatch for use with the baby box) ~\$1,200.
4. Annual Alarm Service: Annual fee for monitoring~\$300 annually paid by location to Alarm Company
5. Permits or other requirements prior to construction. (varies)
6. \$500.00 (optional) Box comes pre-installed with the Amazon Blink™ camera and requires a third-party membership to activate. Location must have a Wi-Fi connection. *\*Alternatives may apply. Please contact SHBB for more information*





## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Missy Shelton, Council Clerk

**DATE** April 29, 2024

**SUBJECT:** IN THE MATTER OF APPROVAL OF MINUTES OF APRIL 16, 2024  
COUNCIL MEETING

---

**Request:**

For your review and approval.

# **REGULAR CITY COUNCIL MEETING**

## **MUNICIPAL MINUTES CITY OF TUPELO**

### **STATE OF MISSISSIPPI**

**APRIL 16, 2024**

Be it remembered that a regular meeting of the Tupelo City Council was held in the Council Chambers in the City Hall building on Tuesday, April 19, 2024, at 6:00 p.m. with the following in attendance: Council Members Chad Mims, Lynn Bryan, Travis Beard, Nettie Davis, Buddy Palmer, Janet Gaston and Rosie Jones; Ben Logan, City Attorney and Missy Shelton, Clerk of the Council. Council Member Janet Gaston gave the invocation, and Council Member Buddy Palmer led the pledge of allegiance.

Council President Travis Beard called the meeting to order at 6:00 p.m.

### **CONFIRMATION OR AMENDMENT TO THE AGENDA AND AGENDA ORDER**

Council Member Davis moved, seconded by Council Member Bryan, to approve the agenda and agenda order, with an addition, as follows:

Add Item # 12 In the Matter of Rejection of Bid # 2024-011FD – Truck and Tahoe

The vote was unanimous in favor.

### **PUBLIC RECOGNITION**

Council Member Nettie Davis asked everyone to be in prayer for the family of Cliff Brinkley, a former employee of the City of Tupelo. She also mentioned that there are several participants in the Boston Marathon from our area.

### **MAYOR'S REMARKS**

Mayor Todd Jordan announced that the Downtown Main Street Association (DTMSA) recently received the 2024 Bernice Linton Outstanding Event Pinnacle Award for the Tupelo Elvis Festival. Keep Tupelo Beautiful also received a state award. Softball and soccer tournaments will be going on in Tupelo this weekend.

### **IN THE MATTER OF PUBLIC HEARING FOR THE AMENDMENT AND RESTATEMENT OF 2004 TUPELO COMMONS TIF PLAN AS THE APRIL 2024 AMENDED AND RESTATED PLAN**

No one appeared concerning this public hearing. APPENDIX A

### **IN THE MATTER OF MINUTES OF COUNCIL MEETING ON APRIL 2, 2024**

Council Member Palmer moved, seconded by Council Member Gaston to approve the minutes of the April 2, 2024, Council meeting. The vote was unanimous in favor.

### **IN THE MATTER OF BILL PAY**

Bills were reviewed at 4:30 p.m. by Council Members Travis Beard, Buddy Palmer, Janet Gaston, Lynn Bryan and Nettie Davis. Council Member Davis moved, seconded by Council Member Bryan, to approve the payment of the checks, bills, claims and utility adjustments. The vote was unanimous in favor. APPENDIX B

### **IN THE MATTER OF ADVERTISING AND PROMOTIONAL ITEMS**

Council Member Bryan moved, seconded by Council Member Mims, to approve the advertising and promotional items, as follows:

#### ITEMS:

Various Vendors      \$5,000.00      Assist with expenses for the Dr. Lee Williams Legacy Fest

The vote was unanimous in favor. APPENDIX C

### **IN THE MATTER OF THE CITY OF TUPELO AUDIT FOR FY 2023**

The Jarrell Group, PLLC, conducted the annual audit of the city's financial condition. No current year deficiencies or material weaknesses in internal control or in the compliance system were reported. Council Member Bryan moved, seconded by Council Member Gaston, to accept the City of Tupelo Audit for fiscal year ending September 30, 2023. A copy of the audit report is on file in the City Clerk's office. The vote was unanimous in favor.

### **IN THE MATTER OF THE 2023 CONTINUING DISCLOSURE**

Council Member Bryan moved, seconded by Council Member Davis, to accept the Continuing Disclosure Statement prepared by Butler Snow for FY 2023. City Attorney Ben Logan explained that the Electronic Municipal Market Access, (EMMA), requires a yearly statement from any entity with outstanding bond debt. The vote was unanimous in favor. APPENDIX D

### **IN THE MATTER OF SURPLUSING WEAPON FOR RETIREMENT**

Police Chief John Quaka asked that the service weapon of Alan Chavers - Glock Model 47 Direct Mount, 9mm - serial number CBYM864, be surplused and sold to him at fair market value, upon his retirement. Fair market value of the weapon is \$250 and is permissible under Mississippi State Statute §45-9-131. APPENDIX E

### **IN THE MATTER OF APPROVAL OF CONTRACT FOR GUMTREE AND HANCOCK PARKS UPGRADES - BID #2024-006PR**

Bid # 2024-006PR – Gumtree and Hancock Parks Upgrades was awarded at the April 2, 2024, Council meeting. Council Member Davis moved, seconded by Council Member Jones, to approve the contract for this project with M & N Construction, LLC in the amount of \$1,166,800.00. APPENDIX F

**IN THE MATTER OF MINUTES OF NOVEMBER 16, 2023 TUPELO REDEVELOPMENT AGENCY**

Council Member Palmer moved, seconded by Council Member Mims, to accept the Tupelo Redevelopment Agency (TRA) minutes of November 16, 2023. The vote was unanimous in favor. APPENDIX G

**IN THE MATTER OF A RESOLUTION APPROVING THE ADOPTION AND IMPLEMENTATION OF THE “TAX INCREMENT FINANCING PLAN, TUPELO COMMONS PROJECT, TUPELO, MISSISSIPPI, FEBRUARY 2004, AS AMENDED AND RESTATED APRIL 2024”**

Council Member Gaston moved, seconded by Council Member Davis, to approve the ‘Resolution Approving the Adoption and Implementation of the “Tax Increment Financing Plan, Tupelo Commons Project, Tupelo, Mississippi, February, 2004, as Amended and Restated April, 2024”’. The vote was unanimous in favor. APPENDIX H

**IN THE MATTER OF ORDER FINDING THAT INSTEAD OF COMPETITIVE SEALED BIDS, THAT COMPETITIVE SEALED REQUEST FOR PROPOSALS (RFP) PROCUREMENT SHOULD BE USED TO CONTRACT FOR THE CONSTRUCTION OF THE BALLARD PARK INCLUSIVE PLAYGROUND**

Council Member Bryan moved, seconded by Council member Gaston, to approve an “Order Finding that Instead of Competitive Sealed Bids, that Competitive Sealed Request for Proposals (RFP) Procurement Should Be Used to Contract for the Construction of the Ballard Park Inclusive Playground”. The vote was unanimous in favor. APPENDIX I

**IN THE MATTER OF APPROVAL FOR A SAFE HAVEN BABY BOX AT FIRE STATION 3**

The Council unanimously agreed to move this item up.

**IN THE MATTER OF MONETARY DONATION FOR SAFE HAVEN BABY BOX**

The Council unanimously agreed to move this item up.

**IN THE MATTER OF DEVELOPMENT CODE AMENDMENT – SIGNS (MOVED TO STUDY AGENDA ON FEBRUARY 20, 2024)**

The Council unanimously agreed to leave this item on the study agenda.

**IN THE MATTER OF DEVELOPMENT CODE AMENDMENTS TA-23-01**

The Council unanimously agreed to leave this item on the study agenda.

**EXECUTIVE SESSION**

Council Member Davis moved, seconded by Council Member Jones, to determine the need for an executive session. City Attorney Ben Logan said the session will be for the possible purchase of property under Miss. Code Anno. § 25-41-7 (g) (1972 as amended). The vote was unanimous in favor.

Council Member Bryan moved, seconded by Council Member Jones, to close the regular session and enter executive session for discussion of the possible purchase of property under Miss. Code Anno. § 25-41-7 (g) (1972 as amended).

After discussion in executive session, Council Member Davis moved, seconded by Council Member Bryan, to return to the regular meeting at 6:26 p.m. The vote was unanimous in favor.

**ADJOURNMENT**

There being no further business to come before the Council at this time, Council Member Jones moved, seconded by Council Member Gaston, to adjourn the meeting at 6:27 p.m.

\_\_\_\_\_  
Travis Beard, Council President

ATTEST:

\_\_\_\_\_  
Missy Shelton, Council Clerk

APPROVED

\_\_\_\_\_  
Todd Jordan, Mayor

\_\_\_\_\_  
Date



## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Kim Hanna, CFO/City Clerk  
**DATE** April 29, 2024  
**SUBJECT:** IN THE MATTER OF BILL PAY **KH**

---

**Request:**

For your review and approval.

Chad Mims  
Buddy Palmer  
Rosie Jones



# AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Kim Hanna, CFO

**DATE:** May 7, 2024

**SUBJECT:** IN THE MATTER OF ADVERTISING AND PROMOTIONAL ITEMS **KH**

---

**Request:**

Proposed items for approval are for the purpose of advertising and bringing into favorable notice the opportunities, possibilities and resources of the City of Tupelo.

**ITEMS:**

MS Radio Group	\$299	Memorial Day Ads from City of Tupelo
MS Radio Group	\$299	July 4 <sup>th</sup> Ads from City of Tupelo



## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Kim Hanna, CFO  
**DATE** May 7, 2024  
**SUBJECT:** IN THE MATTER OF THE 2025 BUDGET CALENDAR **KH**

---

**Request:**

I am requesting the approval of the 2025 Budget Calendar.

**ATTACHED:**  
2025 Budget Calendar



## PROPOSED BUDGET CALENDAR FY 2025

<u>Date</u>	<u>Process</u>
May	Distribute departmental request forms and notification of due date
June 14	Deadline for return of department request to the Finance Department
July	Revenue Projection (Section 21-35-5)
July 17 & 24	Publish notice twice for Public Hearing on Budget
August 6	Hold Public Hearing on Budget (Section 21-35-5)
August 12 - 30	Hold Budget Planning Sessions (To be determined by the Council)
August 12 - 16	Review anticipated Tax Levy to determine whether public notice is required for any levy
August 21 & 28	Publish notice of Public Hearing on Tax Levy for two weeks prior to adoption of the budget
September 3	Hold Public Hearing on Tax Levy (Section 27-39-203)
September 3	Adopt Lee County Tax Assessment Rolls (No later than 9/15/2024) (Section 21-33-45)
September 12	Set Tax Levy necessary to support adopted budget (No later than 9/15/2024) (Section 21-33-45)
September 12	Adopt Budget (No later than 9/15/2024) (Code Section 21-35-9)
September 13	Deliver Tax Levy to Lee County Tax Assessor (No later than 9/15/2024) (Code Section 21-33-45)
September 13	Deliver Tax Levy to State Department of Revenue (No later than 9/15/2024) (Code Section 21-33-47)
September 17	Resolution of Fireman Fund for FY 2025
September 18 – 25	Give Public Notice of availability of budget for inspection by 9/30/2024
September - 25	Publish adopted budget (Code Section 21-35-5)
October 1	Approve Municipal Compliance Questionnaire (State Department of Audit)



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Tanner Newman, Director of Development Services

**DATE:** May 7, 2024

**SUBJECT:** IN THE MATTER OF REVIEW/ACCEPT PLANNING COMMITTEE  
MINUTES OF FEBRUARY 5, 2024 **TN**

---

**Request:**

Review and approve attached minutes of the Tupelo Planning Committee meeting held February 5, 2024.

**MINUTES OF  
THE TUPELO PLANNING COMMITTEE  
FEBRUARY REGULAR MEETING  
Monday, February 5, 2024  
6:00 PM Cadence Arena**

**CALL TO ORDER**

Chair Lindsey Leake called the meeting to order. Committee members Scott Davis, Patti Thompson, Leslie Mart, Victor Fleitas, Mark Williams, Lindsey Leake, Bentley Nolan, and Pam Hadley were present. Gus Hildenbrand was absent. Staff members present were City Planner Jenny Savely. Chair Leake asked Bentley Nolan to open with a prayer and Victor Fleitas to lead the pledge. Chair Leake then presented an opening statement of the committee purpose and reviewed how the committee would conduct its business. The Staff and Committee were then asked to introduce themselves and did so.

**Review of Minutes**

There was no meeting in January 2024 and the December 2023 minutes were not available for review. Jenny apologized for the oversight and stated that the Zoning Administrator, Russ Wilson usually prepared the minutes, but that he had retired. The staff and committee send best wishes in his future endeavors.

**Report on Council Actions**

Jenny reported that the city council will hear the Major Site plan for Magnolia Grove, and they will finalize the text amendments to multifamily and congregate living tomorrow evening.

**No Old Business**

**New Business**

**First Item: MAJSUB24-01 MAJOR SUBDIVISION, COMPATIBLE USE**

Chair Leake asked for the staff analysis. Jenny Savely stated that yes, it is a two-part decision by the planning committee, and we have combined what is typically not a planning committee hearing with this hearing because all major subdivisions require planning committee approval. This is a 26-lot single family home subdivision situated almost at the intersection of Mount Vernon and McCullough. There is a new development there facing McCullough. This would be behind that and not seen from McCullough. Entry will be on Mount Vernon Road just north of that intersection. The decision before the planning is approval of the preliminary plat which includes several items that the developer and engineer has submitted to us as well as a compatible use approval for single family homes. This is in a mixed-use Commercial Corridor zoning district because the parcel is technically in the zoning district

right along McCullough it is zoned for the same uses there, however residential uses are permitted. But by what we refer to as compatibility meaning typically this would be the compatible use of this approval among the property owners 500 feet and we would invite them to a hearing to hear from them and provide feedback to whatever relevant to the proposal. This is a mixed use typically housing there would be denser, zero lot line, tighter less acreage per parcel development. However, because this is different from that, we are doing compatible use, we are going to put it in front of the Planning Committee, there are some members of the public here tonight as we did send notices as thought it were a compatible use and invited you to come tonight instead of da middle of the day for a compatible use hearing. That said, we are recommending approval of the compatible use as well as the plat itself. This is an interesting location that does bring residential development that is larger acreage along Mount Vernon Road and in subdivisions north of McCullough. It's the same type of use. The lots here are about a 1/4 to 3/4 acre, varied throughout the subdivision to work with the topography. The engineer has done a great job working with the topography there and the drainage and preventing site lines to commercial development from the residential properties. That said, the presentation here, the setbacks are important to look at. Setbacks are 30 feet and 10 feet from the side. There will be lots that sit back off the road and not right on top of the sidewalk. This will be a very livable, walkable community, encouraging front porch living and folks getting to know their neighbors. Because there are only 26 lots. We don't anticipate and negative traffic impact to Mount Vernon and the drainage has been worked with engineering and public works Street will be dedicated to the city. They have sidewalks throughout the development as well as open space on the southern portion and the northern portion. I believe the southern portion is intended to have a walking trail with maybe a natural surface on that. Everything else meets our standards. We are recommending this because it is a unique parcel and a unique location, the city needs housing that is walkable residential development. We do see it as a positive development for the city generally. You have the previous plat that was proposed with acreage for each lot as well as the updated plat that shows the open space and the cluster mailbox at the immediate entry on the south side.

The applicants Chip & Debbie Waterer stated they live at 415 CR 430 Houlka at the east side of the Natchez Trace. In 1990 they bought Hydro Hose and started a company called Huntington Fabrics. They watched Dr. Campbell, a retired dentist, who had horses, ponies, and a few cattle. He had lots of trees, pine trees and a pecan grove on the west side. The property became available, and they bought it a couple of years ago. They envisioned a front porch community for downsizers. They don't want to change anything. They want to keep the oak trees and pecan trees, leaving the topography as natural as possible. There is a big deer population on it right now and a few turkeys. They plan sidewalks and a nature trail around the creek and possibly tie into the Natchez Trace Trail. One way in and one way out ensures the safety of the residents.

The meeting was opened for the committee to ask questions:

Bentley asked if there would be a HOA. The applicant answered that they are developing it as they go along. They would like to present it to the planning committee for advice on tweaking it.

Leslie asked if there was a pond on the property. The applicant answered that there was, but it really didn't hold water, an old levy, perhaps a beaver or muskrat got into it. It was a spot for watering Dr. Campbell's horse. It has been filled in and MDEQ paperwork has been completed. Leslie asked about green space. The plat shows it by the words Mount Vernon. Jenny stated that there is some open space by the road on the southern portion of the new plat. The developer mentioned that there might be some development in the open space for commercial development. To meet the 10% requirement for open space we plan to work on that during construction and negotiate that open space as they develop that site plan. Leslie asked about the space that turns down Mount Vernon for the entrance to the new development. Is it your plan to do some commercial development eventually there? We got the approval from MDOT, that owns that little weird little platting there. We would like to put something kind of catty-cornered to face both Mount Vernon and McCullough. We had someone look at it and it appears to be 4 to 5 thousand square feet, but we don't want to disturb the pecan trees. Leslie asked if the department would take into consideration the calculations of space not including what is future commercial. The deal is if we right now define that open space, then it is open space in perpetuity, it would be in the deed for that parcel. We wanted to let them work on where the commercial will be and then the remaining acreage will be parceled off as open space. Scott asked about future connections, will that be a possible road as you come in on the right? The applicant replied that there is Mount Vernon Chapel there and that is the old existing driveway that Dr. Campbell had going back to his tennis courts with a two room shack that his manager lived. We left it because it is so scenic with pecan trees on both sides. That will be an access road. Leslie asked if that is on the original plat. Jenny said it is on the new plat. The one at the entry way was for a possible retail space but they are not going to do it.

Jenny asked if that drive would connect back to the funeral home. The applicant stated that it would. He said that he has a permit from MDOT to make this wider entrance going in before you get to Mount Vernon. Scott asked if that future connection would go to the chapel? The applicant answered yes, it would. Scott asked on the southern part does the sidewalk stop and not continue back to the main road It looks like it wraps all the way around and stops as it turns back north. He asked what the reason was for not taking it back to the main road. The applicant replied it was less concrete, greener, more yard. Jenny added that because the stopping of how that main inlet comes in still meets the sidewalk requirements.

The Chair opened the public portion of the meeting and there were no respondents.

**The Chair opened the committee discussion.**

**Leslie asked about the radius of the cul-de-sac. Could emergency vehicles navigate the curvature? Jenny stated that it was submitted to the Fire Marshall. He is reviewing it and making minor changes as needed. She didn't think it would change the plat significantly if he had any changes at all. They will address that in the construction documents, a very minor change, if any is needed. Leslie asked about the mailbox location. Jenny said it is on the southern open section and it is very small near a parallel parking area at the termination of the sidewalk. Victor asked if assuming an approval, is that something we need to stipulate as part of any approval or is that taken care of by city staff. Jenny said it would be taken care of by city staff during construction.**

**Scott made the motion to approve the preliminary plat and approve the proposal.  
Seconded by Victor.**

**The motion passed unanimously.  
Jenny informed the applicant of the next steps.**

**The next work session is February 26th with a public meeting on March 4th. We have several applications for March. Hope to be in council quarters for the March meeting.**

**Meeting adjourned.**



# AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Tanner Newman, Director of Development Services

**DATE:** May 7, 2024

**SUBJECT:** IN THE MATTER OF REVIEW/APPROVE LIEN RESOLUTION FOR UNPAID PROPERTY CLEANING COSTS TN

---

**Request:**

Please review and approve the attached Resolution Adjudicating Cost and Assessing Lien Against Real Property under MISS.CODE ANN. §21-19-11 (1972) AS AMENDED for the following property:

Address	Parcel #
2281 EDGEMONT DRIVE	076K-23-041-00

**BEFORE THE MAYOR AND CITY COUNCIL OF  
THE CITY OF TUPELO, MISSISSIPPI**

**CITY OF TUPELO, MISSISSIPPI**

**LIENOR**

**VS.**

**CASE NO. 37348**

**KATHY BARNETT AND  
ROBERT CLARK BARNETT**

**OWNER**

**RESOLUTION ADJUDICATING COST AND ASSESSING LIEN AGAINST REAL PROPERTY UNDER  
MISS. CODE ANN. 21-19-11 (1972) AS AMENDED**

1. Pursuant to Miss. Code Ann. §21-19-11 (1972), as amended, the City of Tupelo gave notice of a public hearing before the governing authorities of the City of Tupelo to **KATHY BARNETT AND ROBERT CLARK BARNETT** (Owner of the property described herein below) to determine whether the real property described herein below was in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community.

Property Owner: KATHY BARNETT AND  
ROBERT CLARK BARNETT

Address of Owner: 2281 EDGEMONT DRIVE  
TUPELO, MS 38804

Parcel Number: 076K-23-041-00

Address of Violation: 2281 EDGEMONT DRIVE

2. The hearing was held before the Mayor and City Council of the City of Tupelo on **06/06/2023** following which the property referenced above was found to be a menace to the public health and safety, and the property was ordered to be cleaned immediately. Subsequent to this date, and in accordance with Miss. Code Ann. §21-19-11 (1972), as amended, the City of Tupelo proceeded to have the structure(s) demolished.

3. Pursuant to Miss. Code Ann. §21-19-11 (1972, as amended), City of Tupelo shall charge Owner with the actual cost of demolition, including administrative and legal costs of the municipality, and may also impose a penalty of one-half of the actual cost or \$1500.00, whichever is more.

4. The City of Tupelo, by and through its council, at a regularly scheduled meeting held on **05/07/2023**, adjudicated the actual cost of second cleaning to be **\$495.00**. This amount is assessed as a lien on the real property described above.

5. This Resolution will be enrolled as a judgment lien on the Lee County, Mississippi judgment roll in the office of the Circuit Clerk of Lee County, Mississippi. If unpaid prior to the 30<sup>th</sup> day of September of the current year, this lien shall be satisfied by having the amount of this lien included with municipal ad valorem taxes and payment shall be enforced in the same manner in which payment is enforced for municipal ad valorem taxes. Failure to pay this assessment shall require the tax collector to sell the land as now provided by law for the sale of lands for delinquent municipal taxes. Liens filed after September 30<sup>th</sup> of the current year, and unpaid by September 30<sup>th</sup> of the subsequent year shall be collected as a part of the subsequent year’s municipal ad valorem taxes, in the same manner as provided herein. The lien against the property shall be an encumbrance upon the property and shall follow title of the property

6. Prior to its collection as a judgment lien, this assessment may otherwise be collected as a civil debt, and the City of Tupelo may institute a suit on open account against the owner of the property in a court of competent jurisdiction in the manner provided by law for the cost and any penalty, plus court costs, reasonable attorney’s fees



and interest from the date that the property was cleaned. Pursuant to Miss. Code Ann. § 27-41-9 (1972, as amended), an interest charge of one-half of one percent (1/2 of 1%) will accrue monthly on all unpaid liens.

7. The Director of Development Services is hereby directed to cause a copy of this Resolution to be mailed to the owner advising of the assessment of a lien against the property, and the Owner’s right to appeal under Miss. Code Ann §11-51-75 (1972, as amended).

WHEREUPON, the foregoing Resolution was declared passed and adopted at a regular meeting of the City Council of Tupelo, Mississippi, on this, the 7th day of May, 2024.

CITY OF TUPELO, MISSISSIPPI

BY: \_\_\_\_\_  
TRAVIS BEARD, Council President

ATTEST:

\_\_\_\_\_  
MISSY SHELTON, Clerk of the Council

APPROVED:

\_\_\_\_\_  
TODD JORDAN., Mayor

\_\_\_\_\_  
Date



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Tanner Newman, Director of Development Services

**DATE:** May 2, 2024

**SUBJECT:** IN THE MATTER OF APPROVAL OF MISSISSIPPI STATE DEPARTMENT OF HEALTH GRANT APPLICATION AWARD FOR FORMATION OF THE MAYOR’S HEALTH COUNCIL TN

---

**Request:**

Approval to submit grant application forms: Questionnaire, W-9 Form, and Conflict of Interest Form to the MS Department of Health. The Mississippi State Department of Health has received grant funds to support a Community Health Needs Assessment in Tupelo. By participating in the needs assessment, the City will receive \$5,000 of unobligated funds and be recognized for the formation of a Mayor's Health Council, which will make non-profit programming supporting community health initiatives eligible for millions of dollars of Federal, State, Local, and private grant funds. The Mayor's Health Council represents an exploratory committee aiming at examining social determinants of health and preventative possibilities to assist in reducing negative community health outcomes.

# Sub-Grantee Questionnaire

This questionnaire gathers preliminary details required prior to the routing and awarding of grant funds from the Office of Community Health Improvement with the Mississippi State Department of Health.

### Sub-Grantee Information

Subgrantee/Organization Name: City of Tupelo

Street Address: 71 East Troy Street, Tupelo, MS 38804

Post Office Box: PO Box 1485 Tupelo MS 38802

City: Tupelo State: MS

EIN: 64-6001140 UEI: DK 9PFM6XSDR7

Email Address: abby.christian@tupeloms.gov

Telephone: 662 - 687 - 4269

Mayor: Todd Jordan Phone: 662-231-9181

Email Address: todd.jordan@tupeloms.gov

Fiscal Director/Accountant: Kim Hanna Phone: 662-401-6993

Email Address: kim.hanna@tupeloms.gov

Sub-Grant Contact Person, Title: Jenny Savely, City Planner Phone: 662-208-5063

Email Address: jenny.savely@tupeloms.gov

### Sub-Grant Information

Sub-Grant Title: Mayor's Health Council

**Description:** Establish a coalition to assess community health related to prevention, diversion, and health disparities and provide community engagement opportunities for assessment data and education as well as establishing interest. The coalition will establish a Mayor's Health Council of stakeholders in organizations with shared goals as the coalition. Outcomes may include development of a sustainability plan through policy reformation, established funding sources for identified prevention and diversion projects, ongoing collaboration through continuation of the Mayor's Health Council, and continued networking with other industry sectors addressing social determinants of health.

Start Date: May 8, 2024 End Date: August 31, 2024

Dates are Tentative

Total Sub-grant Amount: \$5,000.00 Payment Basis: Monthly(Or Upon Completion of Activities)

### Payment Verification

W9 Completed?  Yes  No

Review page 2 and complete the process for MAGIC and Paymode if incomplete before returning questionnaire by the identified due date above

Registration completed in MAGIC?  X  Ye  No

Registration completed for PAYMODE?  X  Ye  No

Technical Assistance for MAGIC, PAYMODE, and DUNS

### **MAGIC**

To register for MAGIC, please visit the following website.

1. [https://sus.magic.ms.gov/sap/bc/webdynpro/sapsrm/wda\\_e\\_suco\\_sreg?sap-client=100#](https://sus.magic.ms.gov/sap/bc/webdynpro/sapsrm/wda_e_suco_sreg?sap-client=100#)
2. The only problem may be with the Product Category. Clicks add categories; enter a short description with asterisks before & after the description and then remove the 500 restrictions from the maximum # of hits
3. Include proof of completion with attachments
4. For assistance with MAGIC, the helpdesk number is 601-359-1343.

### **PAYMODE**

Once registered in MAGIC please complete the following steps to receive DIRECT DEPOSIT:

1. <http://www.dfa.ms.gov/applications/paymode/paymode-electronic-payment-and-remittance/>
2. Go to the search option and type in PAYMODE
3. Click on PAYMODE-ELECTRONIC PAYMENT AND REMITTANCE
4. Click the link in paragraph two (2) <http://protal.paymode.com/ms/>
5. Include proof of completion with attachments
6. If more assistance is needed, the help number for PAYMODE is 1-866-252-7366

### **DUNS (if needed)**

To register for a Data Universal Number System (DUNS):

1. Visit [SAM Webform : Home \(dnb.com\)](http://www.dnb.com). Registering for a DUNS number is free of charge. The information listed below is required to obtain a DUNS number:
  - a. Name of organization
  - b. Organization address
  - c. Name of the chief executive officer (CEO) or organization owner
  - d. Legal structure of the organization (e.g., corporation, partnership, proprietorship)
  - e. Year the organization started
  - f. Primary type of business
  - g. Total number of employees (full and part-time)
2. The DUNS is required to ensure vendors are not suspended, debarred, or otherwise excluded by the federal government from receiving federal funds. The agency needs the DUNS number to conduct this review before we contract with a vendor receiving federal funds.

### Attachments

Please complete the attached documents for questionnaire to be considered complete

1. W-9
2. conflict of Interest
3. Proof of Completion/Enrollment: MAGIC & PAYMODE (submitted by Sub-Grantee)



MISSISSIPPI STATE DEPARTMENT OF HEALTH

**CONFLICTS OF INTEREST**

(Please attach additional pages, as needed, to address each question)

- List all other current agreements/contracts with MSDH, **including** the dollar amount associated with the agreement/contract and the beginning and ending dates. If no other funds are received, please mark N/A.

MSDH Program Name	Dollar Amount	Beginning Date	Ending Date
NONE			

- Please list the name of each member of your organization’s Board of Directors or other governing body (i.e., trustee, alderman, partner, owner).

TODD JORDAN, MAYOR	JANET GASTON, WARD 6
TRAVIS BEARD, CITY COUNCIL PRESIDENT, WARD 3	ROSIE JONES, WARD 7
CHAD MIMS, WARD 1	
LYNN BRYAN, WARD 2	
NETTIE DAVIS, WARD 4	
BUDDY PALMER, WARD 5	

- Are any members of the governing body or project staff also MSDH employees, MSDH Board Members, **or** spouses, parents, or children of MSDH employees?  Yes  No

If yes, please complete the following:

Name	MSDH Board Member/MSDH Employee/Relative	Position held with MSDH

4. If you answered **yes** to #3, please answer the following:

- i. Does the MSDH Board Member, Employee, or Relative receive more than \$2,500.00 per year in income from the business?  **Yes**  **No**
- ii. Does the MSDH Board Member, Employee, or Relative own ten (10%) percent or more of the fair market value in the business, either directly or indirectly through another business?  **Yes**  **No**
- iii. Does the MSDH Board Member, Employee, or Relative have ownership interest in the business, in which the fair market value exceeds \$5,000.00?  **Yes**  **No**
- iv. Is the MSDH Board Member, Employee, or Relative a director, officer, or employee of the business?  **Yes**  **No**

I hereby certify that the information set forth above is true and complete to the best of my knowledge and that no MSDH employee, spouse, parent, or child of an MSDH employee, serves as a member of the governing body, project staff, or has an ownership or pecuniary interest in the agreement/contract or organization. I agree to notify MSDH within thirty (30) days if any of these conditions change during the agreement/contract.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Tanner Newman, Director of Development Services

**DATE** May 7, 2024

**SUBJECT:** IN THE MATTER OF AN ORDER AUTHORIZING THE PURCHASE OF REAL PROPERTY LOCATED AT 200 DOZIER STREET AND AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT FOR PURCHASE TN

---

**Request:**

Approve the purchase of 200 Dozier Street in the amount of \$49,500 for the purpose of blight removal.



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** John Quaka, Chief

**DATE:** April 26, 2024

**SUBJECT:** IN THE MATTER OF REJECTING REVERSE BID #2024-014PD - TWO 1500 CHEVROLET SILVERADO CREW CAB TRUCKS (SSV) **JQ**

---

**Request:**

Please accept this letter of request to reject Bid #2024-014PD. There were 2 unpriced submissions for Two (2) new 1500 Chevrolet Silverado's Crew Cab Trucks (SSV). Neither submission met the required specifications. Due to the unpriced submissions, the Reverse Bid Process will need to be resubmitted in order to solicit additional vendors to participate.





## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Chief John Quaka  
**DATE:** April 30, 2024  
**SUBJECT:** IN THE MATTER OF APPROVING THE ADDITION OF ITEM REMOVED FROM ASSET LIST AT NORTH MS NARCOTICS UNIT **JQ**

---

**Request:**

The following item was added to the surplus list on November 21, 2023, in error:

LVO TS M800 computer (S/N: 1S10FW003DUSMJ05BYJX; asset #5729)

Please add the item back to the NMNU asset list.



## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Chief John Quaka  
**DATE** April 30, 2024  
**SUBJECT:** IN THE MATTER OF APPROVING SEIZED VEHICLE TO NMNU ASSET LIST JQ

---

**Request:** Please add the following seized vehicle to NMNU asset list: white 2016 Chevrolet Tahoe; vin #1GNSKBKC8GR132362.



## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Quaka, John Chief  
**DATE** May 2, 2024  
**SUBJECT:** IN THE MATTER OF APPROVAL OF NMNU SURPLUS **JQ**

---

**Request:** Please remove the following vehicle from the NMNU asset list and add to the NMNU surplus list; gold 2004 Chevrolet Venture van; vin #1GNDX03E24D177921. This vehicle is not functional and will be sold at auction.



## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Brad Robinson, Fire Chief  
**DATE** May 7, 2024  
**SUBJECT:** IN THE MATTER OF SURPLUS OF TWO FIRE APPARATUS FOR SALE **BR**

---

### **Request:**

The Fire Department needs City Council to surplus (2) two old Fire Apparatus to sell in a bid. The description of the two Fire Apparatus are:

- 1993 E-One Cyclone Pumper Vin #4ENAAAA88P1002501
- 1998 E-One 100' Ladder Truck Vin #4ENSABA89W1008915



## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** RHONDA COLE  
**DATE** MAY 1, 2024  
**SUBJECT:** IN THE MATTER OF SURPLUS 2009 NISSAN VERSA FOR AUCTION –  
MUNICIPAL COURT RC

---

**Request:**

Surplus Asset # 3052 for a 2009 Nissan Versa Serial # 3N1BC11E69L440503.



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Kevan Kirkpatrick, Director Cadence Bank Arena

**DATE:** April 17, 2024

**SUBJECT:** IN THE MATTER OF APPROVAL OF CADENCE BANK ARENA MINUTES OF MARCH 18, 2024 **KK**

---

**Request:**

PLEASE REVIEW AND ACCEPT MINUTES OF MARCH 18, 2024



**CADENCE BANK**  
Arena & Conference Center

Tupelo Coliseum Commission  
Regular Meeting Minutes  
March 18, 2024

Be it known the Tupelo Coliseum Commission did meet in regular session Monday, March 18, 2024 at 3:00 p.m. in the Commerce Room with the following present:

Chair- Jason Hayden  
Vice Chair- Stephanie Coomer  
Commissioner-Yvette Crump  
Commissioner- Jessica Hollinger  
Commissioner- Darrell Marcle  
Commissioner- Nat Grubbs

Representatives of the City of Tupelo Present:

Kevan Kirkpatrick –Executive Director -Cadence Bank Arena and Conference Center  
Kim Hanna- CFO  
Rosiland Barr- Assistant CFO

Chair Jason Hayden called the meeting to order at 3:00 p.m.

Approval of minutes from February 26, 2024 was discussed. Vice Chair Stephanie Coomer made a motion to approve the minutes as written, seconded by Commissioner Jessica Hollinger. All commission members voting aye, the motion passed.

**Financial Report**

Kim Hanna discussed the financial report.

**Director's Report**

Kevan gave us an update on our past events. We had Winter Jam on 02/29 with 4,500 attending, Long Distribution Food Show 03/05, Monster Jam 03/09-10 with 3 different shows. We Are Messengers Charity event on 03/14 and 20 meeting events.

Kevan also updated us on our upcoming events. Taste of Tupelo will be 03/21 and has already sold out, Golden Triangle Rodeo 03/23, Oliver Anthony 04/12, and 23 meeting events.

**Old Business:**

Kevan gave us an update on the West Parking Lot project, it will go out for bid soon and be completed in the late summer.

Arena Lighting upgrade project is projected to be complete in September.



**CADENCE BANK**  
Arena & Conference Center

New Business

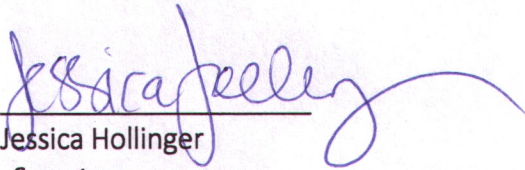
None

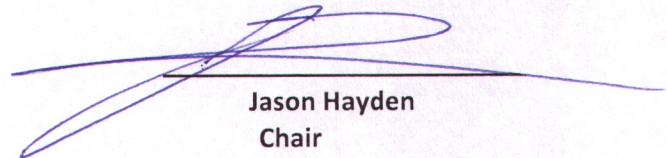
Check Approval:

Commissioner Nat Grubbs made a motion to approve the checks from February, seconded by Commissioner Yvette Crump. All commissioners voted aye; the motion passed.

Adjournment:

Chair Jason Hayden adjourned the meeting at approximately 3:15 p.m.

  
\_\_\_\_\_  
Jessica Hollinger  
Secretary

  
\_\_\_\_\_  
Jason Hayden  
Chair





## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Johnny Timmons, Manager TW&L  
**DATE** April 24, 2024  
**SUBJECT:** IN THE MATTER OF APPROVAL OF SURPLUS ITEM **JT**

---

**Request:**

Surplus and remove the following item from our fixed asset list:

- Pipehorn Ferromagnetic Locator, S/N 4502647, ID # 1289

This item no longer works and has been used for spare parts to repair other locators.



# AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Johnny Timmons, Manager TW&L

**DATE:** April 22, 2024

**SUBJECT:** IN THE MATTER OF AWARD OF BID # 2023-065WL FOR THE LABOR AND MATERIALS AT THE NORTH GREEN STREET SUBSTATION JT

---

**Request:**

I recommend the following bid award for consideration at your regular meeting on Tuesday, May 7, 2024:

**Bid No. 2023-065WL** – Labor and materials for the North Green Street Substation to the low qualified bid submitted by Power Grid Company in the amount of \$2,130,000.00 as recommended by Allen & Hoshall Engineers.

Complete List of Bidders:

Power Grid Company	\$2,130,000
Garnet Electric	\$2,317,600
Groves Electrical Services	\$2,698,288
Service Electric Company	\$2,850,000
Aubrey Silvey	\$2,900,000



March 14, 2024

Mr. Johnny Timmons, General Manager  
Tupelo Water and Light Department  
320 North Front Street  
Tupelo, MS 38802

**RE: 2023-065WL  
Labor and Materials Contract  
North Green Substation**

Dear Mr. Timmons:

We have evaluated the bids on the above-referenced project. After careful consideration and evaluation, we recommend you accept the total lump sum bid price of \$2,130,000.00 from Power Grid Company for the Labor and Materials Contract at the North Green Substation.

Enclosed is the bid tabulation.

After approval, please let us know and we will instruct Power Grid Company to proceed with the procurement of the insurance and bonds.

If there are any questions or you need additional information, please contact me at 901.261.4639.

Sincerely,

**Allen & Hoshall**

Russell Scott Burleson, P.E.  
Sr. Vice President

# Minute Entry Sign Up Sheet

Date: 3/14/2024

Time: 10:00

Bid # 2023-065WL

Department: WL

Project: North Green Substation

Attendance

Company

<i>WAYNE ESPER</i>	<i>POWER GRID Co.</i>
<i>Stephen Reed</i>	<i>COT</i>
<i>Ben N. Legan</i>	<i>COT</i>
<i>W.S. B...</i>	<i>ALLEN &amp; Marshall</i>
<i>Mina Dillard</i>	<i>COT</i>

**BID TABULATION**  
**LABOR & MATERIALS**  
**FOR**  
**NORTH GREEN SUBSTATION**  
**TUPELO WATER & LIGHT**  
**BID OPENING: MARCH 14, 2024**  
**10:00 A.M. Local Time**

<u>Bidder</u>	<u>Total Bid Price</u>
Aubrey Silvey	\$2,900,000.00
Garnet Electric	\$2,317,600.00
Groves Electrical Services	\$2,698,288.00
<b>Power Grid Company</b>	<b>\$2,130,000.00</b>
Service Electric Company	\$2,850,000.00

Total Bid Price includes \$50,000.00 for Authorized Contract Amendments.

Engineer's Recommended Acceptance in **BOLD**.



**Power Grid**  
C O M P A N Y  
201 County Line Rd.  
Fayetteville, GA 30215  
+1 404 491 0168  
powergridsouth.com



**NORTH GREEN SUBSTATION**

**TUPELO WATER & LIGHT  
TUPELO, MS**

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A310

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we

Power Grid Company  
201 County Line Road  
Fayetteville GA 30215

as Principal, hereinafter called the Principal, and  
Western Surety Company  
5565 Glenridge Connector NE, 6th Floor  
Atlanta GA 30342

a corporation duly organized under the laws of the State of South Dakota  
as Surety, hereinafter called the Surety, are held and firmly bound unto  
Tupelo Water & Light  
71 East Troy Street

Tupelo MS 38804  
as Oblige, hereinafter called the Oblige, in the sum of Five Percent of Amount of Bid

Dollars (5% of Amount of Bid),

for the payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for  
Tupelo Substation  
Tupelo MS

NOW, THEREFORE, if the Oblige shall accept the bid of the Principal and the Principal shall enter into a Contract with the Oblige in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Oblige the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Oblige may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

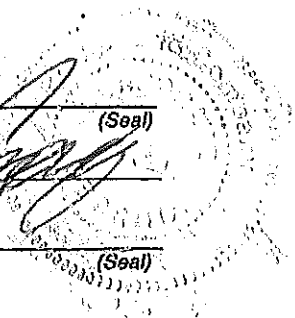
Signed and sealed this 14th day of March, 2024

Gary Caldwell  
(Witness)

Hunter  
(Witness)

Power Grid Company  
(Principal) (Seal)  
By: [Signature]  
(Title)

Western Surety Company  
(Surety) (Seal)  
By: [Signature]  
(Title)  
John D. Brock, Attorney-in-Fact



# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Mark R Brock, Patricia S Kleehammer, Dana Keith Davis, Cecil Ray Vaughan III, Mark Ramsey Brock Jr, Tina Marsh, John D Brock, Individually**

of Rossville, GA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 5th day of December, 2022.



WESTERN SURETY COMPANY

Paul T. Brufat  
Paul T. Brufat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 5th day of December, 2022, before me personally came Paul T. Brufat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires  
March 2, 2026



M. Bent  
M. Bent, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 14th day of March, 2024.



WESTERN SURETY COMPANY

L. Nelson  
L. Nelson, Assistant Secretary

Form F4280-7-2012

Go to [www.cnasurety.com](http://www.cnasurety.com) > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.



**Authorizing By-Law**

**ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY**

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.



# State of Mississippi

## BOARD OF CONTRACTORS

ACTIVE

POWER GRID COMPANY  
227 COUNTY LINE ROAD  
FAYETTEVILLE, GA 30215

is duly registered and entitled to perform

ELECTRICAL WORK

*We have heretofore set our hand and official seal given this 24 day of March, 2023*

CERTIFICATE OF RESPONSIBILITY

No. 24218-MC

Expires Mar. 24, 2024

*Jack A. Carroll*

CHAIRMAN OF THE BOARD

**DOCUMENT 00300  
BID FORM**

Project Identification: North Green 161:15 kV Substation

Contract Identification: 81925

This Bid is submitted to:

Tupelo Water and Light Department  
Tupelo City Hall  
71 East Troy Street  
Tax Office, Attn. Traci Dillard  
Tupelo, MS 38804

This Bid is submitted from (Contractor):

POWER GRID CO  
\_\_\_\_\_  
201 COUNTY LINE RD  
\_\_\_\_\_  
FAYETTEVILLE, GA 30215  
\_\_\_\_\_

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for forty-five days after the day of Bid opening. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of Owner's Notice of Award.
3. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:
  - (a) Bidder has examined copies of all the Bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged, if no addenda received, insert "None"):

Number	Date
1 _____	02/26/2024 _____
_____ _____	_____ _____

- (b) Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site,

- locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- (c) Bidder has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the GENERAL CONDITIONS, and accepts the determination set forth in paragraph 4.2 of the GENERAL CONDITIONS of the extent of the technical data contained in such reports and drawings upon which Bidder is entitled to rely.
  - (d) Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in (c) above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Bidder considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the GENERAL CONDITIONS; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.
  - (e) Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the GENERAL CONDITIONS.
  - (f) Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
  - (g) Bidder has given Architect/Engineer written notice to all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Architect/Engineer is acceptable to Bidder.
  - (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

**ADDENDUM NO. 1**  
**SPECIFICATIONS AND CONTRACT DOCUMENTS**  
**FOR**  
**NORTH GREEN SUBSTATION**  
**TUPELO WATER & LIGHT**  
**TUPELO, MISSISSIPPI**

This addendum forms a part of the Contract Documents and modifies the original specifications, dated February 26, 2024 as noted below. Acknowledge receipt of this Addendum by signing below and attaching to the Bid Documents. Failure to do so may subject bidder to disqualification.

**Item No. 1:** Contractor to supply and install substation surface course stone.

- 1. Replace document 01012 with attached document 01012r1.

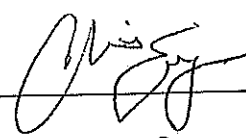
**Item No. 2:** Changed all underground pipe and conduit to schedule 80.

- 1. Replace drawing E8.1 with E8.1r1.
- 2. Replace drawing C5.1 with C5.1r1.
- 3. Replace drawing C5.2 with C5.2r1.

**Item No. 3:** Changed the Notes and Design Notes.

- 1. Replace drawing E2.1 with E2.1r1.
- 2. Replace drawing E3.1 with E3.1r1.
- 3. Replace drawing E4.1 with E4.1r1

**Item No. 4:** See included geotechnical report.

By: 

Bidder: Power Grid Co.

Date: 2/26/2024



**Tupelo Water & Light  
North Green Substation  
March 9, 2024**

The questions below regarding this Project have been received as of the date shown. The Engineer's response in **RED** is also presented. Future questions will be addressed in a similar fashion.

Start of Questions

1. Is it acceptable to use porcelain for the vertical insulators and polymer for the cantilevered insulators on the 161kV side?

Yes, that is acceptable.

2. Will temporary power be available on site for the project?

Yes, temporary power will be supplied by TW&L.

3. Does the testing company need to test the relays.

No, relay and controls testing will be supplied by owner.

4. Does the contractor need to supply site grading work, fence work, and yard rock?

No, the site is already graded and the fence and base course rock are already installed. The contractor will need to supply and install the surface course rock.

5. Is Ritz an approved manufacturer for the PT and what is the PT ratio?

Yes, Ritz is acceptable and the PT ratio should be 60:1.

6. Were the regulators ordered with a stud to 500 Cu connection or with a stud to 4-hole pad?

Stud to 4-hole pad.

7. Is it acceptable for the above grade conduits to be RGS?

It is acceptable to use RGS, Sch. 80 PVC or LFMC for the above grade conduits.

8. The spec mentions V-Pin Connectors for the fiber but it also calls for SEL C807 fiber which is only available with ST connectors. What connectors or cables should we supply?

The contractor should supply the fiber optic cable only. The connectors will be supplied and terminated by Owner. The connectors installed by owner will be LC so please supply the C808G fiber cable instead of C807.

9. Are estimates available for start/completion dates and material deliveries?

Construction can start as soon as the contract is awarded which should be the first of April. The target energization date is April/May 2025. The 13 kV breakers have already been delivered. The regulators are scheduled to be delivered in May. The control house is scheduled to be delivered the first of September. The transformer is scheduled to be delivered at the end of September and the 161 kV breakers are scheduled for a January 2025 delivery.

011724

81925

4. **LUMP SUM BID** - The Bidder will complete the Work, as indicated on the Contract Drawings and/or described in the Specifications for the following lump sum price:

**BID SUMMARY**

**LUMP SUM BASE BID**

TWO MILLION AND EIGHTY THOUSAND Dollars and 0 cents (\$ 2,080,000.00 ).

**AUTHORIZED CONTRACT AMENDMENTS**

(See Document 00700 - GENERAL CONDITIONS, Document 00800 - SUPPLEMENTARY CONDITIONS, and Section 01021 - CASH ALLOWANCES for description of ACA.)

Fifty Thousand Dollars and No cents (\$ 50,000.00 ).

**TOTAL LUMP SUM BID PRICE**

(Total of Lump Sum Base Bid and Authorized Contract Amendments)

TWO MILLION, ONE HUNDRED THIRTY THOUSAND Dollars and        cents (\$ 2,130,000.00 ).

**THE ABOVE TOTAL LUMP SUM BID PRICE SHALL NOT INCLUDE ANY AMOUNT THAT IS NOT SPECIFICALLY STATED BY THIS BID FORM TO BE INCLUDED.**

**Unit Price Adjustments of Lump Sum Bid:**

Lump Sum Base Bid quantities of the Project items are to be determined by the Contractor based on the Contract Documents, Contract Drawings, and Contract Specifications. If increases or decreases in these quantities occur the Contract Price is to be adjusted by Change Order on the basis of the Unit Prices listed below. Refer to Section 01025 - MEASUREMENT AND PAYMENT for description of Item units and payment measurements.

Specifications Section	Item	Unit	Adjustment Price \$ Per Unit
02220	Grounding Grid Conductor Trench	Linear Ft.	65.00
02220	Trench, 6"	Linear Ft.	34.00
02220	Trench, 12"	Linear Ft.	36.00
02220	Trench, 24"	Linear Ft.	38.00
02220	Trench, 30"	Linear Ft.	40.00
02220	Trench, 36"	Linear Ft.	42.00
02230	Crushed Aggregate Base Course	Square Yd.	64.00
02370	30" dia. drilled pier foundation, Earth	Linear Ft.	450.00
02370	36" dia. drilled pier foundation, Earth	Linear Ft.	500.00
02370	42" dia. drilled pier foundation, Earth	Linear Ft.	550.00
02370	48" dia. drilled pier foundation, Earth	Linear Ft.	600.00
02370	60" dia. drilled pier foundation, Earth	Linear Ft.	750.00
02513	Crushed Limestone Surface Course	Square Yd.	65.00

011724		81925	
		Square Yd.	50.00
02930	Seeding and Mulching	Cubic Yd.	1100.00
03300	Concrete Pad Foundation	Linear Ft.	11.00
16112	PVC Conduit, 1"	Linear Ft.	12.00
16112	PVC Conduit, 1½"	Linear Ft.	13.00
16112	PVC Conduit, 2"	Linear Ft.	18.00
16112	PVC Conduit, 3"	Linear Ft.	100.00
16112	PVC Conduit, 6"	Linear Ft.	18.00
16112	Elbow, 1" PVC, 24" Radius	Each	19.00
16112	Elbow, 1½" PVC, 24" Radius	Each	22.00
16112	Elbow, 2" PVC, 24" Radius	Each	30.00
16112	Elbow, 3" PVC, 36" Radius	Each	80.00
16112	Elbow, 6" PVC, 36" Radius	Each	10.00
16120	LV Power Cable, 600v, 3-1/C No. 3/0 RHW	Linear Ft.	12.00
16120	Control Cable, 4/C No. 6	Linear Ft.	11.00
16120	Control Cable, 2/C No. 8	Linear Ft.	10.00
16120	Control Cable, 4/C No. 8	Linear Ft.	7.00
16120	Control Cable, 2/C No. 10	Linear Ft.	8.00
16120	Control Cable, 3/C No. 10	Linear Ft.	8.00
16120	Control Cable, 4/C No. 10	Linear Ft.	12.00
16120	Control Cable, 7/C No. 10	Linear Ft.	5.00
16120	Fiber Optic Cable	Linear Ft.	10.00
16395	Ground Rod, 3/4" x 10'	Each	12.00
16395	2/0 Copper Ground Grid Conductor	Linear Ft.	15.00
16395	4/0 Copper Ground Grid Conductor	Linear Ft.	23.00
16395	500 kcmil, Copper Ground Grid Conductor	Linear Ft.	



011724

81925

5. SUBCONTRACTORS LIST

DESCRIPTION	COMPANY NAME	BUSINESS ADDRESS
Site Work DIVISION 2	OWNER	TUPELO, MS
Concrete DIVISION 3	STEEL CON	TUPELO, MS
Substation Materials DIVISION 16	PEAK SUBSTATION SERVICES	BIRMINGHAM, AL
Substation Calibration & Testing DIVISION 16	SOUTHERN POWER & COATING	CARROLLTON, MS

6. Bidder agrees that the Work will be substantially complete on or before **March 15, 2025** and completed and ready for final payment in accordance with paragraph 14.8 of the GENERAL CONDITIONS on or before **April 15, 2025**. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

7. The following documents are attached to and made a condition of this Bid:

- (a) Required Bid Security in the form of 5% Bid Bond or Bank Check in the amount of 5% of the Bid.
- (b) Bidder's Qualification Statement, Document 00420.
- (c) Drug-Free Workplace Affidavit, Document 00482.
- (d) Equal Opportunity Provisions, Document 00820.
- (e) Copies of Contractor's and Subcontractor's License Certificates

8. Communications concerning this Bid shall be addressed to:

The address of Bidder indicated below.

Principal Contact: JOSHUA POST

Email: jlpost@powergridsouth.com

Alternate Contact: WAYNE ESPEY

Email: gwespey@powergridsouth.com

Phone Number: 256-366-5389

Fax: \_\_\_\_\_

Address: 201 County Line rd  
Fayetteville, ga 30215

011724

81925

- 9. The terms used in this Bid which are defined in the GENERAL CONDITIONS or Instructions will have the meanings assigned to them in the GENERAL CONDITIONS or Instructions.

Submitted on MAR 14, 2024.

State Contractor License/Certificate No. 24218-MC.

If Bidder is:

**An Individual**

\_\_\_\_\_ (SEAL)  
(Individual's Signature)

\_\_\_\_\_  
(Individual's Name - Print/Type)

doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

**A Partnership**

\_\_\_\_\_ (SEAL)  
(Firm Name)

\_\_\_\_\_  
(Signature of General Partner)

\_\_\_\_\_  
(Print/Type)

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

011724

81925

**A Corporation**

POWER GRID CO

(Corporation Name)

By: \_\_\_\_\_

(Signature of person authorized to sign)

Title: VICE PRESIDENT

WAYNE ESPEY

(Print/Type name of person authorized to sign)

(Corporate Seal)

Attest: \_\_\_\_\_

(Secretary)

GEORGIA

(State of incorporation)

Business address: 201 COUNTY LINE RD  
FAYETTEVILLE, GA

Phone No.: 256-366-5389

**A Joint Venture**

\_\_\_\_\_  
(Joint Venture) (SEAL)

By: \_\_\_\_\_  
(Signature of Joint Venturer)

By: \_\_\_\_\_  
(Signature of Joint Venturer)

\_\_\_\_\_  
(Type/Print)

\_\_\_\_\_  
(Type/Print)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

END OF DOCUMENT

**DOCUMENT 00482**  
**DRUG-FREE WORKPLACE AFFIDAVIT**  
(must be attached to bid form upon submission)

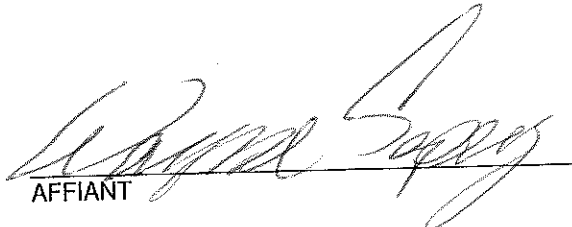
STATE OF MISSISSIPPI  
COUNTY OF TUPELO

DRUG-FREE WORKPLACE AFFIDAVIT  
OF PRIME BIDDER

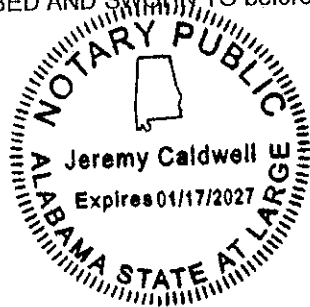
NOW COMES AFFIANT, who being duly sworn, deposes and says:

1. He/She is the principal officer for POWER GRID CO. 201 COUNTY LINE RD FAYETTEVILLE, GA;  
(insert name and address of bidding entity)
2. That the bidding entity has submitted a bid to TUPELO WATER & ELECTRIC  
(insert name of city, dept, project No.)  
for the construction of NORTH GREEN SUBSTATION;  
(insert name of project)
3. That the bidding entity employs no less than five (5) employees;
4. That Affiant certifies that the bidding entity has in effect, at the time of submission of its bid to perform the construction referred to above, a drug-free workplace program;
5. That this affidavit is made on personal knowledge.

Further Affiant saith not.

  
AFFIANT

SUBSCRIBED AND SWORN TO before me this 13<sup>th</sup> day of march, 20 24.



Jeremy L. Caldwell  
NOTARY PUBLIC

My commission expires: 01/17/2027

**DOCUMENT 00300  
BID FORM**

Project Identification: North Green 161:15 kV Substation

Contract Identification: 81925

This Bid is submitted to:

Tupelo Water and Light Department  
Tupelo City Hall  
71 East Troy Street  
Tax Office, Attn. Traci Dillard  
Tupelo, MS 38804

This Bid is submitted from (Contractor):

Aubrey Silvey Enterprises Inc.  
371 Hamp Jones Rd. Carrollton Ga. 30117  
\_\_\_\_\_  
\_\_\_\_\_

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for forty-five days after the day of Bid opening. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of Owner's Notice of Award.
3. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:
  - (a) Bidder has examined copies of all the Bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged, if no addenda received, insert "None"):

Number	Date
<u>Addendum #1</u>	<u>2/26/24</u>
_____	_____
_____	_____

- (b) Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site,

locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

- (c) Bidder has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the GENERAL CONDITIONS, and accepts the determination set forth in paragraph 4.2 of the GENERAL CONDITIONS of the extent of the technical data contained in such reports and drawings upon which Bidder is entitled to rely.
- (d) Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in (c) above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Bidder considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the GENERAL CONDITIONS; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.
- (e) Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the GENERAL CONDITIONS.
- (f) Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- (g) Bidder has given Architect/Engineer written notice to all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Architect/Engineer is acceptable to Bidder.
- (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

4. **LUMP SUM BID** - The Bidder will complete the Work, as indicated on the Contract Drawings and/or described in the Specifications for the following lump sum price:

**BID SUMMARY**

**LUMP SUM BASE BID**

Two Million, Eight Hundred, and Fifty Thousand Dollars and No cents (\$ 2,850,000.00 ).

**AUTHORIZED CONTRACT AMENDMENTS**

(See Document 00700 - GENERAL CONDITIONS, Document 00800 - SUPPLEMENTARY CONDITIONS, and Section 01021 - CASH ALLOWANCES for description of ACA.)

Fifty Thousand Dollars and No cents (\$ 50,000.00 ).

**TOTAL LUMP SUM BID PRICE**

(Total of Lump Sum Base Bid and Authorized Contract Amendments)

Two Million, Nine Hundred Thousand Dollars and NO cents (\$ 2,900,000.00 ).

**THE ABOVE TOTAL LUMP SUM BID PRICE SHALL NOT INCLUDE ANY AMOUNT THAT IS NOT SPECIFICALLY STATED BY THIS BID FORM TO BE INCLUDED.**

**Unit Price Adjustments of Lump Sum Bid:**

**Lump Sum Base Bid quantities of the Project items are to be determined by the Contractor based on the Contract Documents, Contract Drawings, and Contract Specifications.** If increases or decreases in these quantities occur the Contract Price is to be adjusted by Change Order on the basis of the Unit Prices listed below. Refer to Section 01025 - MEASUREMENT AND PAYMENT for description of Item units and payment measurements.

<u>Specifications Section</u>	<u>Item</u>	<u>Unit</u>	<u>Adjustment Price \$ Per Unit</u>
02220	Grounding Grid Conductor Trench	Linear Ft.	<u>\$2.50</u>
02220	Trench, 6"	Linear Ft.	<u>\$2.50</u>
02220	Trench, 12"	Linear Ft.	<u>\$5.00</u>
02220	Trench, 24"	Linear Ft.	<u>\$10.00</u>
02220	Trench, 30"	Linear Ft.	<u>\$15.00</u>
02220	Trench, 36"	Linear Ft.	<u>\$20.00</u>
02230	Crushed Aggregate Base Course	Square Yd.	<u>\$16.00</u>
02370	30" dia. drilled pier foundation, Earth	Linear Ft.	<u>\$ 240.00</u>
02370	36" dia. drilled pier foundation, Earth	Linear Ft.	<u>\$340.00</u>
02370	42" dia. drilled pier foundation, Earth	Linear Ft.	<u>\$460.00</u>
02370	48" dia. drilled pier foundation, Earth	Linear Ft.	<u>\$580.00</u>
02370	60" dia. drilled pier foundation, Earth	Linear Ft.	<u>\$600.00</u>
02513	Crushed Limestone Surface Course	Square Yd.	<u>\$50.00</u>

011724

81925

02930	Seeding and Mulching	Square Yd.	\$12.00
03300	Concrete Pad Foundation	Cubic Yd.	\$725.00
16112	PVC Conduit, 1" Sch.40	Linear Ft.	\$1.98
16112	PVC Conduit, 1½" Sch.40	Linear Ft.	\$ 2.89
16112	PVC Conduit, 2" Sch. 40	Linear Ft.	\$11.44
16112	PVC Conduit, 3" Sch.40	Linear Ft.	\$13.91
16112	PVC Conduit, 6" Sch.40	Linear Ft.	\$45.00
16112	Elbow, 1" PVC, 24" Radius Sch. 40	Each	\$26.00
16112	Elbow, 1½" PVC, 24" Radius Sch. 40	Each	\$28.50
16112	Elbow, 2" PVC, 24" Radius Sch. 40	Each	\$33.60
16112	Elbow, 3" PVC, 36" Radius Sch.40	Each	\$37.00
16112	Elbow, 6" PVC, 36" Radius Sch. 40	Each	\$230.00
16120	LV Power Cable, 600v, 3-1/C No. 3/0 RHW	Linear Ft.	\$38.01
16120	Control Cable, 4/C No. 6	Linear Ft.	\$9.00
16120	Control Cable, 2/C No. 8	Linear Ft.	\$7.50
16120	Control Cable, 4/C No. 8	Linear Ft.	\$8.00
16120	Control Cable, 2/C No. 10	Linear Ft.	\$6.00
16120	Control Cable, 3/C No. 10	Linear Ft.	\$5.40
16120	Control Cable, 4/C No. 10	Linear Ft.	\$6.20
16120	Control Cable, 7/C No. 10	Linear Ft.	\$8.60
16120	Fiber Optic Cable	Linear Ft.	\$9.50
16395	Ground Rod, 3/4" x 10'	Each	\$145.00
16395	2/0 Copper Ground Grid Conductor	Linear Ft.	\$7.10
16395	4/0 Copper Ground Grid Conductor	Linear Ft.	\$12.00
16395	500 kcmil, Copper Ground Grid Conductor	Linear Ft.	\$23.00



5. SUBCONTRACTORS LIST

DESCRIPTION	COMPANY NAME	BUSINESS ADDRESS
Site Work DIVISION 2	Aubrey Silvey Enterprises Inc.	371 Hamp Jones Rd. Carrollton Ga 30117
Concrete DIVISION 3	Thompson Construction Services	243 South Broadview St. Greenbrier, AR 72058
Substation Materials DIVISION 16	Substation Engineering & Design	661 Stuart Lane Pelham AL. 35124
Substation Calibration & Testing DIVISION 16	Aubrey Silvey Enterprises Inc.	371 Hamp Jones Rd. Carrollton Ga. 30117

6. Bidder agrees that the Work will be substantially complete on or before **March 15, 2025** and completed and ready for final payment in accordance with paragraph 14.8 of the GENERAL CONDITIONS on or before **April 15, 2025**. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

7. The following documents are attached to and made a condition of this Bid:

- (a) Required Bid Security in the form of 5% Bid Bond or Bank Check in the amount of 5% of the Bid.
- (b) Bidder's Qualification Statement, Document 00420.
- (c) Drug-Free Workplace Affidavit, Document 00482.
- (d) Equal Opportunity Provisions, Document 00820.
- (e) Copies of Contractor's and Subcontractor's License Certificates

8. Communications concerning this Bid shall be addressed to:

The address of Bidder indicated below.

Principal Contact: T. Vann Pelt - Vice President

Email: vpelt@silvey.com

Alternate Contact: Israel Norton

Email: inorton@silvey.com

Phone Number: 770-834-0738

Fax: 770-834-1055

Address: 371 Hamp Jones Rd. Carrollton Ga. 30117

011724

81925

9. The terms used in this Bid which are defined in the GENERAL CONDITIONS or Instructions will have the meanings assigned to them in the GENERAL CONDITIONS or Instructions.

Submitted on March 14, 2024.

State Contractor License/Certificate No. 03160-MC.

If Bidder is:

**An Individual**

\_\_\_\_\_  
(Individual's Signature) (SEAL)

\_\_\_\_\_  
(Individual's Name - Print/Type)

doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

**A Partnership**

\_\_\_\_\_  
(Firm Name) (SEAL)

\_\_\_\_\_  
(Signature of General Partner)

\_\_\_\_\_  
(Print/Type)

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

011724

81925

**A Corporation**

Aubrey Silvey Enterprises Inc.  
(Corporation Name)

By: T. Vann Pelt Title: Vice President  
(Signature of person authorized to sign)

T. Vann Pelt  
(Print/Type name of person authorized to sign)

(Corporate Seal)

Attest: William A. Head  
(Secretary) William A. Head

Georgia  
(State of incorporation)

Business address: 371 Hamp Jones Rd.

Carrollton Ga. 30117

Phone No.: 770-834-0738

**A Joint Venture**

\_\_\_\_\_  
(Joint Venture) (SEAL)

By: \_\_\_\_\_  
(Signature of Joint Venturer)

By: \_\_\_\_\_  
(Signature of Joint Venturer)

\_\_\_\_\_  
(Type/Print)

\_\_\_\_\_  
(Type/Print)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

END OF DOCUMENT



**DOCUMENT 00100F  
BID ENVELOPE INFORMATION FORM**

**BIDDER:**

This form is for the Bidder's convenience as noted in Section 00100 - INSTRUCTIONS TO BIDDERS. This form is not required; however, **the information is required on the front of the Bid Envelope.**

Add the required information of all subcontractors proposed. Extend form as required.

<b>Allen&amp;Hoshall</b> <small>since 1915</small>	
Project:	North Green 161:15 kV Substation
Owner:	Tupelo Water and Light Department Tupelo City Hall
Address:	71 East Troy Street Tax Office, Attn. Traci Dillard Tupelo, MS 38804
Bidder:	<u>Aubrey Silvey Enterprises Inc.</u>
Address:	<u>371 Hamp Jones Rd</u>
Bidder License/Certificate No.	<u>03160-MC</u>
Subcontractor:	<u>Thompson Construction Services- (Concrete/Foundations Subcontractor)</u>
Address:	<u>243 South Broadview St. Greenbrier, AR 72058</u>
Subcontractor License/Certificate No.	<u>031575</u>

END OF DOCUMENT

**DOCUMENT 00300  
BID FORM**

Project Identification: North Green 161:15 kV Substation

Contract Identification: 81925

This Bid is submitted to:

Tupelo Water and Light Department  
Tupelo City Hall  
71 East Troy Street  
Tax Office, Attn. Traci Dillard  
Tupelo, MS 38804

This Bid is submitted from (Contractor):

Aubrey Silvey Enterprises Inc.  
371 Hamp Jones Rd. Carrollton Ga. 30117  
\_\_\_\_\_  
\_\_\_\_\_

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for forty-five days after the day of Bid opening. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of Owner's Notice of Award.
3. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:
  - (a) Bidder has examined copies of all the Bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged, if no addenda received, insert "None"):

Number	Date
<u>Addendum #1</u>	<u>2/26/24</u>
_____	_____
_____	_____

- (b) Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site,

locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

- (c) Bidder has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the GENERAL CONDITIONS, and accepts the determination set forth in paragraph 4.2 of the GENERAL CONDITIONS of the extent of the technical data contained in such reports and drawings upon which Bidder is entitled to rely.
- (d) Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in (c) above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Bidder considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the GENERAL CONDITIONS; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.
- (e) Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the GENERAL CONDITIONS.
- (f) Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- (g) Bidder has given Architect/Engineer written notice to all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Architect/Engineer is acceptable to Bidder.
- (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

4. **LUMP SUM BID** - The Bidder will complete the Work, as indicated on the Contract Drawings and/or described in the Specifications for the following lump sum price:

**BID SUMMARY**

**LUMP SUM BASE BID**

Two Million, Eight Hundred, and Fifty Thousand Dollars and No cents (\$ 2,850,000.00 ).

**AUTHORIZED CONTRACT AMENDMENTS**

(See Document 00700 - GENERAL CONDITIONS, Document 00800 - SUPPLEMENTARY CONDITIONS, and Section 01021 - CASH ALLOWANCES for description of ACA.)

Fifty Thousand Dollars and No cents (\$ 50,000.00 ).

**TOTAL LUMP SUM BID PRICE**

(Total of Lump Sum Base Bid and Authorized Contract Amendments)

Two Million, Nine Hundred Thousand Dollars and NO cents (\$ 2,900,000.00 ).

**THE ABOVE TOTAL LUMP SUM BID PRICE SHALL NOT INCLUDE ANY AMOUNT THAT IS NOT SPECIFICALLY STATED BY THIS BID FORM TO BE INCLUDED.**

**Unit Price Adjustments of Lump Sum Bid:**

**Lump Sum Base Bid quantities of the Project items are to be determined by the Contractor based on the Contract Documents, Contract Drawings, and Contract Specifications.** If increases or decreases in these quantities occur the Contract Price is to be adjusted by Change Order on the basis of the Unit Prices listed below. Refer to Section 01025 - MEASUREMENT AND PAYMENT for description of Item units and payment measurements.

Specifications Section	Item	Unit	Adjustment Price \$ Per Unit
02220	Grounding Grid Conductor Trench	Linear Ft.	\$2.50
02220	Trench, 6"	Linear Ft.	\$2.50
02220	Trench, 12"	Linear Ft.	\$5.00
02220	Trench, 24"	Linear Ft.	\$10.00
02220	Trench, 30"	Linear Ft.	\$15.00
02220	Trench, 36"	Linear Ft.	\$20.00
02230	Crushed Aggregate Base Course	Square Yd.	\$16.00
02370	30" dia. drilled pier foundation, Earth	Linear Ft.	\$ 240.00
02370	36" dia. drilled pier foundation, Earth	Linear Ft.	\$340.00
02370	42" dia. drilled pier foundation, Earth	Linear Ft.	\$460.00
02370	48" dia. drilled pier foundation, Earth	Linear Ft.	\$580.00
02370	60" dia. drilled pier foundation, Earth	Linear Ft.	\$600.00
02513	Crushed Limestone Surface Course	Square Yd.	\$50.00

011724

81925

02930	Seeding and Mulching	Square Yd.	\$12.00
03300	Concrete Pad Foundation	Cubic Yd.	\$725.00
16112	PVC Conduit, 1" Sch.40	Linear Ft.	\$1.98
16112	PVC Conduit, 1½" Sch.40	Linear Ft.	\$ 2.89
16112	PVC Conduit, 2" Sch. 40	Linear Ft.	\$11.44
16112	PVC Conduit, 3" Sch.40	Linear Ft.	\$13.91
16112	PVC Conduit, 6" Sch.40	Linear Ft.	\$45.00
16112	Elbow, 1" PVC, 24" Radius Sch. 40	Each	\$26.00
16112	Elbow, 1½" PVC, 24" Radius Sch. 40	Each	\$28.50
16112	Elbow, 2" PVC, 24" Radius Sch. 40	Each	\$33.60
16112	Elbow, 3" PVC, 36" Radius Sch.40	Each	\$37.00
16112	Elbow, 6" PVC, 36" Radius Sch. 40	Each	\$230.00
16120	LV Power Cable, 600v, 3-1/C No. 3/0 RHW	Linear Ft.	\$38.01
16120	Control Cable, 4/C No. 6	Linear Ft.	\$9.00
16120	Control Cable, 2/C No. 8	Linear Ft.	\$7.50
16120	Control Cable, 4/C No. 8	Linear Ft.	\$8.00
16120	Control Cable, 2/C No. 10	Linear Ft.	\$6.00
16120	Control Cable, 3/C No. 10	Linear Ft.	\$5.40
16120	Control Cable, 4/C No. 10	Linear Ft.	\$6.20
16120	Control Cable, 7/C No. 10	Linear Ft.	\$8.60
16120	Fiber Optic Cable	Linear Ft.	\$9.50
16395	Ground Rod, 3/4" x 10'	Each	\$145.00
16395	2/0 Copper Ground Grid Conductor	Linear Ft.	\$7.10
16395	4/0 Copper Ground Grid Conductor	Linear Ft.	\$12.00
16395	500 kcmil, Copper Ground Grid Conductor	Linear Ft.	\$23.00



5. SUBCONTRACTORS LIST

DESCRIPTION	COMPANY NAME	BUSINESS ADDRESS
Site Work DIVISION 2	Aubrey Silvey Enterprises Inc.	371 Hamp Jones Rd. Carrollton Ga 30117
Concrete DIVISION 3	Thompson Construction Services	243 South Broadview St. Greenbrier, AR 72058
Substation Materials DIVISION 16	Substation Engineering & Design	661 Stuart Lane Pelham AL. 35124
Substation Calibration & Testing DIVISION 16	Aubrey Silvey Enterprises Inc.	371 Hamp Jones Rd. Carrollton Ga. 30117

6. Bidder agrees that the Work will be substantially complete on or before **March 15, 2025** and completed and ready for final payment in accordance with paragraph 14.8 of the GENERAL CONDITIONS on or before **April 15, 2025**. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

7. The following documents are attached to and made a condition of this Bid:

- (a) Required Bid Security in the form of 5% Bid Bond or Bank Check in the amount of 5% of the Bid.
- (b) Bidder's Qualification Statement, Document 00420.
- (c) Drug-Free Workplace Affidavit, Document 00482.
- (d) Equal Opportunity Provisions, Document 00820.
- (e) Copies of Contractor's and Subcontractor's License Certificates

8. Communications concerning this Bid shall be addressed to:

The address of Bidder indicated below.

Principal Contact: T. Vann Pelt - Vice President

Email: vpelt@silvey.com

Alternate Contact: Israel Norton

Email: inorton@silvey.com

Phone Number: 770-834-0738

Fax: 770-834-1055

Address: 371 Hamp Jones Rd. Carrollton Ga. 30117

9. The terms used in this Bid which are defined in the GENERAL CONDITIONS or Instructions will have the meanings assigned to them in the GENERAL CONDITIONS or Instructions.

Submitted on March 14, , 20 24 .

State Contractor License/Certificate No. 03160-MC.

If Bidder is:

**An Individual**

\_\_\_\_\_ (SEAL)  
(Individual's Signature)

\_\_\_\_\_  
(Individual's Name - Print/Type)

doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

**A Partnership**

\_\_\_\_\_ (SEAL)  
(Firm Name)

\_\_\_\_\_  
(Signature of General Partner)

\_\_\_\_\_  
(Print/Type)

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

**A Corporation**

Aubrey Silvey Enterprises Inc.  
\_\_\_\_\_  
(Corporation Name)

By: T. Vann Pelt Title: Vice President  
(Signature of person authorized to sign)

T. Vann Pelt  
(Print/Type name of person authorized to sign)

(Corporate Seal)

Attest: William A. Head  
(Secretary) William A. Head

Georgia  
(State of incorporation)

Business address: 371 Hamp Jones Rd.

Carrollton Ga. 30117

Phone No.: 770-834-0738

**A Joint Venture**

\_\_\_\_\_  
(Joint Venture) (SEAL)

By: \_\_\_\_\_  
(Signature of Joint Venturer)

By: \_\_\_\_\_  
(Signature of Joint Venturer)

\_\_\_\_\_  
(Type/Print)

\_\_\_\_\_  
(Type/Print)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

END OF DOCUMENT



**DOCUMENT 00100F  
BID ENVELOPE INFORMATION FORM**

**BIDDER:**

This form is for the Bidder's convenience as noted in Section 00100 - INSTRUCTIONS TO BIDDERS. This form is not required; however, **the information is required on the front of the Bid Envelope.**

Add the required information of all subcontractors proposed. Extend form as required.

<b>Allen&amp;Hoshall</b> <small>since 1915</small>	
Project:	North Green 161:15 kV Substation
Owner:	Tupelo Water and Light Department Tupelo City Hall
Address:	71 East Troy Street Tax Office, Attn. Traci Dillard Tupelo, MS 38804
Bidder:	<u>Garnet Electric Co., Inc.</u>
Address:	<u>1615 East State St., Sheffield, AL 35660</u>
Bidder License/Certificate No.	<u>12049-MC</u>
Subcontractor:	<u>B.H. Craig Construction Company, Inc.</u>
Address:	<u>835 Wall St., Florence, AL 35630</u>
Subcontractor License/Certificate No.	<u>04084-MC</u>

END OF DOCUMENT

**DOCUMENT 00300  
BID FORM**

Project Identification: North Green 161:15 kV Substation

Contract Identification: 81925

This Bid is submitted to:

Tupelo Water and Light Department  
Tupelo City Hall  
71 East Troy Street  
Tax Office, Attn. Traci Dillard  
Tupelo, MS 38804

This Bid is submitted from (Contractor):

Garnet Electric Company, Inc.  
1615 East State Street  
Sheffield, AL 35660

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for forty-five days after the day of Bid opening. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of Owner's Notice of Award.
3. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:
  - (a) Bidder has examined copies of all the Bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged, if no addenda received, insert "None"):

Number	Date
<u>1</u>	<u>2/26/24</u>
<u>                    </u>	<u>                    </u>
<u>                    </u>	<u>                    </u>

- (b) Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site,

locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

- (c) Bidder has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the GENERAL CONDITIONS, and accepts the determination set forth in paragraph 4.2 of the GENERAL CONDITIONS of the extent of the technical data contained in such reports and drawings upon which Bidder is entitled to rely.
- (d) Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in (c) above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Bidder considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the GENERAL CONDITIONS; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.
- (e) Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the GENERAL CONDITIONS.
- (f) Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- (g) Bidder has given Architect/Engineer written notice to all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Architect/Engineer is acceptable to Bidder.
- (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

- 4. **LUMP SUM BID** - The Bidder will complete the Work, as indicated on the Contract Drawings and/or described in the Specifications for the following lump sum price:

**BID SUMMARY**

**LUMP SUM BASE BID**

Two Million, Two Hundred Sixty Seven Thousand, Six Hundred \_\_\_\_\_ Dollars and zero cents (\$ 2,267,600.00 ).

**AUTHORIZED CONTRACT AMENDMENTS**

(See Document 00700 - GENERAL CONDITIONS, Document 00800 - SUPPLEMENTARY CONDITIONS, and Section 01021 – CASH ALLOWANCES for description of ACA.)

Fifty Thousand Dollars and No cents (\$ 50,000.00 ).

**TOTAL LUMP SUM BID PRICE**

(Total of Lump Sum Base Bid and Authorized Contract Amendments)

Two Million, Three Hundred Seventeen Thousand, Six Hundred \_\_\_\_\_ Dollars and zero cents (\$ 2,317,600.00 ).

**THE ABOVE TOTAL LUMP SUM BID PRICE SHALL NOT INCLUDE ANY AMOUNT THAT IS NOT SPECIFICALLY STATED BY THIS BID FORM TO BE INCLUDED.**

**Unit Price Adjustments of Lump Sum Bid:**

**Lump Sum Base Bid quantities of the Project items are to be determined by the Contractor based on the Contract Documents, Contract Drawings, and Contract Specifications.** If increases or decreases in these quantities occur the Contract Price is to be adjusted by Change Order on the basis of the Unit Prices listed below. Refer to Section 01025 - MEASUREMENT AND PAYMENT for description of Item units and payment measurements.

Specifications Section	Item	Unit	Adjustment Price \$ Per Unit
02220	Grounding Grid Conductor Trench	Linear Ft.	<u>30.25</u>
02220	Trench, 6"	Linear Ft.	<u>30.25</u>
02220	Trench, 12"	Linear Ft.	<u>40.00</u>
02220	Trench, 24"	Linear Ft.	<u>42.50</u>
02220	Trench, 30"	Linear Ft.	<u>45.00</u>
02220	Trench, 36"	Linear Ft.	<u>50.00</u>
02230	Crushed Aggregate Base Course	Square Yd.	<u>150.00</u>
02370	30" dia. drilled pier foundation, Earth	Linear Ft.	<u>495.00</u>
02370	36" dia. drilled pier foundation, Earth	Linear Ft.	<u>550.00</u>
02370	42" dia. drilled pier foundation, Earth	Linear Ft.	<u>605.00</u>
02370	48" dia. drilled pier foundation, Earth	Linear Ft.	<u>660.00</u>
02370	60" dia. drilled pier foundation, Earth	Linear Ft.	<u>825.00</u>
02513	Crushed Limestone Surface Course	Square Yd.	<u>160.00</u>

02930	Seeding and Mulching	Square Yd.	125.00
03300	Concrete Pad Foundation	Cubic Yd.	1,210.00
16112	PVC Conduit, 1"	Linear Ft.	N/A
16112	PVC Conduit, 1½ "	Linear Ft.	16.50
16112	PVC Conduit, 2"	Linear Ft.	20.00
16112	PVC Conduit, 3"	Linear Ft.	25.00
16112	PVC Conduit, 6"	Linear Ft.	40.00
16112	Elbow, 1" PVC, 24" Radius	Each	N/A
16112	Elbow, 1½" PVC, 24" Radius	Each	70.00
16112	Elbow, 2" PVC, 24" Radius	Each	80.00
16112	Elbow, 3" PVC, 36" Radius	Each	160.00
16112	Elbow, 6" PVC, 36" Radius	Each	250.00
16120	LV Power Cable, 600v, 3-1/C No. 3/0 RHW	Linear Ft.	10.00
16120	Control Cable, 4/C No. 6	Linear Ft.	7.50
16120	Control Cable, 2/C No. 8	Linear Ft.	3.25
16120	Control Cable, 4/C No. 8	Linear Ft.	5.90
16120	Control Cable, 2/C No. 10	Linear Ft.	2.40
16120	Control Cable, 3/C No. 10	Linear Ft.	3.00
16120	Control Cable, 4/C No. 10	Linear Ft.	3.30
16120	Control Cable, 7/C No. 10	Linear Ft.	6.00
16120	Fiber Optic Cable	Linear Ft.	2.07
16395	Ground Rod, 3/4" x 10'	Each	175.00
16395	2/0 Copper Ground Grid Conductor	Linear Ft.	14.50
16395	4/0 Copper Ground Grid Conductor	Linear Ft.	18.30
16395	500 kcmil, Copper Ground Grid Conductor	Linear Ft.	25.00



5. SUBCONTRACTORS LIST

DESCRIPTION	COMPANY NAME	BUSINESS ADDRESS
Site Work DIVISION 2	Garnet Electric Co. (SURFACE STONE)	1615 East State St. Sheffield, AL 35660
Concrete DIVISION 3	BH Craig Construction	835 Wall Street Florence, AL 35631
Substation Materials DIVISION 16	Substation Engineering and Design	661 Stuart Lane Pelham, AL 35124
Substation Calibration & Testing DIVISION 16	Aubrey Silvey Testing Division	371 Hamp Jones Road Carrollton, GA 30117

6. Bidder agrees that the Work will be substantially complete on or before **March 15, 2025** and completed and ready for final payment in accordance with paragraph 14.8 of the GENERAL CONDITIONS on or before **April 15, 2025**. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

7. The following documents are attached to and made a condition of this Bid:

- (a) Required Bid Security in the form of 5% Bid Bond or Bank Check in the amount of 5% of the Bid.
- (b) Bidder's Qualification Statement, Document 00420.
- (c) Drug-Free Workplace Affidavit, Document 00482.
- (d) Equal Opportunity Provisions, Document 00820.
- (e) Copies of Contractor's and Subcontractor's License Certificates

8. Communications concerning this Bid shall be addressed to:

The address of Bidder indicated below.

Principal Contact: Brandon Harrison

Email: bharrison@garnetelectric.com

Alternate Contact: Jerrold Skipworth

Email: jskipworth@garnetelectric.com

Phone Number: 256-381-4062

Fax: 256-381-4066

Address: 1615 East State St.

Sheffield, AL 35660

9. The terms used in this Bid which are defined in the GENERAL CONDITIONS or Instructions will have the meanings assigned to them in the GENERAL CONDITIONS or Instructions.

Submitted on March 14, 2024.

State Contractor License/Certificate No. 12049-MC.

If Bidder is:

**An Individual**

\_\_\_\_\_  
(Individual's Signature) (SEAL)

\_\_\_\_\_  
(Individual's Name - Print/Type)

doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

**A Partnership**

\_\_\_\_\_  
(Firm Name) (SEAL)

\_\_\_\_\_  
(Signature of General Partner)

\_\_\_\_\_  
(Print/Type)

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

**A Corporation**

Garnet Electric Company, Inc.

(Corporation Name)

By: Jerrold Skipworth Title: President  
(Signature of person authorized to sign)

Jerrold Skipworth

(Print/Type name of person authorized to sign)



(Corporate Seal)

Attest: [Signature]  
(Secretary)

Alabama

(State of incorporation)

Business address: 1615 East State Street

Sheffield, AL 35660

Phone No.: 256-381-4062

**A Joint Venture**

\_\_\_\_\_ (SEAL)  
(Joint Venture)

By: \_\_\_\_\_  
(Signature of Joint Venturer)

By: \_\_\_\_\_  
(Signature of Joint Venturer)

\_\_\_\_\_  
(Type/Print)

\_\_\_\_\_  
(Type/Print)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

END OF DOCUMENT

**DOCUMENT 00100F  
BID ENVELOPE INFORMATION FORM**

**BIDDER:**

This form is for the Bidder's convenience as noted in Section 00100 - INSTRUCTIONS TO BIDDERS. This form is not required; however, **the information is required on the front of the Bid Envelope.**

Add the required information of all subcontractors proposed. Extend form as required.

**Allen&Hoshall**  
since 1915

Project: North Green 161:15 kV Substation

Owner: Tupelo Water and Light Department  
Tupelo City Hall

Address: 71 East Troy Street  
Tax Office, Attn. Traci Dillard  
Tupelo, MS 38804

Bidder: William E. Groves Construction, LLC dba Groves Electrical Services

Address: 3135 Grapevine Rd, Madisonville, KY 42431

Bidder License/Certificate No. 11847-MC

Subcontractor: N/A

Address: \_\_\_\_\_

Subcontractor License/Certificate No. \_\_\_\_\_

END OF DOCUMENT

**DOCUMENT 00300  
BID FORM**

Project Identification: North Green 161:15 kV Substation

Contract Identification: 81925

This Bid is submitted to:

Tupelo Water and Light Department  
Tupelo City Hall  
71 East Troy Street  
Tax Office, Attn. Traci Dillard  
Tupelo, MS 38804

This Bid is submitted from (Contractor):

William E. Groves Construction, LLC dba Groves Electrical Services  
3135 Grapevine Rd  
Madisonville, KY 42431  
Phone: (270) 825-1437

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for forty-five days after the day of Bid opening. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of Owner's Notice of Award. \*Please see attached Clarification Letter provided by Groves Electrical Services
3. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:
  - (a) Bidder has examined copies of all the Bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged, if no addenda received, insert "None"):

Number	Date
<u>1</u>	<u>02/26/2024</u>
_____	_____
_____	_____

- (b) Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site,

locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

- (c) Bidder has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the GENERAL CONDITIONS, and accepts the determination set forth in paragraph 4.2 of the GENERAL CONDITIONS of the extent of the technical data contained in such reports and drawings upon which Bidder is entitled to rely.
- (d) Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in (c) above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Bidder considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the GENERAL CONDITIONS; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.
- (e) Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the GENERAL CONDITIONS.
- (f) Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- (g) Bidder has given Architect/Engineer written notice to all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Architect/Engineer is acceptable to Bidder.
- (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

- 4. **LUMP SUM BID** - The Bidder will complete the Work, as indicated on the Contract Drawings and/or described in the Specifications for the following lump sum price:

**BID SUMMARY**

**LUMP SUM BASE BID**

Two Million Six Hundred Forty-Eight Thousand Two Hundred Eighty-Eight \_\_\_\_\_ Dollars and 00/100 cents (\$ 2,648,288.00 ).

**AUTHORIZED CONTRACT AMENDMENTS**

(See Document 00700 - GENERAL CONDITIONS, Document 00800 - SUPPLEMENTARY CONDITIONS, and Section 01021 – CASH ALLOWANCES for description of ACA.)

\_\_\_\_\_ Fifty Thousand \_\_\_\_\_ Dollars and \_\_\_\_\_ No \_\_\_\_\_ cents (\$ \_\_\_\_\_ 50,000.00 \_\_\_\_\_).

**TOTAL LUMP SUM BID PRICE**

(Total of Lump Sum Base Bid and Authorized Contract Amendments)

Two Million Six Hundred Ninety-Eight Thousand Two Hundred Eighty-Eight \_\_\_\_\_ Dollars and \_\_\_\_\_ cents (\$ 2,698,288.00 ).

**THE ABOVE TOTAL LUMP SUM BID PRICE SHALL NOT INCLUDE ANY AMOUNT THAT IS NOT SPECIFICALLY STATED BY THIS BID FORM TO BE INCLUDED.**

**Unit Price Adjustments of Lump Sum Bid:**

Lump Sum Base Bid quantities of the Project items are to be determined by the Contractor based on the Contract Documents, Contract Drawings, and Contract Specifications. If increases or decreases in these quantities occur the Contract Price is to be adjusted by Change Order on the basis of the Unit Prices listed below. Refer to Section 01025 - MEASUREMENT AND PAYMENT for description of Item units and payment measurements.

Specifications Section	Item	Unit	Adjustment Price \$ Per Unit
02220	Grounding Grid Conductor Trench	Linear Ft.	\$9.75
02220	Trench, 6"	Linear Ft.	\$10.25
02220	Trench, 12"	Linear Ft.	\$15.50
02220	Trench, 24"	Linear Ft.	\$21.00
02220	Trench, 30"	Linear Ft.	\$31.00
02220	Trench, 36"	Linear Ft.	\$40.75
02230	Crushed Aggregate Base Course	Square Yd.	\$27.00
02370	30" dia. drilled pier foundation, Earth	Linear Ft.	\$359.25
02370	36" dia. drilled pier foundation, Earth	Linear Ft.	\$517.31
02370	42" dia. drilled pier foundation, Earth	Linear Ft.	\$704.12
02370	48" dia. drilled pier foundation, Earth	Linear Ft.	\$919.66
02370	60" dia. drilled pier foundation, Earth	Linear Ft.	\$1436.97
02513	Crushed Limestone Surface Course	Square Yd.	\$26.00

011724

81925

02930	Seeding and Mulching	Square Yd.	\$20.00
03300	Concrete Pad Foundation	Cubic Yd.	\$2000.00
16112	PVC Conduit, 1"	Linear Ft.	\$7.00
16112	PVC Conduit, 1½"	Linear Ft.	\$8.10
16112	PVC Conduit, 2"	Linear Ft.	\$10.09
16112	PVC Conduit, 3"	Linear Ft.	\$12.25
16112	PVC Conduit, 6"	Linear Ft.	\$41.78
16112	Elbow, 1" PVC, 24" Radius	Each	\$23.32
16112	Elbow, 1½" PVC, 24" Radius	Each	\$28.02
16112	Elbow, 2" PVC, 24" Radius	Each	\$37.00
16112	Elbow, 3" PVC, 36" Radius	Each	\$79.08
16112	Elbow, 6" PVC, 36" Radius	Each	\$219.95
16120	LV Power Cable, 600v, 3-1/C No. 3/0 RHW	Linear Ft.	\$12.25
16120	Control Cable, 4/C No. 6	Linear Ft.	\$11.50
16120	Control Cable, 2/C No. 8	Linear Ft.	\$6.50
16120	Control Cable, 4/C No. 8	Linear Ft.	\$8.50
16120	Control Cable, 2/C No. 10	Linear Ft.	\$5.65
16120	Control Cable, 3/C No. 10	Linear Ft.	\$6.75
16120	Control Cable, 4/C No. 10	Linear Ft.	\$8.35
16120	Control Cable, 7/C No. 10	Linear Ft.	\$14.25
16120	Fiber Optic Cable	Linear Ft.	\$4.75
16395	Ground Rod, 3/4" x 10'	Each	\$32.00
16395	2/0 Copper Ground Grid Conductor	Linear Ft.	\$14.56
16395	4/0 Copper Ground Grid Conductor	Linear Ft.	\$19.70
16395	500 kcmil, Copper Ground Grid Conductor	Linear Ft.	\$26.50



5. SUBCONTRACTORS LIST

DESCRIPTION	COMPANY NAME	BUSINESS ADDRESS
Site Work DIVISION 2	N/A	
Concrete DIVISION 3	William E. Groves Construction, LLC dba Groves Electrical Services	3135 Grapevine Rd Madisonville, KY 42431
Substation Materials DIVISION 16	Substation Engineering	661 Stuart Ln Pelham, AL 35124
Substation Calibration & Testing DIVISION 16	William E. Groves Construction, LLC dba Groves Electrical Services	3135 Grapevine Rd Madisonville, KY 42431

6. Bidder agrees that the Work will be substantially complete on or before **March 15, 2025** and completed and ready for final payment in accordance with paragraph 14.8 of the GENERAL CONDITIONS on or before **April 15, 2025**. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

7. The following documents are attached to and made a condition of this Bid:

- (a) Required Bid Security in the form of 5% Bid Bond or Bank Check in the amount of 5% of the Bid.
- (b) Bidder's Qualification Statement, Document 00420. (Pre-Qualified)
- (c) Drug-Free Workplace Affidavit, Document 00482.
- (d) Equal Opportunity Provisions, Document 00820.
- (e) Copies of Contractor's and Subcontractor's License Certificates

8. Communications concerning this Bid shall be addressed to:

The address of Bidder indicated below.

Principal Contact: Brett Sizemore, Project Manager/Estimator  
 Email: blsizemore@wegroves.com  
 Alternate Contact: Mike Rose, Substation Operations Director  
 Email: mrose@wegroves.com  
 Phone Number: 270-825-1437  
 Fax: 270-825-1485  
 Address: 3135 Grapevine Rd  
Madisonville, KY 42431

011724

81925

9. The terms used in this Bid which are defined in the GENERAL CONDITIONS or Instructions will have the meanings assigned to them in the GENERAL CONDITIONS or Instructions.

Submitted on March 14, 2024.

State Contractor License/Certificate No. 11847-MC.

If Bidder is:

**An Individual**

\_\_\_\_\_ (SEAL)  
(Individual's Signature)

\_\_\_\_\_  
(Individual's Name - Print/Type)

doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

**A Partnership**

\_\_\_\_\_ (SEAL)  
(Firm Name)

\_\_\_\_\_  
(Signature of General Partner)

\_\_\_\_\_  
(Print/Type)

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

011724

81925

**A Corporation** (A Limited Liability Company)

William E. Groves Construction, LLC dba Groves Electrical Services (a subsidiary of Quanta Services, Inc.)  
(Corporation Name)

By: [Signature] Title: President  
(Signature of person authorized to sign)

Andy Bachman  
(Print/Type name of person authorized to sign)

(Corporate Seal)  
Attest: [Signature]  
(Secretary)

KY  
(State of incorporation)

Business address: 3135 Grapevine Rd  
Madisonville, KY 42431

Phone No.: 270-825-1437

**A Joint Venture**

\_\_\_\_\_ (SEAL)  
(Joint Venture)

By: \_\_\_\_\_  
(Signature of Joint Venturer)

By: \_\_\_\_\_  
(Signature of Joint Venturer)

\_\_\_\_\_  
(Type/Print)

\_\_\_\_\_  
(Type/Print)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

END OF DOCUMENT

**DOCUMENT 00100F  
BID ENVELOPE INFORMATION FORM**

**BIDDER:**

This form is for the Bidder's convenience as noted in Section 00100 - INSTRUCTIONS TO BIDDERS. This form is not required; however, **the information is required on the front of the Bid Envelope.**

Add the required information of all subcontractors proposed. Extend form as required.

**Allen&Hoshall**  
since 1915

Project: North Green 161:15 kV Substation

Owner: Tupelo Water and Light Department  
Tupelo City Hall

Address: 71 East Troy Street  
Tax Office, Attn. Traci Dillard  
Tupelo, MS 38804

Bidder: Service Electric Company

Address: 1631 East 25th Street Chattanooga, TN 37404

Bidder License/Certificate No. 07025-SC

Subcontractor: Service Electric Company

Address: 1631 East 25th Street Chattanooga, TN 37404

Subcontractor License/Certificate No. 07025-SC

END OF DOCUMENT



A  QUANTA SERVICES COMPANY

## PROPOSAL

Presented to:

Tupelo Water and Light

North Green 161 - 15kV Substation

BID DUE DATE: 3/14/24



locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

- (c) Bidder has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the GENERAL CONDITIONS, and accepts the determination set forth in paragraph 4.2 of the GENERAL CONDITIONS of the extent of the technical data contained in such reports and drawings upon which Bidder is entitled to rely.
- (d) Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in (c) above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Bidder considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the GENERAL CONDITIONS; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.
- (e) Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the GENERAL CONDITIONS.
- (f) Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- (g) Bidder has given Architect/Engineer written notice to all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Architect/Engineer is acceptable to Bidder.
- (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

4. **LUMP SUM BID** - The Bidder will complete the Work, as indicated on the Contract Drawings and/or described in the Specifications for the following lump sum price:

**BID SUMMARY**

**LUMP SUM BASE BID**

Two Million, Eight Hundred Thousand \_\_\_\_\_ Dollars and 00 cents (\$ 2,800,000.00 ).

**AUTHORIZED CONTRACT AMENDMENTS**

(See Document 00700 - GENERAL CONDITIONS, Document 00800 - SUPPLEMENTARY CONDITIONS, and Section 01021 – CASH ALLOWANCES for description of ACA.)

\_\_\_\_\_ Fifty Thousand \_\_\_\_\_ Dollars and \_\_\_\_\_ No \_\_\_\_\_ cents (\$ \_\_\_\_\_ 50,000.00 ).

**TOTAL LUMP SUM BID PRICE**

(Total of Lump Sum Base Bid and Authorized Contract Amendments)

Two Million, Eight Hundred Fifty Thousand \_\_\_\_\_ Dollars and 00 cents (\$ 2,850,000.00 ).

**THE ABOVE TOTAL LUMP SUM BID PRICE SHALL NOT INCLUDE ANY AMOUNT THAT IS NOT SPECIFICALLY STATED BY THIS BID FORM TO BE INCLUDED.**

**Unit Price Adjustments of Lump Sum Bid:**

Lump Sum Base Bid quantities of the Project items are to be determined by the Contractor based on the Contract Documents, Contract Drawings, and Contract Specifications. If increases or decreases in these quantities occur the Contract Price is to be adjusted by Change Order on the basis of the Unit Prices listed below. Refer to Section 01025 - MEASUREMENT AND PAYMENT for description of Item units and payment measurements.

Specifications Section	Item	Unit	Adjustment Price \$ Per Unit
02220	Grounding Grid Conductor Trench	Linear Ft.	<u>\$8.74</u>
02220	Trench, 6"	Linear Ft.	<u>\$11.64</u>
02220	Trench, 12"	Linear Ft.	<u>\$15.52</u>
02220	Trench, 24"	Linear Ft.	<u>\$19.40</u>
02220	Trench, 30"	Linear Ft.	<u>\$23.28</u>
02220	Trench, 36"	Linear Ft.	<u>\$31.03</u>
02230	Crushed Aggregate Base Course	Square Yd.	<u>\$64.66</u>
02370	30" dia. drilled pier foundation, Earth	Linear Ft.	<u>\$1,650.00</u>
02370	36" dia. drilled pier foundation, Earth	Linear Ft.	<u>\$1,650.00</u>
02370	42" dia. drilled pier foundation, Earth	Linear Ft.	<u>\$1,650.00</u>
02370	48" dia. drilled pier foundation, Earth	Linear Ft.	<u>\$1,650.00</u>
02370	60" dia. drilled pier foundation, Earth	Linear Ft.	<u>\$1,750.00</u>
02513	Crushed Limestone Surface Course	Square Yd.	<u>\$56.67</u>



011724

81925

02930	Seeding and Mulching	Square Yd.	\$12.00
03300	Concrete Pad Foundation	Cubic Yd.	\$1,650.00
16112	PVC Conduit, 1"	Linear Ft.	\$9.66
16112	PVC Conduit, 1½"	Linear Ft.	\$13.63
16112	PVC Conduit, 2"	Linear Ft.	\$13.65
16112	PVC Conduit, 3"	Linear Ft.	\$17.06
16112	PVC Conduit, 6"	Linear Ft.	\$33.38
16112	Elbow, 1" PVC, 24" Radius	Each	\$41.11
16112	Elbow, 1½" PVC, 24" Radius	Each	\$50.62
16112	Elbow, 2" PVC, 24" Radius	Each	\$50.67
16112	Elbow, 3" PVC, 36" Radius	Each	\$63.34
16112	Elbow, 6" PVC, 36" Radius	Each	\$70.00
16120	LV Power Cable, 600v, 3-1/C No. 3/0 RHW	Linear Ft.	\$12.30
16120	Control Cable, 4/C No. 6	Linear Ft.	\$6.50
16120	Control Cable, 2/C No. 8	Linear Ft.	\$6.12
16120	Control Cable, 4/C No. 8	Linear Ft.	\$7.00
16120	Control Cable, 2/C No. 10	Linear Ft.	\$4.00
16120	Control Cable, 3/C No. 10	Linear Ft.	\$4.54
16120	Control Cable, 4/C No. 10	Linear Ft.	\$5.92
16120	Control Cable, 7/C No. 10	Linear Ft.	\$9.26
16120	Fiber Optic Cable	Linear Ft.	\$5.00
16395	Ground Rod, 3/4" x 10'	Each	\$223.55
16395	2/0 Copper Ground Grid Conductor	Linear Ft.	\$9.94
16395	4/0 Copper Ground Grid Conductor	Linear Ft.	\$12.96
16395	500 kcmil, Copper Ground Grid Conductor	Linear Ft.	\$14.81



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Johnny Timmons, Manager TW&L

**DATE:** April 24, 2024

**SUBJECT:** IN THE MATTER OF APPROVAL OF CONTRACT WITH POWER GRID COMPANY FOR BID # 2023-065WL (LABOR AND MATERIALS AT THE NORTH GREEN STREET SUBSTATION) **JT**

---

**Request:**

I recommend award of the attached contract with Power Grid Company for the Labor and Materials for the North Green Street Substation. The contract price for this project is \$2,130,000.00.

Please let me know if you have any questions.

## DOCUMENT 00500 AGREEMENT

THIS AGREEMENT is entered into as of the **7th** day of **May 2024** between **Tupelo Water and Light Department** (hereinafter called Owner) and **Power Grid Company** (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### SECTION 1. WORK

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: **North Green 161:15 kV Substation**.

### SECTION 2. ENGINEER/ARCHITECT

Allen & Hoshall (hereinafter called Engineer/Architect) is to act as Owner's representative, and shall have the duties and responsibilities and the rights and authority assigned to Engineer/Architect in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### SECTION 3. CONTRACT TIME

3.1 Completion. The Work will be substantially completed on or before **March 15, 2025**, and completed and ready for final payment in accordance with paragraph 14.8 of the General Conditions on or before **April 15, 2025**.

3.2 Liquidated Damages. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner five hundred dollars (\$500) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if Contractor shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner Five Hundred Dollars (\$500) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

### SECTION 4. CONTRACT PRICE

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents in current funds as follows:

<b>ITEM 1</b>	<b>North Green 161:15 kV Substation</b>	<b>\$2,080,000.00</b>
	<b>Authorized Contract Amendments</b>	<b>\$50,000.00</b>
	<b>TOTAL CONTRACT PRICE -</b>	<b>\$2,130,000.00</b>

**Two Million One Hundred and Thirty Thousand Dollars and No Cents**

All specified allowances are included in the above price and have been computed in accordance with the General Conditions.

## SECTION 5. PAYMENT PROCEDURES

5.1 Applications for Payment. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer/Architect as provided in the General Conditions.

5.2 Progress Payments. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer/Architect on or about the 15th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values established in accordance with paragraph 2.8 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided in the General Requirements. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer/Architect shall determine, or Owner may withhold, in accordance with paragraph 14.3(d) of the General Conditions.

90% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.2 of the General Conditions).

90% of Work completed

5.3 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.8 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer/Architect as provided in paragraph 14.8 of the General Conditions.

## SECTION 6. INTEREST

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

## SECTION 7. CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and all Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

7.2 Contractor has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions, and accepts the determination set forth in paragraph 4.2 of the General Conditions of the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to rely.

7.3 Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

7.4 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the General Conditions.

7.5 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.6 Contractor has given Engineer/Architect written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer/Architect is acceptable to Contractor.

## **SECTION 8. CONTRACT DOCUMENTS**

The Contract Documents, which comprise the entire agreement between Owner and Contractor concerning the Work, consist of the following:

- (a) This Agreement.
- (b) Performance Bond, Payment Bond and other Bonds.
- (c) Notice of Award.
- (d) General Conditions.
- (e) Supplementary Conditions.
- (f) These Specifications - See Document 00003 - TABLE OF CONTENTS.
- (g) Drawings, consisting of a cover sheet and sheets numbered as listed in Document 00004 - LIST OF DRAWINGS, TABLES AND SCHEDULES of specification.
- (h) Addenda numbers 1 to 1, inclusive.
- (i) Contractor's Bid.
- (j) The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.4 of the General Conditions.

The documents listed in paragraphs (a) through (j) above are attached to this Agreement (except as expressly noted otherwise above). There are no Contract Documents other than those listed above in this Section 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.4 of the General Conditions.

## **SECTION 9. MISCELLANEOUS**

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2 No assignments by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and

specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from duty or responsibility under the Contract Documents.

9.3 Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreement sand obligations contained in the Contract Documents.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in quadruplicate. One counterpart each has been delivered to Contractor and Engineer/Architect, and two to Owner.

This Agreement will be effective on **May 7, 2024**.

Owner: **Tupelo Water and Light Department**

Contractor: **Power Grid Company**

By: \_\_\_\_\_

By: \_\_\_\_\_

[Corporate Seal]

[Corporate Seal]

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Address for giving notice:

Address for giving notice:

320 North Front Street

227 County Line Road

Tupelo, MS 38802

Fayetteville, GA 30214

\_\_\_\_\_

\_\_\_\_\_

License/Certificate No.: \_\_\_\_\_

Agent for service of process:

\_\_\_\_\_

(If Owner is a public body attach )  
(evidence of authority to sign )  
(and resolution or other document )  
(authorizing execution. )

(If Contractor is a corporation )  
(attach evidence of authority )  
(to sign. )

END OF DOCUMENT



## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Johnny Timmons, Manager TW&L  
**DATE:** April 22, 2024  
**SUBJECT:** IN THE MATTER OF AN EMERGENCY PURCHASE OF THREE (3) 500 kVA THREE PHASE PADMOUNT TRANSFORMERS **JT**

---

**Request:**

I respectfully request your approval of an emergency purchase for the following:

- Three (3) 500 kVA 7200/12870 Delta – 120/208Y three phase padmount transformers – On April 9, 2024, Arkansas Electric submitted the lowest quote for these three transformers at \$30,950.00 each, for a total of \$92,850.00. This cost is subject to review at the time of shipment. The lead time for these transformers is a minimum of thirty-six (36) weeks.

Note: The second quote received was from Howard Industries in the amount of \$49,212.00 each with a lead time of 52 weeks.

This emergency purchase is requested due to the following factors:

- Volatility of the metals market and key transformer and wire cost factors beyond the manufacturer's control
- Lead/delivery times

Please let me know if you have any questions.

**ORDER****ORDER AUTHORIZING EMERGENCY PURCHASE OF  
THREE (3) 500 kVA THREE PHASE PADMOUNT TRANSFORMERS**

**WHEREAS**, the Tupelo Water and Light Department has nearly exhausted its supply of 500 kVA three phase padmount transformers; and

**WHEREAS**, in order to replenish these transformers, quotes for three (3) 500 kVA three phase padmount transformers were obtained, and on April 9, 2024, Arkansas Electric Cooperatives, Inc. submitted the lowest and best quote for these three (3) transformers at \$30,950.00 each, for a total of \$92,850.00; and

**WHEREAS**, due to the lead time of a minimum of thirty-six (36) weeks for these transformers, Arkansas Electric Cooperatives, Inc. would not hold the quote, and the cost is subject to review at the time of shipment; and

**WHEREAS**, the manufacturer cited the volatility of the metals market and other key factors beyond the manufacturer's control for being unable to guarantee the pricing; and

**WHEREAS**, an emergency purchase is authorized by Miss. Code Ann. § 31-7-13(k) to allow governing authorities to emergency purchase where it would otherwise be a detriment to the interest of the municipality to allow time for obtaining firm quotes and issuing purchase orders; and

**WHEREAS**, these materials and supplies are critical to placement of new and replacement of existing electrical projects, and the lead times involved between order and delivery pose an emergency of running out of these supplies and materials.

**NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF TUPELO, MISSISSIPPI**, as follows:

**SECTION 1.** The prefatory clauses above are incorporated in the findings of the City Council.

**SECTION 2.** The City Council finds that further delay will be detrimental to the city, and an emergency purchase is required to order the materials and supplies without a firm delivery price.

**SECTION 3.** The Water and Light Department is authorized on an emergency basis to order these transformers without a firm delivery price.



The foregoing order was proposed in a motion by Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, and after discussion, no council member having called for a reading, was brought to a vote as follows:

- Councilman Chad Mims \_\_\_\_\_
- Councilman Lynn Bryan \_\_\_\_\_
- Councilman Travis Beard \_\_\_\_\_
- Councilwoman Nettie Davis \_\_\_\_\_
- Councilman Buddy Palmer \_\_\_\_\_
- Councilwoman Janet Gaston \_\_\_\_\_
- Councilwoman Rosie Jones \_\_\_\_\_

Whereupon, the motion having received a majority of affirmative votes, the President of the Council declared that the Ordinance has been passed and adopted on this the \_\_\_\_\_ day of May, 2024.

**CITY OF TUPELO, MISSISSIPPI**

**BY:** \_\_\_\_\_  
**Lynn Bryan, President**

**ATTEST:**

\_\_\_\_\_  
**Missy Shelton, Clerk of the Council**

**APPROVED:**

\_\_\_\_\_  
**Todd Jordan, Mayor**

**Date:** \_\_\_\_\_

CUSTOMER COPY

QUOTE # 721547-00  
QUOTED DATE 4/09/24

BILL TO:  
ARKANSAS ELECTRIC COOPERATIVE  
P.O. BOX 194208

SHIP TO:  
TUPELO WATER & LIGHT  
320 N. FRONT STREET  
PO BOX 1485

LITTLE ROCK

AR72209

TUPELO

MS38801

DESCRIPTION PRODUCT NUMBER QTY UNIT PRICE EXT PRICE

TRANSFORMER LOSS DATA IS BASED ON ANSI C57.12.00:

LOSS GRT: AVE VOLT% : 100

NL TEMP BASIS: 85 LL TEMP BASIS: 85

FOB DESTINATION. FREIGHT PREPAID AND ALLOWED.

\*QUOTED PER TUPELO WATER AND LIGHT TRANSFORMER SPECIFICATIONS.

-QUOTING COPPER PRIMARY AND ALUMINUM SECONDARY WINDINGS. ERMCO DOES NOT PROVIDE COPPER SECONDARY WINDINGS.

ITEM 1  
ERMCO 3 PHASE PAD TRANSFORMER 3PH-PAD 3 30,950.00 92,850.00

ITEM# : 1.00

NL= 578 LL= 4620 IZ=5.500 TL= 5198

OPTIONS BEGIN.....

- ERMCO ERMCO STD 3PH TRANSFORMER
- 0500 500 KVA
- D DELTA
- 563D 12870 95 BIL
- N NO NEUTRAL GROUND
- 003 2 TAPS 2.5% ABOVE & BELOW NORMAL
- P T/C HANDLE IN P.SIDE COMPARTMENT
- 112 208Y/120 LH
- M4 ANSI MINIMUM K DIM=4.5
- L LOOP FEED
- 000 GENERIC STD FIXED STUD WELL
- G15 STD INSERT SYSTEM SELECT
- 000 ELBOW ARRESTERS NOT SELECTED
- 000 NO INS. STANDOFF BUSHING SELECTED
- 000 NO INS. PROTECTIVE CAP SELECTED
- S STAGGERED LV BUSHING ARRANGEMENT
- 000 ERMCO STD STUD LV BUSHINGS
- 800 8 HOLE NEMA SPADES
- E58 DUAL SENSING BAYO & LINK (GENERIC)
- A00 STD ISOLATION LINK BY CONFIGURATOR
- 000 MILD STEEL TANK & BASE
- 000 MILD STEEL CABINET & SILL
- 0 STD CABINET PARTITION
- 0 PADMOUNT GREEN FINISH
- 0 STANDARD HARDWARE.
- 11 SILICON BRONZE PENTABOLT
- 0 GROUND BOSS IN PRIMARY & SECONDARY
- 00 STANDARD AIR SPACE

\*SUBJECT TO ESCALATION  
DELIVERY SOMETIME 2025

*Wayne Garner*

CUSTOMER COPY

QUOTE # 721547-00  
QUOTED DATE 4/09/24

BILL TO:  
ARKANSAS ELECTRIC COOPERATIVE  
P.O. BOX 194208

SHIP TO:  
TUPELO WATER & LIGHT  
320 N. FRONT STREET  
PO BOX 1485

LITTLE ROCK

AR72209

TUPELO

MS38801

DESCRIPTION	PRODUCT NUMBER	QTY	UNIT PRICE	EXT PRICE
00	GENERIC PR VALVE .25 10PSI 35SCFM			
Z	ERMCO STD DRAIN VALVE W/ SAMPLER			
S	DRAIN IN SECONDARY COMPARTMENT			
0	1"NPT FILL PLUG			
Z	SEC ERMCO STD LIQUID LEVEL GAUGE			
Z	ERMCO STD VACUUM GAGE			
Z	ERMCO STD TEMPERATURE GAGE			
0	STD TX OIL			
A	STANDARD TWO NAMEPLATES			
00	STD KVA DECAL OUTSIDE			
00	DOES NOT REQUIRE PCB DECAL.			
11	DANGER "MR.OUCH" GENERIC (3-52-02)			
02	WARNING "MR OUCH" GENERIC(3-52-01)			
99	STD PRIMARY DECAL INSIDE(HV)			
00	NO SECONDARY VOLTAGE DECALS			
00	STD ERMCO "E" LOGO DECAL (3-8-151)			
0	STANDARD PALLET			
N	NO SPECIAL TEST NEEDED			
OPTIONS END.....				

48 HOUR NOTICE

100% CTR W/ SHIPMENT

DELIVERY TO BE FLAT BED

# HOWARD **Hi** INDUSTRIES

Howard Industries, Inc.  
Utility Transformer Division  
P.O. Box 1588  
Laurel, MS 39441-1588  
Phone: 601 425 3151  
Fax: 601 649 8090

# QUOTATION CUSTOMER COPY

CASEY TURNER  
TUPELO WATER & LT. DEPT  
PO BOX 1485 ACCT PAYABLE  
TUPELO, MS 38802

FOB: DESTINATION  
PRICING: \* SEE STATEMENT BELOW \*  
AGENT: HOWARD AGENCY

VALIDITY:  
TERMS: Net 30 Days  
INQUIRY:

QUOTATION NO: ME-6991  
QUOTATION DATE:  
PAGE NO: 1

Item	Qty	Description	Unit Price	Shipment ARO
ITEM 1	3	PRODUCT: 3-PHASE PADMOUNT ANSI C57.12.34 DEAD FRONT SINGLE VOLTAGE KVA: 500 KVA HV: 12870 DELTA 95KV BIL LV: 208Y/120 30KV BIL TAPS: (2) 2-1/2 ABOVE & BELOW IMPED = 5.2 OIL TYPE: MINERAL STOCK NUMBER: CU/CU	\$55,146.00	52-52 WKS
ITEM 2	3	PRODUCT: 3-PHASE PADMOUNT ANSI C57.12.34 DEAD FRONT SINGLE VOLTAGE KVA: 500 KVA HV: 12870 DELTA 95KV BIL LV: 208Y/120 30KV BIL TAPS: (2) 2-1/2 ABOVE & BELOW IMPED = 4.6 OIL TYPE: MINERAL STOCK NUMBER: CU/AL	\$49,212.00	52-52 WKS

QUOTED PER CUSTOMER INQUIRY DATED 4/9/24  
NON EVALUATED  
THREE PHASE PAD DEAD FRONT LOOP FEED SPLIT TAPS  
WELLS/INSERTS BAYONET FUSING 8 HOLE SPADES  
  
**\*\*NOTE\*\***  
 \* DUE TO CURRENT COST VOLATILITY, HOWARD INDUSTRIES RESERVES THE RIGHT TO CHANGE PRICES AT ANY TIME TO COVER INCREASES IN THE KEY TRANSFORMER COST FACTORS BEYOND THE COMPANY'S CONTROL.

Item # 23.

**CONTINUED ON NEXT PAGE**

**UNCONTROLLED COPY**  
UNLESS VIEWED ON A PC FROM THE 'QCShare on Howardpdcc Drive

Document 23  
Revision 1  
Authorized ISS

# HOWARD **Hi** INDUSTRIES

Howard Industries, Inc.  
Utility Transformer Division  
P.O. Box 1588  
Laurel, MS 39441-1588  
Phone: 601 425 3151  
Fax: 601 649 8090

# QUOTATION CUSTOMER COPY

CASEY TURNER  
TUPELO WATER & LT. DEPT  
PO BOX 1485 ACCT PAYABLE  
TUPELO, MS 38802

FOB: DESTINATION  
PRICING: \* SEE STATEMENT BELOW \*  
AGENT: HOWARD AGENCY

VALIDITY:  
TERMS: Net 30 Days  
INQUIRY:

QUOTATION NO: ME-6991  
QUOTATION DATE:  
PAGE NO: 2

Item	Qty	Description	Unit Price	Shipment ARO
		<p>DUE TO COVID-19, LABOR AND RAW MATERIAL SHORTAGES, AS WELL AS OTHER SUPPLY CHAIN DISRUPTIONS, HOWARD INDUSTRIES RESERVES THE RIGHT TO MODIFY LEAD TIMES AT ANY TIME ON BOTH ORDERS THAT HAVE ALREADY BEEN PLACED AND ON FUTURE ORDERS.</p> <p>ORDERS REQUIRING APPROVAL DRAWINGS: LEADTIMES QUOTED ASSUME THAT APPROVAL DRAWINGS WILL BE SIGNED AND RETURNED TO HOWARD INDUSTRIES WITHIN TWO WEEKS OF RECEIPT OF SAID DRAWING. SHOULD THE PROCESS REQUIRE ANY ADDITIONAL TIME BEYOND THESE TWO WEEKS, THAT ADDITIONAL TIME WILL BE ADDED TO THE QUOTED LEADTIME.</p> <p>TRANSFORMERS ON THIS QUOTATION ARE DESIGNED TO COMPLY WITH DOE EFFICIENCY REQUIREMENTS EFFECTIVE FOR COVERED TRANSFORMERS COMPLETING MANUFACTURE BEGINNING JANUARY 1, 2016.</p>		

Item # 23.  
Document 23  
Revised  
Authorized RS

*Mary Ellis*  
**SUBMITTED BY MARY ELLIS**

**LAST PAGE**

**UNCONTROLLED COPY**  
UNLESS VIEWED ON A PC FROM THE 'QCShare on Howardpedc Drive



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Johnny Timmons, Manager TW&L

**DATE** April 24, 2024

**SUBJECT:** IN THE MATTER OF REQUEST TO REJECT BID NO. 2024-012WL (WATER MATERIALS) **JT**

---

**Request:**

I recommend that you reject Bid No. 2024-012WL (Water Materials – 6 Month Supply Bid) at your regular meeting on Tuesday, May 7, 2024. We did not receive any bid responses. These items will be rebid as soon as possible.

Bid 2024-012WL No bids

Traci Dillard <Traci.Dillard@tupeloms.gov>

Thu 4/18/2024 10:41 AM

To:Pam Blasingame <Pam.Blasingame@tupeloms.gov>

← ↻ 🔒 https://www.tupelomsbids.com/jobs/15381/bidding/view?slug=2024-012wl-water-materials

# TUPELO

AN ALL-AMERICA CITY

HOME MY GOVERNMENT

- Home
- Public Bids
- Private Bids
- Bid Calendar
- Upload Files
- Manage My Account

### Download Queue

Items: 0 Total: \$0.00

 [View Download Queue](#)

### Login

You are signed in as **tracidillard**

[Manage my account](#)  
[Logout](#)

You must be logged in to download files.

## 2024-012WL - Water Materials

Tupelo, MS (T-NR-E)

- Details
- Specs
- Plan Holders
- Activity
- View Bids**

No bids have been received.

Traci Dillard

Controller  
City of Tupelo  
PO Box 1485  
Tupelo, MS 38802

P:662-841-6456  
C:662-401-6597



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Johnny Timmons, Manager TW&L

**DATE:** May 2, 2024

**SUBJECT:** IN THE MATTER OF APPROVAL OF THE TRAFFIC COMMITTEE  
MINUTES OF MAY 2, 2024 **JT**

---

Request:

Attached for your review and approval are the Tupelo Traffic Committee summary and minutes from our meeting on May 2, 2024.



# Memo

**To:** Tupelo City Council  
**From:** Tupelo Traffic Committee  
**Subject:** Review/Approve Traffic Committee Minutes of May 2, 2024  
**Date:** May 2, 2024

---

Attached are the minutes of the Traffic Committee Meeting on May 2, 2024. The following is a summary of their actions.

## Old Business:

1. A request from Harvester's Square Homeowners Association, Jayden Borden, 662-660-3182, [Harvesterssquarehoa@gmail.com](mailto:Harvesterssquarehoa@gmail.com), for the installation of speed tables.

Action: Approved

2. A request from Mr. Kenny Wooldridge, 905 Terry Road, 662-871-9713, for the installation of speed tables on Parrish Drive.

Action: Approved

3. A request from Ms. Zola Ward, 3291 Meadow Drive, 662-401-0120, for the installation of speed tables on the following streets:
  - a) Meadow Drive
  - b) Beasley Circle
  - c) Brooks Street
  - d) Moore Avenue
  - e) Evans Circle
  - f) Kennedy Drive

Action: Postponed

## New Business

1. A request from Mr. Ryan Huerta, 5159 Timberlane Road, Tel. 858-472-7592, for the installation of some traffic calming measures on Timberland Road.

Action: Postponed

Tupelo City Council  
May 2, 2024  
Page 2

---

2. A request from the Tupelo Public Works Department for the installation of “Children At Play” signs on Timberlane Road.

Action: Approved

3. A request from Mr. Joel Driskell, 1478 Orleans Place, Tel. 662-871-3465, [jdriskell48@gmail.com](mailto:jdriskell48@gmail.com), for the installation of some traffic calming measures along Butler and Purnell Roads.

Action: Postponed

4. A request from Mr. Jim Kerrant, owner of N MS Dance Center @ 3480 Browning Drive, Tel. 662-324-8085, for the installation of some traffic calming measures.

Action: Postponed

**MINUTES OF THE TUPELO TRAFFIC COMMITTEE  
MAY 2, 2024**

A regular meeting of the Tupelo Traffic Committee was held on May 2, 2024, at 9:00 am in the 3<sup>rd</sup> floor conference room at City Hall. Members present were Mr. Dennis Bonds, Mr. Norman Cruse, Officer Jeff Griffin, Mr. Brent Spears, Mr. Barton Wynn, Mr. Emmitt Foster and Mr. Mike Williams. Ms. Laura Kramer was absent.

Audience members were Mayor Todd Jordan, Mr. Johnny Timmons, Manager TW&L, Mr. Don Lewis, COO, Mr. Chuck Williams, Public Works Director, Mr. Nathan Hughes, Public Works Department and Ms. Patti Thompson (Old Business, Item 2).

**Call to Order**

The meeting was called to order by Mr. Dennis Bonds.

**Old Business**

1. **A request from Harvester's Square Homeowners Association, Jayden Borden, 662-660-3182, [Harvesterssquarehoa@gmail.com](mailto:Harvesterssquarehoa@gmail.com), for the installation of speed tables.**

Mr. Dennis Bonds noted that the streets involved are classified as residential streets and the HOA has already provided a petition with the required signatures. Therefore, Mr. Emmitt Foster made a motion to approve this item. Mr. Mike Williams seconded the motion and it passed unanimously.

2. **A request from Mr. Kenny Wooldridge, 905 Terry Road, 662-871-9713, for the installation of speed tables on Parrish Drive.**

Ms. Pattie Thompson was present to represent the homeowner's association and show their support of this request. Mr. Dennis Bonds noted that Parrish Drive is a residential street and a petition has been completed with the necessary signatures. Mr. Norman Cruse made a motion to approve this request. Mr. Emmitt Foster seconded the motion and it passed unanimously.

3. **A request from Ms. Zola Ward, 3291 Meadow Drive, 662-401-0120, for the installation of speed tables on the following streets:**
  - a) **Meadow Drive**
  - b) **Beasley Circle**
  - c) **Brooks Street**
  - d) **Moore Avenue**
  - e) **Evans Circle**
  - f) **Kennedy Drive**

Mr. Dennis Bonds stated that these streets are all classified as residential streets and that a petition has been completed with the required signatures. Mr. Dennis Bonds asked to postpone this item until the next meeting to allow him to speak with the police department, fire department and other emergency services to make sure the placement of this number of speed tables would not cause a hindrance in responding to emergency situations.

### **New Business**

1. **A request from Mr. Ryan Huerta, 5159 Timberlane Road, Tel. 858-472-7592, for the installation of some traffic calming measures on Timberlane Road.**

Mr. Dennis Bonds has spoken with Mr. Huerta and explained that Timberlane Road does not have the correct classification for speed tables. Mr. Bonds asked that this item be postponed to allow some study time and he would recommend some traffic calming measures at the next meeting.

2. **A request from the Tupelo Public Works Department for the installation of “Children At Play” signs on Timberlane Road.**

Mr. Mike Williams made a motion to approve this request. Mr. Brent Spears seconded the motion and it passed unanimously.

3. **A request from Mr. Joel Driskell, 1478 Orleans Place, Tel. 662-871-3465, [jdriskell48@gmail.com](mailto:jdriskell48@gmail.com), for the installation of some traffic calming measures along Butler and Purnell Roads.**

Mr. Dennis Bonds stated that both Butler and Purnell Roads are classified as collectors and would not be eligible for speed tables. Mr. Dennis Bonds asked to postpone this item to allow time to speak with Mr. Driskell and discuss some other available measures.

4. **A request from Mr. Jim Kerrant, owner of N MS Dance Center @ 3480 Browning Drive, Tel. 662-324-8085, for the installation of some traffic calming measures.**

Mr. Dennis Bonds explained that speed tables will not be an option as Browning Drive does not have the correct classification. Mr. Bonds then asked that this item be postponed until the next meeting and he will get with Mr. Kerrant to discuss some other options.

With there being no further business, Mr. Brent Spears made a motion to adjourn the meeting. Mr. Norman Cruse seconded the motion and it passed unanimously.

Submitted by: Pam Blassingame



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Stephen N. Reed, Assistant City Attorney

**DATE** May 1, 2024

**SUBJECT:** IN THE MATTER OF APPROVAL OF THE 2024 CITY OF TUPELO AND ITAWAMBA COUNTY INMATE HOUSING INTERLOCAL COOPERATION AGREEMENT AND TO AUTHORIZE THE PRESIDENT OF THE CITY COUNCIL AND THE MAYOR TO EXECUTE ON BEHALF OF THE CITY  
**SR**

---

### Request:

The City of Tupelo and the Itawamba County Board of Supervisors and the Itawamba County Sheriff have agreed to enter into a formal interlocal agreement concerning the housing of City of Tupelo prisoners at the Itawamba County Jail. Housing at the Itawamba County Jail will be utilized primarily for individuals convicted and sentenced by the Tupelo Municipal Court to serve time of imprisonment for misdemeanor crimes committed within the city limits of Tupelo. This is done in an effort to alleviate overcrowding at the Lee County Jail, and to allow for the holding of individuals within the Lee County Jail that are awaiting their initial appearance, preliminary hearing, and/or trial.

Upon approval and final execution of this Interlocal Agreement by the City, it will be transmitted to the Office of the Attorney General for final approval.

**INTERLOCAL COOPERATION AGREEMENT**

**THIS INTERLOCAL COOPERATION AGREEMENT** shall be known as the 2024 CITY OF TUPELO AND ITAWAMBA COUNTY INMATE HOUSING INTERLOCAL COOPERATION AGREEMENT and is entered into this day by and between ITAWAMBA COUNTY, MISSISSIPPI, by and through the Itawamba County Board of Supervisors (“County”) and the CITY OF TUPELO, MISSISSIPPI, by and through its governing authorities, (“City”) pursuant to the provisions of the Interlocal Cooperation Act of 1974 codified in Section 17-13-1, *et seq* of the Mississippi Code Annotated (1972), as amended.

**WITNESSETH:**

**WHEREAS**, Section 17-13-1, *et seq.* of the Mississippi Code Annotated (1972), as amended, provides a mechanism in which local governmental units may contract with one another for services on a basis of mutual advantage and cooperation; and

**WHEREAS**, Itawamba County, Mississippi owns and operates an adult detention center located in said county (“Facility”) pursuant to its authority under Miss. Code Ann. § 19-25-71 (1972, as amended); and

**WHEREAS**, the City of Tupelo, Mississippi does not own or operate an adult detention center, but has traditionally housed its prisoners in a local county jail pursuant to an interlocal agreement as authorized by Miss. Code Ann. § 47-1-39 (1972, as amended); and

**WHEREAS**, the City seeks to house a certain number of prisoners in the adult detention center owned and maintained by the County; and

**WHEREAS**, the County seeks to allow the City to house a certain number prisoners in its adult detention center; and

**WHEREAS**, the County and City desire to enter into this agreement establishing the relationship responsibilities and parameters for the fulfillment of this agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and obligations contained herein, the parties agree as follows.

- I. Use.** Upon the execution of this agreement, City shall at all times have the right to house in the Facility a minimum of ten (10) municipal adult arrestees, detainees and prisoners of City (the “Municipal Prisoners”), and Sheriff and County shall accept custody thereof according to the terms of this agreement. No person will be accepted who is in need of immediate medical attention or who is an obvious threat to the health and safety of any County employee or other prisoner housed at the Facility. The County reserves the right to promulgate reasonable rules and regulations regarding the medical condition of persons who will be accepted to be held in the jail. City shall be responsible for the transportation of all such Municipal Prisoners to the Facility and for transportation from the Facility for court appearances. County and Sheriff shall receive the Municipal Prisoners upon delivery to the Facility and shall be responsible for the proper housing, care and maintenance of such prisoners thereafter.

**II. Supervision.** The Facility shall be under the direct control and supervision of the Sheriff and shall be staffed and maintained by a full-time jail administrator, deputies and such other employees of County as are necessary for the proper and efficient operation and maintenance of the Facility. County and Sheriff agree that the jail administrator, jailers and deputies assigned to the Facility shall be qualified for the duties for which each is assigned and shall receive appropriate, periodic training on jail administration, custodial care, security, safety, suicide prevention, first aid, including, but not limited to, mental health first aid, prisoners' rights, the use of reasonable force and such other topics as will enhance the efficient orderly and proper administration of the Facility.

**III. Custodial Responsibility.** The City shall be solely responsible for the transportation of Municipal Prisoners to and from the Facility, and the cost(s) incurred incident thereto. The Sheriff shall be responsible for making Municipal Prisoners available promptly for their transportation to court appearances and for other purposes, upon timely requests therefor. Upon receipt of custody of a prisoner, County and Sheriff shall be responsible for the custodial care, treatment, safety, security, feeding and maintenance of the prisoner. Any Municipal Prisoner transferred to the Facility shall remain in the category of a Municipal Prisoner, for which per diem charges are payable until properly released by Sheriff or removed from the facility by City in accordance with policies adopted by the Sheriff. At such time that a Municipal Prisoner being housed at the Facility ceases to be a City prisoner, either by them being bound over to the Grand Jury or by their waiver of a preliminary hearing, the City and County shall coordinate and transfer custody of the prisoner to the appropriate law enforcement agency responsible for the detention of the prisoner. In the event that a Municipal Prisoner being housed at the Facility is brought under charge or indictment by the County, the prisoner shall cease to be a Municipal Prisoner, and the City shall subsequently not be charged a per diem for such prisoner.

Persons arrested by the North Mississippi Narcotics Unit, or its successor, shall be Municipal Prisoners only if arrested for crimes committed inside the municipal limits of City of Tupelo, except as otherwise provided in this section and subject to and in accordance with the North Mississippi Narcotics Unit based upon charges from another county shall be held in the county in which the charges are to be brought. The County agrees to maintain daily custody logs, clearly showing the receipt of custody of all prisoners, including dates and times of incarceration, the entity or agency for which custody is maintained, the date and time of any change of status which would shift the responsibility for the cost of per diem of a prisoner, transfers, and final disposition. County and Sheriff agree to provide for a documented system for receipt and custody of prisoner's personal property.

**IV. Per Diem and Costs.**

- a. **Per Diem.** City shall pay County a per diem of Forty Dollars (\$40.00) per Municipal Prisoner for each calendar day, or part of a day, in which a municipal prisoner is in the custody of the County at the Facility upon the terms and conditions set forth herein. Said per diem shall cover all costs incurred by the County incident to its housing of Municipal Prisoners as contemplated herein. By separate written agreement of City and County, City and County may adjust the

per diem rate at any time, and such written agreement shall become part and parcel of this agreement.

- b. **Days.** A full per diem charge shall apply to each Municipal Prisoner who is placed in custody at the Facility and remains for any part of a day.
- c. **Transportation.** In the event that the Sheriff or County transports Municipal Prisoners in vehicles owned or operated by the Sheriff or County, then City shall pay to County in reimbursement the mileage reimbursement rate then in effect for travel by employees of the State of Mississippi for each mile one (1) or more Municipal Prisoners are transported in a vehicle owned or operated by the Sheriff or County on an approved trip together with such supervisory costs as agreed to by the parties. For the purposes of this section, an "approved trip" shall be an excursion outside the Facility under custody for any one (1) or more of the following documents reasons:
  - i. At the request of the Tupelo Police Department, Chief, Deputy Chief, or other officer with the rank of Captain or above;
  - ii. At the request of the Municipal Prosecutor, City Judge or Municipal Court Clerk;
  - iii. For any medical or other emergency;
  - iv. Upon any court order or subpoena relating to criminal charges against the Municipal Prisoner for which such prisoner is in custody at the Facility.

Payment shall be made within thirty (30) days after receipt of County's statement therefor (or with the regular monthly payment), together with documentation showing the mileage, the date, the Municipal Prisoner, the reason for the approved trip, and the employee transporting the Municipal Prisoner. The parties agree and acknowledge that City normally will transport Municipal Prisoners, except in exigent circumstances.

- V. **Accounting and Auditing.** County and Sheriff will maintain at all times an accurate set of financial records in accordance with generally accepted accounting procedures for governmental entities and in compliance with applicable state law, documenting all costs incurred in the operation and maintenance of the Facility and the provision of support services as provided herein. All financial records, books and documentation supporting the costs shall be made available to City, or its designated agents, for inspection and copying upon reasonable notice to County. County shall maintain daily jail custody logs, disposition reports, files and financial records in an auditable form and manner. City shall have reasonable access to such records. In the event that any audit or review of such records of the Facility reveals a discrepancy resulting in an overcharge or undercharge for any billing cycle, City and County agree to make prompt adjustments thereto. Each party hereto shall use its best efforts to coordinate and cooperate to ensure the operation and maintenance of the Facility in a reasonable cost-efficient manner in conformance with state and federal law.



- VI. Payment.** City shall pay to County the per diem charges accruing in each calendar month, at the rate in effect for the fiscal year, for each Municipal Prisoner housed in the Facility during that month, within thirty (30) days after receipt by City of an itemized billing statement containing, and supported by, a written calculation of the total monthly per diem charges derived by the multiplication of the pertinent number of prisoner days, and half prisoner days, by the then current per diem rate, together with a list of all Municipal Prisoners upon whom the monthly charges are based, showing the data of receipt of custody, the number of days in custody, and the date of release, discharge or other disposition. Also, each statement shall be signed by the Itawamba County Sheriff or their designee. City may request additional supporting documentation for any billing statement or conduct its own review according to the provisions of Section 5 of this agreement.
- VII. Insurance.** County shall obtain and maintain law enforcement liability insurance providing coverage for the Facility in the amount of not less than One Million Dollars (\$1,000,000), issued by a reputable company which is permitted to do business in the State of Mississippi naming City as an additional insured. Both City and County shall maintain and provide comprehensive law enforcement liability insurance in an amount not less than \$1,000,000. Each party waives the right of subrogation against the other for claims to the extent that claims are paid by insurance to the extent allowed by the respective insurance carriers.
- VIII. Indemnity.** City agrees to defend and hold harmless the Sheriff, County, its governing authority, officers, employees, and agents against any demand, claim, assertion of liability or action arising out of any act or omission of City, its officers, employees and agents in connection with its use of the Facility which is not fully covered by the insurance set forth in Section VII, and City agrees to assume liability for County for any loss, damages, liability, attorneys' fees or other sums for which County may reasonably pay on account of any such demand, claim, assertion of liability or action.
- County agrees to defend and hold harmless City, its governing authority, officers, employees, and agents against any demand, claim, assertion of liability or action arising out of any act or omission of County or the Sheriff, their officers, employees and agents in connection with its construction, operation and maintenance of the Facility which is not fully covered by the insurance set forth in Section VII, and County agrees to assume liability for City for any loss, damages, liability, attorneys' fees or the sums for which City may reasonably pay on account of any such demand, claim, assertion of liability or action.
- IX. Health Care Services and Costs.** In the event it is necessary to obtain any type of health care (including, but not limited to, medical, dental, psychological, psychiatric, or pharmaceutical care) for a Municipal Prisoner by a third-party health care provider, City shall be directly responsible to the provider for payments for services rendered. City shall provide at all times a list of preapproved, designated health care providers to meet all anticipated health needs of Municipal Prisoners. All other municipalities and law enforcement agencies housing prisoners in the Facility shall be responsible for the costs of the health care for their respective prisoners. Transportation for non-emergency

treatment shall be provided by City for Municipal Prisoners and by such other municipality or law enforcement agency for each respective prisoner. County shall be responsible for providing first response medical care and emergency medical transportation when necessary to the health of Municipal Prisoners. In the event of an emergency requiring County to provide immediate transportation, County shall be entitled to payment as provided in Section 4c or City shall be directly responsible for ambulance billing.

- X. Default.** In the event that the city fails to pay charges when billed and due as provided herein, and such delinquency continues for fifteen (15) days after written demand therefor, County may refuse to take any additional Municipal Prisoners from City until such delinquency is cured, and may charge interest at the legal rate, not to exceed eight percent (8%) per annum from and after the date upon which such written demand is received by City. In the event that County refuses, or is unable, to receive custody and house any Municipal Prisoners during a period of fifteen (15) consecutive days, except for the reasons allowed for herein, County shall pay to City the difference in the then current per diem charge and the actual cost to the city of housing each Municipal Prisoner, for which City must obtain other Facility during such period, until the default is cured by County and the Municipal Prisoners are received for custody and housed at the Facility. The provisions of this section shall be in addition to any and all other remedies at law or in equity. No waiver of any breach or default under this contract by either party shall be construed to be a waiver of any succeeding breach or default of the same or any other provision.
- XI. Dispute Resolution.** In the event that the City disputes any billing statement received by City, City shall promptly notify County and Sheriff of the dispute and the reasons therefor. If County concurs with the reasons, adjustments shall be made to the statement, and City shall pay the adjusted statement promptly thereafter. If County does not agree, County shall notify City in writing, within five (5) working days thereafter, a dispute resolution committee shall convene, comprised of a representative from City, County and the Sheriff. The parties hereto agree that no legal action shall be instituted until the dispute resolution committee has had the opportunity to meet as provided herein, and no interest shall accrue on the unpaid disputed amount until the dispute resolution committee has had an opportunity to meet. The failure of County or Sheriff to provide at least twenty-four (24) hours' notice to City of the meeting of the dispute resolution committee shall be deemed as forestalling the opportunity to meet as provided hereunder; the failure of City to name and send a representative to a duly noticed meeting of the dispute resolution committee shall not impair nor delay the opportunity to meet as provided hereunder.

In the event City notifies County in writing of city's dispute of the calculation of per diem charges for the next fiscal year, and County does not concur with such reasons, then City and County agree to submit the calculation of the per diem charge for the next fiscal year to an independent and mutually agreed upon certified public accountant, the cost for which shall be shared equally by City and County, for analysis and calculation of the per diem in accordance with the terms of this agreement, prior to institution any legal action hereinunder or serving notice of termination of this agreement, unless City and County

cannot agree upon an independent certified public accountant within ten (10) days. During the pendency of the analysis by a certified public accountant, per diem charges for the current fiscal year shall remain in effect, and adjustments shall be made after the dispute has been resolved.

- XII. Force Majeure.** In the event that City or County is delayed, hindered or prevented from the performance of any requirement hereunder by reason of general civil disturbance, riot, labor dispute, strike, flood, tornado or other natural disaster, or for other reasons, which are totally beyond control of such party, the performance of the requirements shall be excused for the period of the delay; provided, however, that nothing in this provision shall prevent or delay termination as provided in Section XIII.
- XIII. Termination.** In the event either party desires to terminate this agreement, such party shall give the other six (6) full calendar months written notice prior to the date of termination. Upon completion of the termination notice period, this agreement shall be terminated; provided, however, that obligation to maintain general liability insurance and the right of indemnity shall survive for three (3) years after termination or until all claims are resolved, whichever occurs later
- XIV. Amendment.** No amendment or modification to this agreement shall be effective unless reduced in writing and signed by all parties hereto. No waiver of any breach of this agreement by any party hereto shall be construed to be a waiver of any succeeding breach. This agreement has been fully negotiated and shall not be construed against either party as a result of the preparation of the agreement.
- XV. Safety, Security and Training.** The Sheriff, and County, as the source of revenue for the Sheriff, agrees to supervise, control and manage the Facility and to provide safe and secure custody of prisoners according to state and federal law, regulations and standards. The Sheriff and County shall adequately staff the Facility with trained jailers and law enforcement officers and provide a continuing training program for employees of and at the Facility. The management and operation of the Facility shall not be contracted or assigned to any private entity without twelve (12) months prior written notice to City, unless otherwise mutually agreed by the parties hereto. The parties hereto acknowledge that City is not responsible for the operation, maintenance or management of the Facility. City agrees to cooperate with the Sheriff and jail administrator and to abide by any reasonable rules provided in advance in writing regarding the operation and management of the Facility.
- XVI. Access, Inspection and Transfer.** The parties hereto agree that City shall have the right to enter into the Facility at any time for the purpose of delivering or transferring Municipal Prisoners, for serving warrants, subpoenas, and process. Upon reasonable notice to the Sheriff, or jail administrator, City may interview, question or interrogate Municipal Prisoners at the Facility, according to the reasonable rules and regulations promulgated by the Sheriff. The City may inspect the premises of the Facility at any time during normal working hours and in such a manner as to cause the least possible inconvenience to the Sheriff and the staff of the Facility.

**XVII. Notices.** All notices or communications required or contemplated herein shall be in writing, shall be mailed by the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to County and Sheriff at:

Itawamba County Sheriff's Department  
Attn: Itawamba County Sheriff

\_\_\_\_\_

To City at:  
City of Tupelo, Mississippi  
Attn: Mayor Todd Jordan  
PO Box 1485  
Tupelo, MS 38802

With copies to:  
Tupelo Police Department  
Attn: Chief of Police  
400 North Front Street  
Tupelo, MS 38801

Or to any other address the respective parties may designate in writing. In the alternative, notices may be hand-delivered in writing to the mayor's office for City, to the President of the Board of Supervisors or the County Administrator for County and for the Sheriff. All notices shall be deemed to be complete on receipt thereof.

**XVIII. Assignment.** This agreement shall not be assigned except upon written agreement of all the parties.

**XIX. Duration.** After the effective date, the term of this agreement shall be through and including June 30, 2025. This agreement shall automatically renew every year unless terminated in the manner prescribed in Section XIII herein.

**XX. Approval and Effective Date.** The parties hereto acknowledge that this agreement shall be submitted to the Mississippi Attorney General for review under the Interlocal Cooperation Act of 1974. This agreement shall not be effective or enforceable until duly authorized in the minutes of the City and County, duly executed by the representatives of City and County and until the agreement has been approved by the Mississippi Attorney General, or sixty (60) days has passed from its submission to the Mississippi Attorney General without receipt of notice of disapproval of the same, whichever occurs first. Upon approval by the Mississippi Attorney General, or the passing of sixty (60) days after submission without disapproval, this agreement shall become effective and binding on the parties hereto. Copies of this agreement shall be filed with the Lee County Chancery Clerk, the Itawamba County Chancery Clerk, the City Clerk of the City of Tupelo, and the Mississippi Secretary of State, according to law.

- XXI. Specific Performance.** This agreement, the provisions thereof, shall be enforceable, by any party to this agreement by specific performance.
- XXII. General.** The parties hereto acknowledge that this agreement contains the full, complete and entire agreement between the parties regarding the Facility and matters pertaining thereto and that this agreement supersedes all other agreements, correspondence and understandings, verbal or in writing.
- XXIII. Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable under the laws of the State of Mississippi, such invalidity, illegality, or unenforceability shall not affect any other lawful term or provision of this Agreement. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement to affect the original intent of the parties as closely as possible in order that the promises contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- XXIV. Venue.** The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State courts located in Lee County, Mississippi.

The above 2024 CITY OF TUPELO AND ITAWAMBA COUNTY INMATE HOUSING INTERLOCAL COOPERATION AGREEMENT, after having received the necessary number of affirmative votes, was approved by Order of the Tupelo City Council on this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF TUPELO, MISSISSIPPI

\_\_\_\_\_  
TRAVIS BEARD, City Council President

ATTEST:

\_\_\_\_\_  
MISSY SHELTON, City Council Clerk

APPROVAL:

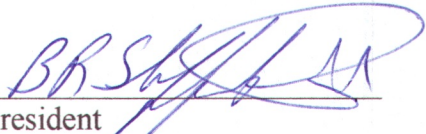
\_\_\_\_\_  
TODD JORDAN, Mayor

ATTEST:

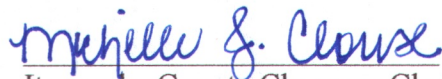
\_\_\_\_\_  
KIM HANNA, CFO/City Clerk

The above 2024 CITY OF TUPELO AND ITAWAMBA COUNTY INMATE HOUSING INTERLOCAL COOPERATION AGREEMENT, after having received the necessary number of affirmative votes, was approved by Order of the Itawamba County Board of Supervisors on this the 1st day of April, 2024.

ITAWAMBA COUNTY, MISSISSIPPI

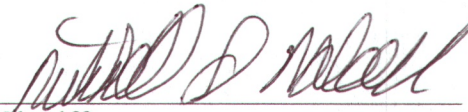
  
\_\_\_\_\_  
President  
Itawamba County Board of Supervisors

ATTEST:

  
\_\_\_\_\_  
Itawamba County Chancery Clerk



ACKNOWLEDGMENT:

  
\_\_\_\_\_  
Sheriff  
Itawamba County, Mississippi



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Stephen N. Reed, Assistant City Attorney

**DATE** May 1, 2024

**SUBJECT:** IN THE MATTER OF APPROVAL OF AN EXECUTED CONTRACT WITH CENTURY CONSTRUCTION GROUP, INC. FOR THE PROVISION OF DEBRIS REMOVAL SERVICES IN ACCORDANCE WITH RFP 23-055PW  
**SR**

---

The City of Tupelo advertised a Request for Proposals seeking to procure a 12-month pre-contract for debris removal services. After having received the proposals, each were evaluated by a scoring committee, and Century Construction Group, Inc, was determined to be the most responsible offeror, and was awarded a contract for these services.

**Request:** Attached is an executed 12-month contract between the City of Tupelo and Century Construction Group, Inc. for debris removal services.



**DEBRIS REMOVAL SERVICE CONTRACT**  
**Project No. 2023-055PW**  
**CITY OF TUPELO, MISSISSIPPI**

THIS CONTRACT, is made and entered into by and between the **CITY OF TUPELO, MISSISSIPPI** (the "CITY"), a body Corporate of the State of Mississippi, whose address for mailing is PO Box 1485, Tupelo, MS 38802 and, **CENTURY CONSTRUCTION GROUP, INC.** (the "CONTRACTOR"), a state of Mississippi corporation, duly registered to do business in the State of Mississippi, whose address for mailing is     P.O. Box 1366, Tupelo, MS 38802    , and is effective as of the date of latest execution below.

**WITNESSETH:**

WHEREAS, the City of Tupelo, Mississippi has an emergency management plan that governs the City's preparation and response to varying types of emergency situations, including, but not limited to, weather related disasters that cause damage to trees and vegetation, homes and structures, and public utilities, when such damage poses a great threat to the safety and wellbeing of the general public creating the need for swift response by debris collection efforts; and

WHEREAS, it is most advantageous to the City of Tupelo to procure a 12-month pre-contract for debris removal services by the solicitation of proposals due to the nature of weather-related disasters of which the extent of the damage often caused by these weather events is rarely unknown and firm fixed-price contracts for these services, procured by sealed bids, are not well suited to serve the interests of the City of Tupelo in the event of a weather-related disaster; and

WHEREAS, on November 2<sup>nd</sup> and 9<sup>th</sup> of 2023, the City of Tupelo advertised in the local newspaper having general circulation in the municipality and through the Mississippi Procurement Technical Assistance Program that it would receive proposals from well-qualified debris removal firms to establish a twelve (12) month pre-contract and such proposals were received no later than 10 am on December 4, 2023 (advertisement attached hereto as Attachment "A"); and

WHEREAS, the City of Tupelo received proposals from eight (8) firms having varying degrees of experience concerning the collection, clearance, removal and hauling of disaster related debris; and

WHEREAS, in accordance with the City's procurements policies, a review committee consisting of seven (7) individuals opened and considered each proposal in light of the criteria contained in the RFP advertisement, and each proposal was scored and ranked by the committee members; and

WHEREAS, based on the scoring criteria and specifications contained in the RFP, Century Construction, Inc. received the highest average score, and were awarded a contract by the Tupelo City Council during its regularly scheduled meeting of January 23, 2024.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable considerations flowing unto the parties, the receipt and sufficiency of which is hereby acknowledged, the CITY and the CONTRACTOR do hereby contract and agree as follows

**GENERAL CONDITIONS**

**1. CONTRACTED SERVICES**

Century Construction, Inc. (hereinafter "Contractor") agrees to provide non-exclusive debris removal services in accordance with the specifications set forth herein, and any other documents set forth by the City of Tupelo (City) hereby incorporated into and made a part of this contract. No oral statements of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. If

other attachments or exhibits exist which are to be incorporated as part of this contract, the title of each document shall be listed here, as follows (use additional sheets, if necessary):

- Attachment B - Conflict of Interest
- Attachment C - Certification Regarding Lobbying
- Attachment D - RFP PW23-055 Debris Removal Assistance for the City of Tupelo with related notices, Clarification(s) and Amendment(s)
- Attachment E - Scope of Work per included RFP Response
- Attachment F – Contract Justification
- Attachment G - Mandatory Addendum to all City of Tupelo Contracts

## 2. ABILITY TO CONTRACT

Century Construction, Inc. (Contractor) warrants that he/she/it is qualified to provide the services, whether personal or professional, as outlined in this contract. The Contractor agrees to conform to existing policies, rules, and regulations of the City. The Contractor agrees to maintain throughout the contract period such licensing and/or certification as may be required by law for the provision of services specified herein, if applicable. The Contractor warrants that it is a validly organized business with valid authority to enter into this contract; that entry into and performance under this contract is not restricted or prohibited by any loan, security, financing, contractual or other contract of any kind; and, notwithstanding any other provision of this contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this contract.

## 3. APPLICABLE LAW

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the appropriate state courts of Lee County Mississippi. Contractor shall comply with applicable federal, state, and local laws and regulations.

## 4. COMPLIANCE WITH LAWS

Contractor understands that the City is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

## 5. DURATION

This agreement shall be effective upon the approval by each party as indicated by the signature of its authorized representative being affixed hereto. The term of this agreement shall be 12-months from such effective date.

## 6. PROCUREMENT REGULATIONS AND APPROVAL

The contract is designed by the applicable provisions of the *Mississippi Personal Service Contract Review Board ("PSCRB") Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>. It is understood that the PSCRB does not and will not approve this contract, the guidelines are best determined by the City of Tupelo that closely parallels the Federal Guidelines required for this contract. Additionally, this contract is governed by the procurement policies of the City of Tupelo Mississippi, and appropriate State and Federal laws and regulations concerning the appropriate of funds for the services made a part of

this agreement, including, but not limited to, 2 CFR § 200, Uniform Administrative Requirements and 44 CFR § 13.36.

#### **7. REPRESENTATION REGARDING CONTINGENT FEES**

Contractor represents that it has not retained any person to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid proposal

#### **8. REPRESENTATION REGARDING GRATUITIES**

The bidder, offeror, respondent, or contractor represents that is has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

**9. DEBARMENT AND SUSPENSION:** Contractor certifies to the best of its knowledge and belief, that it:

- a. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or entity of the State of Mississippi;
- b. has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
- c. has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- d. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (b) and (c) of this certification; and,
- e. has not, within a three-year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

#### **10. INTEGRATED AGREEMENT/MERGER**

This contract, including all contract documents, represents the entire and integrated contractual agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, irrespective of whether they were written or oral. This contract may be altered, amended, or modified only by a written document executed by the City and the Contractor. The Contractor acknowledges that it has thoroughly read all contract documents and attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this contract shall not be construed or interpreted in favor or against the City or the Contractor on the basis of draftsmanship or preparation.

#### **11. MODIFICATIONS AND CHANGES IN SCOPE OF WORK**

All modifications to the contract must be made in writing and signed by both parties to the contract. The City may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the contract or of the Contractor's services has been changed, requiring changes to the amount of compensation to the

Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the City and the Contractor. If the Contractor believes that any particular work is not within the scope of the contract, is a material change, or will otherwise require more compensation to the Contractor, the contractor must immediately notify the City in writing of this belief. If the City believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

**12. AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of the City to proceed under this agreement is conditioned upon the appropriation of funds by the City of Tupelo. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, of the City to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the City, the City shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the City of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

**13. PAYMENT**

Contractor agrees to accept all payments in United States currency via the City’s check issuing system. The City agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the City within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.

**14. E-VERIFICATION**

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the City and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- A. termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- B. the loss of any license, permit, certification or other document granted to Contractor by an local, state, or federal governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- C. both. In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the City due to Contract cancellation or loss of license or permit to do business in the City or State.

**15. STOP WORK ORDER**

This section applies to contracts following the guidelines of the PSCRB as follows:

A. *Order to Stop Work*: The City, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the City shall either:

1. cancel the stop work order; or,
2. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

B. *Cancellation or Expiration of the Order*: If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

1. the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
2. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the City decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

C. *Termination of Stopped Work*: If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

D. *Adjustments of Price*: Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract, if applicable.

## 16. TERMINATION FOR CAUSE and CONVENIENCE

A. *Termination*. The City Engineer or designee may, when the interests of the City so require, terminate this contract in whole or in part, for the convenience of the City. The City Engineer or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

B. *Contractor's Obligations*. Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The COO or designee may direct Contractor to assign Contractor's right, title, an interest under terminated orders or subcontracts to the City. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

## 17. TERMINATION FOR DEFAULT

A. *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the City Engineer or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the City Engineer or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the City Engineer or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the City Engineer or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

B. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the City, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the City has an interest.

C. *Compensation.* Payment for completed services delivered and accepted by the City shall be at the contract price. The City may withhold from amounts due Contractor such sums not to exceed five percent (5%) to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and services.

D. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the City Engineer or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the City, State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor was reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the City Engineer or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the City under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

E. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (d) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the City, be the same as if the notice of termination had been issued pursuant to such clause.

F. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract. Any failure or inaction on the part of the

City to enforce any right or remedy contained in this agreement shall not constitute a waiver of such right or remedy.

### **18. TERMINATION UPON BANKRUPTCY**

This contract may be terminated in whole or in part by the City upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

### **19. RECORDS AND AUDIT**

The Contractor shall maintain such financial records and other records as may be prescribed by the City or by applicable Federal and State laws, rules, and regulations. These may be kept according to the Contractor's usual method of recordkeeping, but must be sufficiently detailed to permit an accurate accounting of contract funds and program activities. The contract and the procurement of goods and services shall be governed by the applicable Mississippi statutes and the applicable provisions of the Mississippi Personal Service Contract Review Board Regulations. The Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by the City, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies. Where audits are required to be submitted to the City before funding can be released, the audits must be submitted within the required timeframe and must be acceptable; if a Contractor fails to submit an audit in a timely manner, or if the audit is unacceptable, the city reserves the right to cancel or suspend the contract at the City's discretion.

### **20. RECORDS RETENTION**

The Contractor agrees to submit to the City quarterly program activity reports thirty (30) days subsequent to the closing of each quarter. The Contractor agrees to submit to the City quarterly fiscal reports thirty (30) days subsequent to the closing of each quarter, or other applicable period as made a part of this contract and agreed to by both parties. The Contractor agrees to permit reasonable program review and evaluation by the City; to provide access to any pertinent records; arrange meetings with appropriate personnel; permit inspection of the premises; and to cooperate in any other reasonable requests for fiscal and/or program information. Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the City or any duly authorized representatives shall have unimpeded, immediate access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of this contract for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this contract shall be retained by the Contractor for three (3) years after final payment and or final closeout for this declaration is made under this contract and all pending matters are closed. However, if any audit, litigation, or other action arising out of or related in any way to this contract is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

### **21. INDEPENDENT CONTRACTOR STATUS**

This section applies only to contracts for which the Contractor shall serve solely on an Independent Contractor basis, as follows:

The Contractor, at all times, shall be regarded as an Independent Contractor and shall at no time act as an agent for the City. Nothing contained herein shall be deemed or construed by the City, the Contractor, or

any third party as creating the relationship of principal and agent, partners, joint ventures, or any similar such relationship between the City and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the City or the Contractor hereunder, create or shall be deemed to create a relationship other than the independent relationship of the City and the Contractor. The Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implications, to be employees of the City. Neither the Contractor nor its employees, under any circumstances, shall be considered servants, agents, or employees of the City; and the City shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, or agents. The City shall not withhold from the contract payments to the Contractor any Federal or State unemployment taxes, Federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the City shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the City for its employees. Furthermore, none of the work performed under this contract shall be subcontracted without prior approval of the City. The City, throughout the life of the contract, shall have the right of reasonable rejection and approval of staff of the Contractor or its Subcontractors assigned to the work by the Contractor. If the City reasonably rejects staff of the Contractor or its Subcontractors, the Contractor must provide replacement staff or Subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Contractor's employees and Subcontractors are the sole responsibility of the Contractor.

**22. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION**

It is expressly understood that Mississippi law requires that the provisions of this contract which 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.

**23. CONFIDENTIAL INFORMATION**

A. *Definition:* "Confidential Information" shall mean:

- 1. those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential; and
- 2. all data and information which the Contractor acquires as a result of its contact with and efforts on behalf of the City, and any other information designated in writing as confidential by the City.

Each party to this contract agrees to protect all Confidential Information provided by one party to the other, to treat all such Confidential Information as confidential to the extent that confidential treatment is allowed under State and/or Federal law, and, except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission, and to do so by using those methods and procedures normally used to protect the party's own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its Subcontractors shall rest with the Contractor. Disclosure of any confidential information by the Contractor or its Subcontractors without the express written approval of the City shall result in the immediate termination of this contract.

B. *Disclosure:* In the event that either party to this contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by State law. This section shall survive the termination or completion of this contract. The parties agree that this section is subject to and superseded



by Mississippi Code of 1972, Annotated, Section 25-61-1, et. seq. regarding public access to public records.

C. *Exceptions*: The Contractor and the City shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("The Disclosing Party") which:

1. is rightfully known to the Contractor prior to negotiations leading to this contract, other than information obtained in confidence under prior engagements;
2. is generally known or easily ascertainable to non-parties of ordinary skill in the business of the Contractor;
3. is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
4. is independently developed by the recipient without any reliance on confidential information;
5. is, or later becomes, part of the public domain or may be lawfully obtained by the City or the Contractor from any non-party; or
6. is disclosed with the Disclosing Party's prior written consent.

D. Contractor agrees to comply with the Administrative Simplifications provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.

E. Notwithstanding any provision to the contrary contained herein, it is recognized that the City is a public entity of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to the City pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, the City shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The City shall not be liable to the Contractor for disclosure of information required by court order or law.

#### **24. TRANSPARENCY (PSCRB 7-1-16)**

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent entity contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

#### **25. OWNERSHIP OF DOCUMENTS AND WORK PAPERS**

The City shall own all documents, files, reports, work papers, and working documentation, electronic or otherwise, created under this contract, or in connection with the project which is the subject of this contract, except for the Contractor's internal administrative and quality assurance files and internal correspondence. The Contractor shall deliver such documents and work papers to the City upon

termination or completion of the contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from the City and subject to any copyright protections. By entering into this contract, the Contractor conveys, sells, assigns, and transfers to the City all rights, titles, and interest it may now have or hereafter acquire under the antitrust laws of the United States and the State of Mississippi that relate to the particular goods or services purchased or acquired by the City under this contract.

## **26. FAILURE TO DELIVER**

In the event of failure of the Contractor to deliver goods or services in accordance with the contract terms and conditions, the City, after due written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the City may have.

## **27. FORCE MAJEURE**

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its Subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the City immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the City determines it to be in its best interest to terminate the contract.

## **28. INDEMNIFICATION**

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the City of Tupelo and its officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this contract. In the City's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim or suit, etc. the Contractor shall use legal counsel acceptable to the City; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the City shall be entitled to participate in said defense. The Contractor shall not settle any claim or suit, etc. without the City's concurrence, which the City shall not unreasonably withhold.

## **29. NO LIMITATION OF LIABILITY**

Nothing in this Contract shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for the damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.

## **30. ATTORNEYS' FEES AND EXPENSES**

Subject to other terms and conditions of this contract, in the event the Contractor defaults in any obligations under this contract, the Contractor shall pay to the City all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the City in enforcing this contract or otherwise reasonably related thereto. The Contractor agrees that under no circumstances

shall the City be obligated to pay any attorneys' fees or costs of legal action to the Contractor. This clause shall not apply to any contracts entered into with another entity, board, or commission.

**31. RECOVERY OF MONEY**

Whenever, under this contract, any sum of money shall be recoverable from or payable by the Contractor to the City, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the City. The rights of the City are in addition and without prejudice to any other right the City may have to claim the amount of any loss or damage suffered by the City on account of the acts or omissions of the Contractor.

**32. SEVERABILITY**

If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the contract that can be given effect without the invalid or unenforceable provision and to this end, the provisions hereof are severable. In such event, the parties shall amend the contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

**33. WAIVER**

No delay or omission by either party to this contract in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this contract shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this contract will void, waive, or change any other term or condition. No waiver by one party to this contract of a default by the other party will imply, be construed as, or require waiver of future or other defaults. Failure by the City at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the City to enforce any provision at any time in accordance with its terms.

**34. CITY PROPERTY**

The Contractor will be responsible for the proper custody and care of any City-owned or City-leased property furnished for the Contractor's use in connection with the performance of this contract. The Contractor will reimburse the City for any loss or damage, normal wear and tear excepted.

**35. UNSATISFACTORY WORK**

If, at any time during the contract term, the service performed or work done by the Contractor is considered by the City to create a condition that threatens the health, safety, or welfare of the general public, the City, its property, or its employees, or for whom the contracted services are to be rendered, the Contractor shall, on being notified by the City, immediately correct the deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, the City shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

**36. ANTI-ASSIGNMENT/SUBCONTRACTING**

The Contractor acknowledges that it was selected by the City to perform the services required hereunder based, in part, upon the Contractor's skills, expertise, and proper response to the Request for Proposal. The Contractor shall not assign, subcontract, or otherwise transfer this contract in whole or in part without the prior written consent of the City, which the City may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer by the Contractor of its obligations without such consent shall be null and void. No such approval by the City of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the City in addition to the total contractual

price agreed upon in this contract. Subcontracts shall be subject to the terms and conditions of this contract and to any conditions of approval that the City may deem necessary. Subject to the foregoing, this contract shall be binding upon the respective successors and assigns of the parties.

**37. THIRD PARTY ACTION NOTIFICATION**

The Contractor shall give the City prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this contract.

**38. INSURANCE REQUIREMENTS**

Within 24 hours following the signing of this contract, respondent shall provide copies of insurance policies including all endorsements and bonding requirements as follows.

The Respondent shall save and hold the City harmless from and against all liability, claims and demands on account of personal injuries (including without limitation workmen’s compensation and death claims) or property loss or damages of any kind whatsoever, which arise out of or be in any manner connected with, or are claimed to arise out of or be in any manner connected with, the performance of any contract, regardless of whether such injury, loss or damage shall be caused by, or be claimed to be caused by, the negligence or other fault of the Responder, any subcontractor, agent or employee.

A. Commercial General Liability - in the amount of two million dollars (\$2,000,000.00) per occurrence.

B. Worker's Compensation - Proposer shall provide a policy with employer’s liability coverage with limits of not less than one million dollars (\$1,000,000.00) per occurrence for each accident or illness. The Worker’s Compensation policy shall state that it cannot be cancelled or materially changed without first giving thirty (30) days prior notice thereof in writing to the Owner. Firms that have owner/operators that have filed a "Notice of Election to be Exempt" shall supply a signed copy of said notice. Any such exemption shall meet the requirements that qualify for an exemption under the applicable Worker’s Compensation law.

C. Business Automobile Liability – Proposer shall provide coverage for all owned, non-owned and hired vehicles with limits of not less than \$1,000,000, per occurrence, Combined Single Limits (CSL) or its equivalent.

D. Performance Bond: Respondent agrees to provide the City with performance bond payable to, in favor of, or for the protection of the City for the work to be performed in the amount estimated per project.

E. Payment Bond: Respondent agrees to provide the City with a payment bond conditioned for the prompt payment of all persons supplying labor or material in the performance of the work as estimated per project

39. Contractor agrees to abide by all local, state, and federal Environmental and Historical Laws as established.

**FEDERAL CLAUSES**

40. Contractor agrees to the following federal clauses:

The following is a list of frequent compliance issues with Federal procurement requirements when Tribal or local government or private nonprofit (PNP) Applicants use cooperative purchasing programs for procurements.

If an Applicant plans to use Federal funds to pay or reimburse equipment expenses or services under a contract, that contract must contain the applicable clauses described in Appendix II to the Uniform Rules (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326. Additionally, FEMA recommends certain contract clauses recommended by FEMA.

This appendix outlines the federally required contract provisions in addition to FEMA- recommended provisions applicable to PA applicant contracts. For some of the required clauses, sample language or references to find sample language are listed below. Sample language for certain required clauses (remedies, termination for cause and convenience, changes) is not listed since these must be drafted in accordance with the non-Federal entity's applicable local laws and procedures. For the clauses which require that exact language be included, the required language is specifically identified below.

The non-Federal entity alone is responsible for ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.

**REMEDIES:** Applies to all FEMA grant and cooperative agreement programs.

Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, A.

**TERMINATION FOR CAUSE AND CONVENIENCE:** Applies to all FEMA grant and cooperative agreement programs.

All contracts exceeding \$10,000 must address termination for cause and for convenience by the non-Federal entity, including how it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, B.

**EQUAL EMPLOYMENT OPPORTUNITY:** This requirement applies to all FEMA grant and cooperative agreement programs and exact language below is required.

**Standard:** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964- 1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, C.

#### **Key Definitions.**

**Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

**Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings,

highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Required Language: 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule,

regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State, Territorial, or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**DAVIS-BACON ACT:** For construction projects over \$10 million (based on expected total cost):

All laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction

law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:

- The number of employees of contractors and sub-contractors working on the project;
- The number of employees on the project hired directly and hired through a third party;
- The wages and benefits of workers on the project by classification; and
- Whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

Other applicable language contained in 29 C.F.R. § 5.5(a) shall apply.

**“COMPLIANCE WITH THE COPELAND “ANTI-KICKBACK” ACT:** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3, as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** This requirement applies to all FEMA contracts awarded by the non-federal entity exceeding \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Standard: Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity exceeding \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work exceeding the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked beyond 40 hours in the work week.

Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

Suggested Language: 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

**Compliance with the Contract Work Hours and Safety Standards Act.**

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause



set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

- (3) *Withholding for unpaid wages and liquidated damages.* The **(write in the name of the Federal agency or the loan or grant recipient)** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act.

- (1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT:**

This requirement applies to contracts awarded by a non-Federal entity of amounts exceeding \$150,000 under a federal grant.

Standard: If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C.

§§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, G.

Suggested Language: The following provides a sample contract clause.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000.00 financed in whole or part with Federal Assistance provided by FEMA.

**DEBARMENT AND SUSPENSION:** This requirement applies to all FEMA grant and cooperative agreement programs.

Standard: Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

Requirements:

1. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530.
2. In general, an "excluded" party cannot receive a federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any non-procurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipients.

3. Specifically, a covered transaction includes the following contracts for goods or services:
  - a. The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
  - b. The contract requires the approval of FEMA, regardless of amount.
  - c. The contract is for federally required audit services.
  - d. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

**Suggested Language:** The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

**Suspension and Debarment**

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**BYRD ANTI-LOBBYING AMENDMENT:** This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II, I; 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

**Standard:** Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the Federal awarding agency.

**Suggested Language:**

**Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of

Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

**Required Certification:** If applicable, contractors must sign and submit to the non-Federal entity the certification attached hereto.

**PROCUREMENT OF RECOVERED MATERIALS:** This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.

**Standard:** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II, J; and 2

C.F.R. § 200.322.

**Requirements:** The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**Suggested Language:**

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - b. Meeting contract performance requirements; or
  - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

**PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative

agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

- (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- (i) Covered telecommunications equipment or services that:
  - i. Are not used as a substantial or essential component of any system; and
  - ii. Are not used as critical technology of any system.
- (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE)

code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

**DOMESTIC PREFERENCE FOR PROCUREMENTS:** As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**RECOMMENDED CONTRACT PROVISIONS**

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. Although FEMA does not currently require additional provisions, FEMA recommends the following for PA applicant contracts:

**ACCESS TO RECORDS.**

Standard: All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS and FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, FEMA is prohibited from providing reimbursement to any SLTT government, or PNP organization for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

Suggested Language:

Access to Records. The following access to records requirements apply to this contract:

1. The Contractor agrees to City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives’ access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being

completed under the contract.

4. In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**CHANGES:** FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

**Standard:** To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

**DHS SEAL, LOGO, AND FLAGS:** FEMA recommends that Applicants include a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**Standard:** Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).

**Suggested Language:** "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval."

**COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS:** FEMA recommends that Applicants include an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

**Standard:** The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.

**Suggested Language:** "This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives."

**NO OBLIGATION BY FEDERAL GOVERNMENT:** FEMA recommends that the non- Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**Standard:** FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.

**Suggested Language:** "The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS:**

FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for

False Claims and Statements) applies to its actions

pertaining to the contract.

Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31

U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Suggested Language. “The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.”

**AFFIRMATIVE SOCIOECONOMIC STEPS:** If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

**LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT AND DATA RIGHTS:** The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

**WHEREUPON** the foregoing Agreement is hereby approved by each party on this the \_\_\_ day of \_\_\_\_\_, 2024.

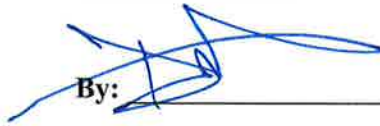
**CITY**

\_\_\_\_\_  
**Todd, Jordan, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Kim Hanna, CFO/City Clerk**

**CONTRACTOR**

  
By: \_\_\_\_\_

Its: President  
\_\_\_\_\_



**ATTACHMENT A**

**Public Advertisement**

ATTACHMENT B

CONFLICTS OF INTEREST

1. List the names of Members of the Board of Directors or other Governing Body:

Colin Maloney      Dason Maloney  
\_\_\_\_\_  
\_\_\_\_\_

2. Are any Members of the Governing Body or Project Staff also City of Tupelo employees?

Check one, only: \_\_\_\_\_ YES      X NO

3. If Yes, please list the name of the City employee(s) and the position held within the City.

N/A  
\_\_\_\_\_  
\_\_\_\_\_

4. Are any Members of the Governing Body or Project Staff also Spouses, Parents, or Children of the City of Tupelo Employees?

Check one, only: \_\_\_\_\_ YES      X NO (None known at this time)

5. If Yes, List the Name and Relationship to the MSDH employee:

\_\_\_\_\_  
\_\_\_\_\_

6. List all other current contracts with the City of Tupelo (include \$ amount/start/end dates):

502 Spring St. Church Demo PO# 2024/1371 \$19,500.00      3/19-current  
\_\_\_\_\_  
\_\_\_\_\_

7. Contractor's Signature:

[Signature]  
Signature

4/9/24  
Date

ATTACHMENT C

APPENDIX A, 44 C.F.R. PART 18-CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor certifies, to the best of his or her knowledge, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Dason Maloney, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

President Dason Maloney  
Name and Title of Contractor's Authorized Official

4/9/24  
Date

**ATTACHMENT D**

**RFP 2023-055PW**

**ATTACHMENT E**  
**SCOPE OF WORK**  
**PER RFP RESPONSE**

**ATTACHMENT F**

**CONTRACT JUSTIFICATION  
FOR DEBRIS REMOVAL**

**Detailed description of contractual services to be performed including location, program, purpose, and condition or regulatory agency establishing the requirement for contract personnel services:**

Debris Removal for Federal Declaration **2023-055PW** including Vegetative, Construction and Demolition, Damaged Structures, Removal of Structures, White Goods, Household Hazardous Waste, Electronic Waste, Soil/Mud/Sand, Stumps, Leaners and Hangers, Vehicles and or Vessels.

**Justification of request, including assessment of current personnel resources** (i.e. utilization of current position vacancies, temporary increase in workload above capability of current workforce, level of expertise required, position classification not available to agency):

Due to the overwhelming amount of Debris the existing City Employees, Equipment, and Mutual Aid Agreements will not be sufficient to perform the required services.

**Qualifications that make this contractor the best suited to perform this task:**

Contractor has Scored per the Request for Proposal to be more than sufficient to complete the task including A) quality of response, B) ability to perform, C) personnel/equipment/facilities/financial resources, D) record of past performance, and E) price.

**Justification of modification request (if applicable):**

NA

**Consequence of contract being disapproved:**

The City will not have the time/equipment/personnel to complete the project within the allotted time frame to qualify for the FEMA Public Assistance Alternative Procedures Pilot Program for Debris Removal or complete the task within 90 days.

I have reviewed this contract request and determined that these services are needed and cannot be provided by current staff or through the staffing of a vacant position.

\_\_\_\_\_  
Mayor, City of Tupelo

\_\_\_\_\_  
Date

## ATTACHMENT G

### Mandatory Addendum to City of Tupelo Contracts October 28, 2022

The City of Tupelo (hereinafter "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 (11<sup>th</sup>) 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.
10. TUPELO may not and does not agree to the payment of attorney fees of a “prevailing party” unless specifically authorized by statute. E.g. Miss. Code Anno. § 31-7-309 (1972 as amended) payment of interest on outstanding invoice. Miss AG Op., Nowak, 2009 WL 367665 (Miss.A.G.).
11. 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).
12. TUPELO does not agree to submit to binding arbitration.  
Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
13. TUPELO will make payments for all amounts owed under a contract agreement in accordance with state law.  
Miss. Code Ann. § 31-7-305.
14. 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).
15. 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).
16. 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.

- 17. TUPELO is prohibited from binding its successors in office to contracts, including leases, which result in taking away the 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).

- 18. 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 or for any longer period than twenty-five years.

Miss. Code Anno. 21-27-1

- 19. 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

- 20. All payments shall be made by TUPELO within forty-five (45) days of invoice, unless disputed. In the case of a bona fide dispute, TUPELO shall pay only the amount of the invoice not disputed. Interest shall be paid at a rate of one and one-half percent (1- 1/2 %) per month or portion thereof on the unpaid balance from the expiration of such forty-five-day period until such time as the warrant or check is mailed or otherwise delivered to the vendor.

Miss. Code Anno. §31-7-305 (1972 as amended)

Acknowledged and agreed:

TUPELO  
Date:

  
CONTRACTOR  
Date:  
4/8/21



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Stephen N. Reed, Assistant City Attorney

**DATE:** May 1, 2024

**SUBJECT:** IN THE MATTER OF APPROVAL OF AN EXECUTED ALTERNATE CONTRACT WITH ASHBRIIT FOR THE PROVISION OF DEBRIS REMOVAL SERVICES IN ACCORDANCE WITH RFP 23-055PW **SR**

---

The City of Tupelo advertised a Request for Proposals seeking to procure a 12-month pre-contract for debris removal services. After having received the proposals, each were evaluated by a scoring committee, and Ashbriit, Inc., was determined to be a responsible offeror, and was awarded an alternate contract for these services.

**Request:** Attached is an executed 12-month contract between the City of Tupelo and Ashbriit for debris removal services.

**DEBRIS REMOVAL SERVICE CONTRACT**  
**Project No. 2023-055PW**  
**CITY OF TUPELO, MISSISSIPPI**

THIS CONTRACT, is made and entered into by and between the **CITY OF TUPELO, MISSISSIPPI** (the "CITY"), a body Corporate of the State of Mississippi, whose address for mailing is PO Box 1485, Tupelo, MS 38802 and, **ASHBRITT, INC.** (the "CONTRACTOR"), a state of Florida corporation, duly registered to do business in the State of Mississippi, whose address for mailing is 565 E. Hillsboro Blvd., Deerfield Beach, FL. 33441, and is effective as of the date of latest execution below.

**WITNESSETH:**

WHEREAS, the City of Tupelo, Mississippi has an emergency management plan that governs the City’s preparation and response to varying types of emergency situations, including, but not limited to, weather related disasters that cause damage to trees and vegetation, homes and structures, and public utilities, when such damage poses a great threat to the safety and wellbeing of the general public creating the need for swift response by debris collection efforts; and

WHEREAS, it is most advantageous to the City of Tupelo to procure a 12-month pre-contract for debris removal services by the solicitation of proposals due to the nature of weather-related disasters of which the extent of the damage often caused by these weather events is rarely unknown and firm fixed-price contracts for these services, procured by sealed bids, are not well suited to serve the interests of the City of Tupelo in the event of a weather-related disaster; and

WHEREAS, on November 2<sup>nd</sup> and 9<sup>th</sup> of 2023, the City of Tupelo advertised in the local newspaper having general circulation in the municipality and through the Mississippi Procurement Technical Assistance Program that it would receive proposals from well-qualified debris removal firms to establish a twelve (12) month pre-contract and such proposals were received no later than 10 am on December 4, 2023 (advertisement attached hereto as Attachment “A”); and

WHEREAS, the City of Tupelo received proposals from eight (8) firms having varying degrees of experience concerning the collection, clearance, removal and hauling of disaster related debris; and

WHEREAS, in accordance with the City’s procurements policies, a review committee consisting of seven (7) individuals opened and considered each proposal in light of the criteria contained in the RFP advertisement, and each proposal was scored and ranked by the committee members; and

WHEREAS, based on the scoring criteria and specifications contained in the RFP, AshBritt, Inc. received the second highest average score, and were awarded an alternate contract by the Tupelo City Council during its regularly scheduled meeting of January 23, 2024, and such alternate contract may be used in the event that circumstances necessitate such action.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable considerations flowing unto the parties, the receipt and sufficiency of which is hereby acknowledged, the CITY and the CONTRACTOR do hereby contract and agree as follows

**GENERAL CONDITIONS**

**1. CONTRACTED SERVICES**

Ashbritt, Inc. (hereinafter “Contractor”) agrees to provide non-exclusive debris removal services in accordance with the specifications set forth herein, and any other documents set forth by the City of Tupelo (City) hereby incorporated into and made a part of this contract. No oral statements of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. If other

attachments or exhibits exist which are to be incorporated as part of this contract, the title of each document shall be listed here, as follows (use additional sheets, if necessary):

- Attachment B - Conflict of Interest
- Attachment C - Certification Regarding Lobbying
- Attachment D - RFP PW23-055 Debris Removal Assistance for the City of Tupelo with related notices, Clarification(s) and Amendment(s)
- Attachment E - Scope of Work per included RFP Response
- Attachment F – Contract Justification
- Attachment G - Mandatory Addendum to all City of Tupelo Contracts

**2. ABILITY TO CONTRACT**

Ashbritt, Inc. (Contractor) warrants that he/she/it is qualified to provide the services, whether personal or professional, as outlined in this contract. The Contractor agrees to conform to existing policies, rules, and regulations of the City. The Contractor agrees to maintain throughout the contract period such licensing and/or certification as may be required by law for the provision of services specified herein, if applicable. The Contractor warrants that it is a validly organized business with valid authority to enter into this contract; that entry into and performance under this contract is not restricted or prohibited by any loan, security, financing, contractual or other contract of any kind; and, notwithstanding any other provision of this contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this contract.

**3. APPLICABLE LAW**

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the appropriate state courts of Lee County Mississippi. Contractor shall comply with applicable federal, state, and local laws and regulations.

**4. COMPLIANCE WITH LAWS**

Contractor understands that the City is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

**5. DURATION**

This agreement shall be effective upon the approval by each party as indicated by the signature of its authorized representative being affixed hereto. The term of this agreement shall be 12-months from such effective date.

**6. PROCUREMENT REGULATIONS AND APPROVAL**

The contract is designed by the applicable provisions of the *Mississippi Personal Service Contract Review Board ("PSCRB") Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>. It is understood that the PSCRB does not and will not approve this contract, the guidelines are best determined by the City of Tupelo that closely parallels the Federal Guidelines required for this contract. Additionally, this contract is governed by the procurement policies of the City of Tupelo Mississippi, and appropriate State and Federal laws and regulations concerning the appropriate of funds for the services made a part of

this agreement, including, but not limited to, 2 CFR § 200, Uniform Administrative Requirements and 44 CFR § 13.36.

#### **7. REPRESENTATION REGARDING CONTINGENT FEES**

Contractor represents that it has not retained any person to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid proposal

#### **8. REPRESENTATION REGARDING GRATUITIES**

The bidder, offeror, respondent, or contractor represents that is has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

**9. DEBARMENT AND SUSPENSION:** Contractor certifies to the best of its knowledge and belief, that it:

- a. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or entity of the State of Mississippi;
- b. has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
- c. has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- d. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (b) and (c) of this certification; and,
- e. has not, within a three-year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

#### **10. INTEGRATED AGREEMENT/MERGER**

This contract, including all contract documents, represents the entire and integrated contractual agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, irrespective of whether they were written or oral. This contract may be altered, amended, or modified only by a written document executed by the City and the Contractor. The Contractor acknowledges that it has thoroughly read all contract documents and attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this contract shall not be construed or interpreted in favor or against the City or the Contractor on the basis of draftsmanship or preparation.

#### **11. MODIFICATIONS AND CHANGES IN SCOPE OF WORK**

All modifications to the contract must be made in writing and signed by both parties to the contract. The City may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the contract or of the Contractor's services has been changed, requiring changes to the amount of compensation to the

Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the City and the Contractor. If the Contractor believes that any particular work is not within the scope of the contract, is a material change, or will otherwise require more compensation to the Contractor, the contractor must immediately notify the City in writing of this belief. If the City believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

**12. AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of the City to proceed under this agreement is conditioned upon the appropriation of funds by the City of Tupelo. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, of the City to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the City, the City shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the City of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

**13. PAYMENT**

Contractor agrees to accept all payments in United States currency via the City’s check issuing system. The City agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the City within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.

**14. E-VERIFICATION**

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program.

Contractor agrees to maintain records of such compliance. Upon request of the City and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- A. termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- B. the loss of any license, permit, certification or other document granted to Contractor by an local, state, or federal governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- C. both. In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the City due to Contract cancellation or loss of license or permit to do business in the City or State.

**15. STOP WORK ORDER**

This section applies to contracts following the guidelines of the PSCRB as follows:

*A. Order to Stop Work:* The City, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the City shall either:

1. cancel the stop work order; or,
2. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

*B. Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

1. the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
2. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the City decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

*C. Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

*D. Adjustments of Price:* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract, if applicable.

## **16. TERMINATION FOR CAUSE and CONVENIENCE**

*A. Termination.* The City Engineer or designee may, when the interests of the City so require, terminate this contract in whole or in part, for the convenience of the City. The City Engineer or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

*B. Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The COO or designee may direct Contractor to assign Contractor's right, title, an interest under terminated orders or subcontracts to the City. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

## 17. TERMINATION FOR DEFAULT

A. *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the City Engineer or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the City Engineer or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the City Engineer or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the City Engineer or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

B. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the City, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the City has an interest.

C. *Compensation.* Payment for completed services delivered and accepted by the City shall be at the contract price. The City may withhold from amounts due Contractor such sums not to exceed five percent (5%) to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and services.

D. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the City Engineer or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the City, State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor was reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the City Engineer or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the City under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

E. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (d) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the City, be the same as if the notice of termination had been issued pursuant to such clause.

F. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract. Any failure or inaction on the part of the



City to enforce any right or remedy contained in this agreement shall not constitute a waiver of such right or remedy.

## **18. TERMINATION UPON BANKRUPTCY**

This contract may be terminated in whole or in part by the City upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

## **19. RECORDS AND AUDIT**

The Contractor shall maintain such financial records and other records as may be prescribed by the City or by applicable Federal and State laws, rules, and regulations. These may be kept according to the Contractor's usual method of recordkeeping, but must be sufficiently detailed to permit an accurate accounting of contract funds and program activities. The contract and the procurement of goods and services shall be governed by the applicable Mississippi statutes and the applicable provisions of the Mississippi Personal Service Contract Review Board Regulations. The Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by the City, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies. Where audits are required to be submitted to the City before funding can be released, the audits must be submitted within the required timeframe and must be acceptable; if a Contractor fails to submit an audit in a timely manner, or if the audit is unacceptable, the city reserves the right to cancel or suspend the contract at the City's discretion.

## **20. RECORDS RETENTION**

The Contractor agrees to submit to the City quarterly program activity reports thirty (30) days subsequent to the closing of each quarter. The Contractor agrees to submit to the City quarterly fiscal reports thirty (30) days subsequent to the closing of each quarter, or other applicable period as made a part of this contract and agreed to by both parties. The Contractor agrees to permit reasonable program review and evaluation by the City; to provide access to any pertinent records; arrange meetings with appropriate personnel; permit inspection of the premises; and to cooperate in any other reasonable requests for fiscal and/or program information. Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the City or any duly authorized representatives shall have unimpeded, immediate access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of this contract for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this contract shall be retained by the Contractor for three (3) years after final payment and or final closeout for this declaration is made under this contract and all pending matters are closed. However, if any audit, litigation, or other action arising out of or related in any way to this contract is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

## **21. INDEPENDENT CONTRACTOR STATUS**

This section applies only to contracts for which the Contractor shall serve solely on an Independent Contractor basis, as follows:

The Contractor, at all times, shall be regarded as an Independent Contractor and shall at no time act as an agent for the City. Nothing contained herein shall be deemed or construed by the City, the Contractor, or

any third party as creating the relationship of principal and agent, partners, joint ventures, or any similar such relationship between the City and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the City or the Contractor hereunder, create or shall be deemed to create a relationship other than the independent relationship of the City and the Contractor. The Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implications, to be employees of the City. Neither the Contractor nor its employees, under any circumstances, shall be considered servants, agents, or employees of the City; and the City shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, or agents. The City shall not withhold from the contract payments to the Contractor any Federal or State unemployment taxes, Federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the City shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the City for its employees. Furthermore, none of the work performed under this contract shall be subcontracted without prior approval of the City. The City, throughout the life of the contract, shall have the right of reasonable rejection and approval of staff of the Contractor or its Subcontractors assigned to the work by the Contractor. If the City reasonably rejects staff of the Contractor or its Subcontractors, the Contractor must provide replacement staff or Subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Contractor's employees and Subcontractors are the sole responsibility of the Contractor.

**22. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION**

It is expressly understood that Mississippi law requires that the provisions of this contract which 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.

**23. CONFIDENTIAL INFORMATION**

A. *Definition:* "Confidential Information" shall mean:

1. those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential; and
2. all data and information which the Contractor acquires as a result of its contact with and efforts on behalf of the City, and any other information designated in writing as confidential by the City.

Each party to this contract agrees to protect all Confidential Information provided by one party to the other, to treat all such Confidential Information as confidential to the extent that confidential treatment is allowed under State and/or Federal law, and, except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission, and to do so by using those methods and procedures normally used to protect the party's own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its Subcontractors shall rest with the Contractor. Disclosure of any confidential information by the Contractor or its Subcontractors without the express written approval of the City shall result in the immediate termination of this contract.

B. *Disclosure:* In the event that either party to this contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by State law. This section shall survive the termination or completion of this contract. The parties agree that this section is subject to and superseded

by Mississippi Code of 1972, Annotated, Section 25-61-1, et. seq. regarding public access to public records.

C. *Exceptions:* The Contractor and the City shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“The Disclosing Party”) which:

1. is rightfully known to the Contractor prior to negotiations leading to this contract, other than information obtained in confidence under prior engagements;
2. is generally known or easily ascertainable to non-parties of ordinary skill in the business of the Contractor;
3. is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
4. is independently developed by the recipient without any reliance on confidential information;
5. is, or later becomes, part of the public domain or may be lawfully obtained by the City or the Contractor from any non-party; or
6. is disclosed with the Disclosing Party’s prior written consent.

D. Contractor agrees to comply with the Administrative Simplifications provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.

E. Notwithstanding any provision to the contrary contained herein, it is recognized that the City is a public entity of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to the City pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, the City shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The City shall not be liable to the Contractor for disclosure of information required by court order or law.

#### **24. TRANSPARENCY (PSCRB 7-1-16)**

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration’s independent entity contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

#### **25. OWNERSHIP OF DOCUMENTS AND WORK PAPERS**

The City shall own all documents, files, reports, work papers, and working documentation, electronic or otherwise, created under this contract, or in connection with the project which is the subject of this contract, except for the Contractor’s internal administrative and quality assurance files and internal correspondence. The Contractor shall deliver such documents and work papers to the City upon

termination or completion of the contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from the City and subject to any copyright protections. By entering into this contract, the Contractor conveys, sells, assigns, and transfers to the City all rights, titles, and interest it may now have or hereafter acquire under the antitrust laws of the United States and the State of Mississippi that relate to the particular goods or services purchased or acquired by the City under this contract.

## **26. FAILURE TO DELIVER**

In the event of failure of the Contractor to deliver goods or services in accordance with the contract terms and conditions, the City, after due written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the City may have.

## **27. FORCE MAJEURE**

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its Subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the City immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the City determines it to be in its best interest to terminate the contract.

## **28. INDEMNIFICATION**

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the City of Tupelo and its officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this contract. In the City's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim or suit, etc. the Contractor shall use legal counsel acceptable to the City; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the City shall be entitled to participate in said defense. The Contractor shall not settle any claim or suit, etc. without the City's concurrence, which the City shall not unreasonably withhold.

## **29. NO LIMITATION OF LIABILITY**

Nothing in this Contract shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for the damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.

## **30. ATTORNEYS' FEES AND EXPENSES**

Subject to other terms and conditions of this contract, in the event the Contractor defaults in any obligations under this contract, the Contractor shall pay to the City all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the City in enforcing this contract or otherwise reasonably related thereto. The Contractor agrees that under no circumstances

shall the City be obligated to pay any attorneys' fees or costs of legal action to the Contractor. This clause shall not apply to any contracts entered into with another entity, board, or commission.

### **31. RECOVERY OF MONEY**

Whenever, under this contract, any sum of money shall be recoverable from or payable by the Contractor to the City, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the City. The rights of the City are in addition and without prejudice to any other right the City may have to claim the amount of any loss or damage suffered by the City on account of the acts or omissions of the Contractor.

### **32. SEVERABILITY**

If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the contract that can be given effect without the invalid or unenforceable provision and to this end, the provisions hereof are severable. In such event, the parties shall amend the contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

### **33. WAIVER**

No delay or omission by either party to this contract in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this contract shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this contract will void, waive, or change any other term or condition. No waiver by one party to this contract of a default by the other party will imply, be construed as, or require waiver of future or other defaults. Failure by the City at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the City to enforce any provision at any time in accordance with its terms.

### **34. CITY PROPERTY**

The Contractor will be responsible for the proper custody and care of any City-owned or City-leased property furnished for the Contractor's use in connection with the performance of this contract. The Contractor will reimburse the City for any loss or damage, normal wear and tear excepted.

### **35. UNSATISFACTORY WORK**

If, at any time during the contract term, the service performed or work done by the Contractor is considered by the City to create a condition that threatens the health, safety, or welfare of the general public, the City, its property, or its employees, or for whom the contracted services are to be rendered, the Contractor shall, on being notified by the City, immediately correct the deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, the City shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

### **36. ANTI-ASSIGNMENT/SUBCONTRACTING**

The Contractor acknowledges that it was selected by the City to perform the services required hereunder based, in part, upon the Contractor's skills, expertise, and proper response to the Request for Proposal. The Contractor shall not assign, subcontract, or otherwise transfer this contract in whole or in part without the prior written consent of the City, which the City may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer by the Contractor of its obligations without such consent shall be null and void. No such approval by the City of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the City in addition to the total contractual

price agreed upon in this contract. Subcontracts shall be subject to the terms and conditions of this contract and to any conditions of approval that the City may deem necessary. Subject to the foregoing, this contract shall be binding upon the respective successors and assigns of the parties.

**37. THIRD PARTY ACTION NOTIFICATION**

The Contractor shall give the City prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this contract.

**38. INSURANCE REQUIREMENTS**

Within 24 hours following the signing of this contract, respondent shall provide copies of insurance policies including all endorsements and bonding requirements as follows.

The Respondent shall save and hold the City harmless from and against all liability, claims and demands on account of personal injuries (including without limitation workmen’s compensation and death claims) or property loss or damages of any kind whatsoever, which arise out of or be in any manner connected with, or are claimed to arise out of or be in any manner connected with, the performance of any contract, regardless of whether such injury, loss or damage shall be caused by, or be claimed to be caused by, the negligence or other fault of the Responder, any subcontractor, agent or employee.

A. Commercial General Liability - in the amount of two million dollars (\$2,000,000.00) per occurrence.

B. Worker's Compensation - Proposer shall provide a policy with employer’s liability coverage with limits of not less than one million dollars (\$1,000,000.00) per occurrence for each accident or illness. The Worker’s Compensation policy shall state that it cannot be cancelled or materially changed without first giving thirty (30) days prior notice thereof in writing to the Owner. Firms that have owner/operators that have filed a "Notice of Election to be Exempt" shall supply a signed copy of said notice. Any such exemption shall meet the requirements that qualify for an exemption under the applicable Worker’s Compensation law.

C. Business Automobile Liability – Proposer shall provide coverage for all owned, non-owned and hired vehicles with limits of not less than \$1,000,000, per occurrence, Combined Single Limits (CSL) or its equivalent.

**39.** Contractor agrees to abide by all local, state, and federal Environmental and Historical Laws as established.

**FEDERAL CLAUSES**

**40. Contractor agrees to the following federal clauses:**

The following is a list of frequent compliance issues with Federal procurement requirements when Tribal or local government or private nonprofit (PNP) Applicants use cooperative purchasing programs for procurements.

If an Applicant plans to use Federal funds to pay or reimburse equipment expenses or services under a contract, that contract must contain the applicable clauses described in [Appendix II to the Uniform Rules](#) (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326. Additionally, FEMA recommends certain contract clauses recommended by FEMA.

This appendix outlines the federally required contract provisions in addition to FEMA- recommended provisions applicable to PA applicant contracts. For some of the required clauses, sample language or references to find sample language are listed below. Sample language for certain required clauses (remedies, termination for cause and convenience, changes) is not listed since these must be drafted in accordance with the non-Federal entity’s applicable local laws and procedures. For the clauses which require that exact language be included, the required language is specifically identified below.

The non-Federal entity alone is responsible for ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.

**REMEDIES:** Applies to all FEMA grant and cooperative agreement programs.

Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, A.

**TERMINATION FOR CAUSE AND CONVENIENCE:** Applies to all FEMA grant and cooperative agreement programs.

All contracts exceeding \$10,000 must address termination for cause and for convenience by the non-Federal entity, including how it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, B.

**EQUAL EMPLOYMENT OPPORTUNITY:** This requirement applies to all FEMA grant and cooperative agreement programs and exact language below is required.

**Standard:** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964- 1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, C.

**Key Definitions.**

**Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

**Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

**Required Language:** 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

**During the performance of this contract, the contractor agrees as follows:**

- (1) The contractor will not discriminate against any employee or applicant for employment because of

race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for



noncompliance:

*Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State, Territorial, or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**“COMPLIANCE WITH THE COPELAND “ANTI-KICKBACK” ACT:** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3, as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** This requirement applies to all FEMA contracts awarded by the non-federal entity exceeding \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Standard: Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity exceeding \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, E. Under 40 U.S.C. § 3702, each contractor must be

required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work exceeding the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked beyond 40 hours in the work week.

Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

Suggested Language: 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* The **(write in the name of the Federal agency or the loan or grant recipient)** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act.

- (1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions

made, and actual wages paid.

- (2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT:**

This requirement applies to contracts awarded by a non-Federal entity of amounts exceeding \$150,000 under a federal grant.

Standard: If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C.

§§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, G.

Suggested Language: The following provides a sample contract clause.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000.00 financed in whole or part with Federal Assistance provided by FEMA.

**DEBARMENT AND SUSPENSION:** This requirement applies to all FEMA grant and cooperative agreement programs.

Standard: Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

Requirements:

1. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530.
2. In general, an “excluded” party cannot receive a federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any non-procurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipients.
3. Specifically, a covered transaction includes the following contracts for goods or services:
  - a. The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
  - b. The contract requires the approval of FEMA, regardless of amount.
  - c. The contract is for federally required audit services.
  - d. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

Suggested Language: The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

Suspension and Debarment

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**BYRD ANTI-LOBBYING AMENDMENT:** This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II, I; 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

Standard: Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the Federal awarding agency.

Suggested Language:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification: If applicable, contractors must sign and submit to the non-Federal entity the certification attached hereto.

**PROCUREMENT OF RECOVERED MATERIALS:** This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.

Standard: A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II, J; and 2 C.F.R. § 200.322.

Requirements: The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Suggested Language:

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule;

- b. Meeting contract performance requirements; or
  - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
  3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

**PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- (i) Covered telecommunications equipment or services that:
  - i. Are not used as a substantial or essential component of any system; and
  - ii. Are not used as critical technology of any system.
- (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

**DOMESTIC PREFERENCE FOR PROCUREMENTS:** As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**RECOMMENDED CONTRACT PROVISIONS**

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. Although FEMA does not currently require additional provisions, FEMA recommends the following for PA applicant contracts:

## **ACCESS TO RECORDS.**

Standard: All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS and FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, FEMA is prohibited from providing reimbursement to any SLTT government, or PNP organization for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

### Suggested Language:

Access to Records. The following access to records requirements apply to this contract:

1. The Contractor agrees to City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives' access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
4. In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**CHANGES:** FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

Standard: To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

**DHS SEAL, LOGO, AND FLAGS:** FEMA recommends that Applicants include a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Standard: Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).

Suggested Language: "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval."

**COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS:** FEMA recommends that Applicants include an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law,



regulations, executive orders, and FEMA policies, procedures, and directives.

Standard: The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.

Suggested Language: “This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

**NO OBLIGATION BY FEDERAL GOVERNMENT:** FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Standard: FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.

Suggested Language: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS:** FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31

U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Suggested Language. “The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.”

**AFFIRMATIVE SOCIOECONOMIC STEPS:** If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

**LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT AND DATA RIGHTS:** The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

WHEREUPON the foregoing Agreement is hereby approved by each party on this the \_\_\_ day of \_\_\_\_\_, 2024.

CITY

\_\_\_\_\_  
Todd, Jordan, Mayor

ATTEST:

\_\_\_\_\_  
Kim Hanna, CFO/City Clerk

CONTRACTOR

By:   
Dow Knight

Its: Senior Vice President

**ATTACHMENT A**  
**Public Advertisement**

**ATTACHMENT B**  
**CONFLICTS OF INTEREST**

1. List the names of Members of the Board of Directors or other Governing Body:

Randal Perkins \_\_\_\_\_

Brittany Perkins Castillo \_\_\_\_\_

Elliot Melamed \_\_\_\_\_

2. Are any Members of the Governing Body or Project Staff also City of Tupelo employees?

Check one, only: \_\_\_ YES \_\_\_  NO

3. If Yes, please list the name of the City employee(s) and the position held within the City.

\_\_\_\_\_

\_\_\_\_\_

4. Are any Members of the Governing Body or Project Staff also Spouses, Parents, or Children of the City of Tupelo Employees?

Check one, only: \_\_\_ YES \_\_\_  NO

5. If Yes, List the Name and Relationship to the MSDH employee:

\_\_\_\_\_

\_\_\_\_\_

6. List all other current contracts with the City of Tupelo (include \$ amount/start/end dates):

None \_\_\_\_\_

\_\_\_\_\_

7. Contractor's Signature:

  
Signature

04/18/2024  
Date

ATTACHMENT C

APPENDIX A, 44 C.F.R. PART 18-CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor certifies, to the best of his or her knowledge, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, AshBritt, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Dow Knight, Senior Vice President  
Name and Title of Contractor's Authorized Official

04/18/2024  
Date

**ATTACHMENT D**

**RFP 2023-055PW**

**ATTACHMENT E**  
**SCOPE OF WORK**  
**PER RFP RESPONSE**

**ATTACHMENT F**

**CONTRACT JUSTIFICATION  
FOR DEBRIS REMOVAL**

**Detailed description of contractual services to be performed including location, program, purpose, and condition or regulatory agency establishing the requirement for contract personnel services:**

Debris Removal for Federal Declaration **2023-055PW** including Vegetative, Construction and Demolition, Damaged Structures, Removal of Structures, White Goods, Household Hazardous Waste, Electronic Waste, Soil/Mud/Sand, Stumps, Leaners and Hangers, Vehicles and or Vessels.

**Justification of request, including assessment of current personnel resources** (i.e. utilization of current position vacancies, temporary increase in workload above capability of current workforce, level of expertise required, position classification not available to agency):

Due to the overwhelming amount of Debris the existing City Employees, Equipment, and Mutual Aid Agreements will not be sufficient to perform the required services.

**Qualifications that make this contractor the best suited to perform this task:**

Contractor has Scored per the Request for Proposal to be more than sufficient to complete the task including A) quality of response, B) ability to perform, C) personnel/equipment/facilities/financial resources, D) record of past performance, and E) price.

**Justification of modification request (if applicable):**

NA

**Consequence of contract being disapproved:**

The City will not have the time/equipment/personnel to complete the project within the allotted time frame to qualify for the FEMA Public Assistance Alternative Procedures Pilot Program for Debris Removal or complete the task within 90 days.

I have reviewed this contract request and determined that these services are needed and cannot be provided by current staff or through the staffing of a vacant position.

\_\_\_\_\_  
Mayor, City of Tupelo

\_\_\_\_\_  
Date



## ATTACHMENT G

### Mandatory Addendum to City of Tupelo Contracts October 28, 2022

The City of Tupelo (hereinafter “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 (11<sup>th</sup>) 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.
10. TUPELO may not and does not agree to the payment of attorney fees of a “prevailing party” unless specifically authorized by statute. E.g. Miss. Code Anno. § 31-7-309 (1972 as amended) payment of interest on outstanding invoice. Miss AG Op., Nowak, 2009 WL 367665 (Miss.A.G.).
11. 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).
12. TUPELO does not agree to submit to binding arbitration.  
Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
13. TUPELO will make payments for all amounts owed under a contract agreement in accordance with state law.  
Miss. Code Ann. § 31-7-305.
14. 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).
15. 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).
16. 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.

- 17. TUPELO is prohibited from binding its successors in office to contracts, including leases, which result in taking away the 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).

- 18. 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 or for any longer period than twenty-five years.

Miss. Code Anno. 21-27-1

- 19. 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

- 20. All payments shall be made by TUPELO within forty-five (45) days of invoice, unless disputed. In the case of a bona fide dispute, TUPELO shall pay only the amount of the invoice not disputed. Interest shall be paid at a rate of one and one-half percent (1- ½ %) per month or portion thereof on the unpaid balance from the expiration of such forty-five-day period until such time as the warrant or check is mailed or otherwise delivered to the vendor.

Miss. Code Anno. §31-7-305 (1972 as amended)

Acknowledged and agreed:

\_\_\_\_\_  
TUPELO  
Date:

  
\_\_\_\_\_  
CONTRACTOR  
Date: 04/18/2024



## AGENDA REQUEST

**TO:** Mayor and City Council

**FROM:** Stephen N. Reed, Assistant City Attorney

**DATE:** March 14, 2024

**SUBJECT:** IN THE MATTER OF THE APPROVAL OF AN EXECUTED CONTRACT WITH DEBRIS TECH FOR THE PROVISION OF DEBRIS MONITORING SERVICES IN ACCORDANCE WITH RFP 23-056PW **SR**

---

The City of Tupelo advertised a Request for Proposals seeking to procure a 12-month pre-contract for debris monitoring services. After having received the proposals, each were evaluated by a scoring committee, and DebrisTech was determined to be the most responsible offeror, and was awarded a contract for these services.

**Request:** Attached is an executed 12-month contract between the City of Tupelo and DebrisTech for debris monitoring services.

**DEBRIS MONITORING SERVICE CONTRACT**  
**Project No. 2023-056PW**  
**CITY OF TUPELO, MISSISSIPPI**

THIS CONTRACT, is made and entered into by and between the **CITY OF TUPELO, MISSISSIPPI** (the "CITY"), a body Corporate of the State of Mississippi, whose address for mailing is PO Box 1485, Tupelo, MS 38802 and, **DEBRISTECH, LLC.** (the "CONTRACTOR"), a state of Mississippi limited liability company, whose address for mailing is 923 Goodyear Blvd., Picayune, MS, 39466, and is effective as of the date of latest execution below.

**WITNESSETH:**

WHEREAS, the City of Tupelo, Mississippi has an emergency management plan that governs the City's preparation and response to varying types of emergency situations, including, but not limited to, weather related disasters that cause damage to trees and vegetation, homes and structures, and public utilities, when such damage poses a great threat to the safety and wellbeing of the general public creating the need for swift response by debris collection efforts; and

WHEREAS, it is most advantageous to the City of Tupelo to procure a 12-month pre-contract for debris monitoring services by the solicitation of proposals due to the nature of weather-related disasters of which the extent of the damage often caused by these weather events is rarely unknown and firm fixed-price contracts for these services, procured by sealed bids, are not well suited to serve the interests of the City of Tupelo in the event of a weather-related disaster; and

WHEREAS, debris monitoring operations are necessary to ensure that debris removal activities claimed to the FEMA PA program for reimbursement are completed in accordance with contract specifications and other supplemental guidance, PA program eligibility criteria, and applicable Federal and SLTT laws, regulations and other requirements; and

WHEREAS, on November 2<sup>nd</sup> and 9<sup>th</sup> of 2023, the City of Tupelo advertised in the local newspaper having general circulation in the municipality and through the Mississippi Procurement Technical Assistance Program that it would receive proposals from well-qualified debris monitoring firms to establish a twelve (12) month pre-contract and such proposals were received no later than 10 am on December 4, 2023 (advertisement attached hereto as Attachment "A"); and

WHEREAS, the City of Tupelo received proposals from three (3) firms having varying degrees of experience concerning the monitoring of collection, clearance, removal and hauling of disaster related debris; and

WHEREAS, in accordance with the City's procurements policies, a review committee consisting of seven (7) individuals opened and considered each proposal in light of the criteria contained in the RFP advertisement, and each proposal was scored and ranked by the committee members; and

WHEREAS, based on the scoring criteria and specifications contained in the RFP, DebrisTech, LLC. received the highest average score, and were awarded a contract by the Tupelo City Council during its regularly scheduled meeting of December 19, 2023, and such alternate contract may be used in the event that circumstances necessitate such action.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable considerations flowing unto the parties, the receipt and sufficiency of which is hereby acknowledged, the CITY and the CONTRACTOR do hereby contract and agree as follows:

## GENERAL CONDITIONS

### 1. CONTRACTED SERVICES

The Contractor agrees to provide non-exclusive debris monitoring services in accordance with the specifications set forth herein, and any other documents set forth by the City of Tupelo (City) hereby incorporated into and made a part of this contract. No oral statements of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. If other attachments or exhibits exist which are to be incorporated as part of this contract, the title of each document shall be listed here, as follows (use additional sheets, if necessary):

Attachment B - Conflict of Interest

Attachment C - Certification Regarding Lobbying

Attachment D - RFP PW23-056 Debris Monitoring Assistance for the City of Tupelo with related notices, Clarification(s) and Amendment(s)

Attachment E - Scope of Work per included RFP Response

Attachment F - Contract Justification

Attachment G - Mandatory Addendum to all City of Tupelo Contracts

### 2. ABILITY TO CONTRACT

The Contractor warrants that he/she/it is qualified to provide the services, whether personal or professional, as outlined in this contract. The Contractor agrees to conform to existing policies, rules, and regulations of the City. The Contractor agrees to maintain throughout the contract period such licensing and/or certification as may be required by law for the provision of services specified herein, if applicable. The Contractor warrants that it is a validly organized business with valid authority to enter into this contract; that entry into and performance under this contract is not restricted or prohibited by any loan, security, financing, contractual or other contract of any kind; and, notwithstanding any other provision of this contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this contract.

### 3. APPLICABLE LAW

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the City of Tupelo and or Lee County Mississippi. Contractor shall comply with applicable federal, state, and local laws and regulations.

### 4. COMPLIANCE WITH LAWS

Contractor understands that the City is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

### 5. DURATION

This agreement shall be effective upon the approval by each party as indicated by the signature of its authorized representative being affixed hereto. The term of this agreement shall be 12-months from such effective date.

## 6. PROCUREMENT REGULATIONS AND APPROVAL

The contract is designed by the applicable provisions of the *Mississippi Personal Service Contract Review Board ("PSCRB") Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>. It is understood that the *PSCRB* does not and will not approve this contract, the guidelines are best determined by the City of Tupelo that closely parallels the Federal Guidelines required for this contract. Additionally, this contract is governed by the procurement policies of the City of Tupelo Mississippi, and appropriate State and Federal laws and regulations concerning the appropriate of funds for the services made a part of this agreement, including, but not limited to, 2 CFR § 200, Uniform Administrative Requirements and 44 CFR § 13.36.

## 7. REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it has not retained person to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid proposal

## 8. REPRESENTATION REGARDING GRATUITIES

The bidder, offeror, respondent, or contractor represents that is has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

## 9. DEBARMENT AND SUSPENSION: Contractor certifies to the best of its knowledge and belief, that it:

a. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or entity of the State of Mississippi;

b. has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;

c. has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

d. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (b) and (c) of this certification; and,

e. has not, within a three-year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

## 10. INTEGRATED AGREEMENT/MERGER

This contract, including all contract documents, represents the entire and integrated contractual agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, irrespective of whether they were written or oral. This contract may be altered, amended, or modified only by a written document executed by the City and the Contractor. The Contractor acknowledges that it has thoroughly read all contract documents and attachments and has had the opportunity to receive competent advice and counsel

necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this contract shall not be construed or interpreted in favor or against the City or the Contractor on the basis of draftsmanship or preparation.

#### **11. MODIFICATIONS AND CHANGES IN SCOPE OF WORK**

All modifications to the contract must be made in writing and signed by both parties to the contract. The City may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the contract or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the City and the Contractor. If the Contractor believes that any particular work is not within the scope of the contract, is a material change, or will otherwise require more compensation to the Contractor, the contractor must immediately notify the City in writing of this belief. If the City believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

#### **12. AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of the City to proceed under this agreement is conditioned upon the appropriation of funds by the City of Tupelo. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, of the City to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the City, the City shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the City of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

#### **13. PAYMENT**

Contractor agrees to accept all payments in United States currency via the City's check issuing system. The City agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the City within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.

#### **14. E-VERIFICATION**

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the City and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- A. termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;



B. the loss of any license, permit, certification or other document granted to Contractor by an local, state, or federal governmental entity for the right to do business in Mississippi for up to one (1) year; or,

C. both. In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the City due to Contract cancellation or loss of license or permit to do business in the City or State.

### **15. STOP WORK ORDER**

This section applies to contracts following the guidelines of the PSCRB as follows:

*A. Order to Stop Work:* The City, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the City shall either:

1. cancel the stop work order; or,
2. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

*B. Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

1. the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
2. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the City decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

*C. Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

*D. Adjustments of Price:* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract, if applicable.

### **16. TERMINATION FOR CAUSE and CONVENIENCE**

A. *Termination.* The City Engineer or designee may, when the interests of the City so require, terminate this contract in whole or in part, for the convenience of the City. The City Engineer or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

B. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The COO or designee may direct Contractor to assign Contractor's right, title, an interest under terminated orders or subcontracts to the City. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

## **17. TERMINATION FOR DEFAULT**

A. *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the City Engineer or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the City Engineer or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the City Engineer or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the City Engineer or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

B. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the City, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the City has an interest.

C. *Compensation.* Payment for completed services delivered and accepted by the City shall be at the contract price. The City may withhold from amounts due Contractor such sums as the City Engineer or designee deems to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and services.

D. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the City Engineer or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the City, State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the City Engineer or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any

one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the City under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

*E. Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (d) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the City, be the same as if the notice of termination had been issued pursuant to such clause.

*F. Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **18. TERMINATION UPON BANKRUPTCY**

This contract may be terminated in whole or in part by the City upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

#### **19. RECORDS AND AUDIT**

The Contractor shall maintain such financial records and other records as may be prescribed by the City or by applicable Federal and State laws, rules, and regulations. These may be kept according to the Contractor's usual method of recordkeeping, but must be sufficiently detailed to permit an accurate accounting of contract funds and program activities. The contract and the procurement of goods and services shall be governed by the applicable Mississippi statutes and the applicable provisions of the Mississippi Personal Service Contract Review Board Regulations. The Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by the City, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies. Where audits are required to be submitted to the City before funding can be released, the audits must be submitted within the required timeframe and must be acceptable; if a Contractor fails to submit an audit in a timely manner, or if the audit is unacceptable, the city reserves the right to cancel or suspend the contract at the City's discretion.

#### **20. RECORDS RETENTION**

The Contractor agrees to submit to the City quarterly program activity reports thirty (30) days subsequent to the closing of each quarter. The Contractor agrees to submit to the City quarterly fiscal reports thirty (30) days subsequent to the closing of each quarter, or other applicable period as made a part of this contract and agreed to by both parties. The Contractor agrees to permit reasonable program review and evaluation by the City; to provide access to any pertinent records; arrange meetings with appropriate personnel; permit inspection of the premises; and to cooperate in any other reasonable requests for fiscal and/or program information. Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the City or any duly authorized representatives shall have

unimpeded, immediate access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of this contract for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this contract shall be retained by the Contractor for three (3) years after final payment and or final closeout for this declaration is made under this contract and all pending matters are closed. However, if any audit, litigation, or other action arising out of or related in any way to this contract is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

## **21. INDEPENDENT CONTRACTOR STATUS**

This section applies only to contracts for which the Contractor shall serve solely on an Independent Contractor basis, as follows:

The Contractor, at all times, shall be regarded as an Independent Contractor and shall at no time act as an agent for the City. Nothing contained herein shall be deemed or construed by the City, the Contractor, or any third party as creating the relationship of principal and agent, partners, joint ventures, or any similar such relationship between the City and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the City or the Contractor hereunder, create or shall be deemed to create a relationship other than the independent relationship of the City and the Contractor. The Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implications, to be employees of the City. Neither the Contractor nor its employees, under any circumstances, shall be considered servants, agents, or employees of the City; and the City shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, or agents. The City shall not withhold from the contract payments to the Contractor any Federal or State unemployment taxes, Federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the City shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the City for its employees. Furthermore, none of the work performed under this contract shall be subcontracted without prior approval of the City. The City, throughout the life of the contract, shall have the right of reasonable rejection and approval of staff of the Contractor or its Subcontractors assigned to the work by the Contractor. If the City reasonably rejects staff of the Contractor or its Subcontractors, the Contractor must provide replacement staff or Subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Contractor's employees and Subcontractors are the sole responsibility of the Contractor.

## **22. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION**

It is expressly understood that Mississippi law requires that the provisions of this contract which 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.

## **23. CONFIDENTIAL INFORMATION**

A. *Definition:* "Confidential Information" shall mean:

1. those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential; and

2. all data and information which the Contractor acquires as a result of its contact with and efforts on behalf of the City, and any other information designated in writing as confidential by the City.

Each party to this contract agrees to protect all Confidential Information provided by one party to the other, to treat all such Confidential Information as confidential to the extent that confidential treatment is allowed under State and/or Federal law, and, except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission, and to do so by using those methods and procedures normally used to protect the party's own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its Subcontractors shall rest with the Contractor. Disclosure of any confidential information by the Contractor or its Subcontractors without the express written approval of the City shall result in the immediate termination of this contract.

*B. Disclosure:* In the event that either party to this contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by State law. This section shall survive the termination or completion of this contract. The parties agree that this section is subject to and superseded by Mississippi Code of 1972, Annotated, Section 25-61-1, et. seq. regarding public access to public records.

*C. Exceptions:* The Contractor and the City shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("The Disclosing Party") which:

1. is rightfully known to the Contractor prior to negotiations leading to this contract, other than information obtained in confidence under prior engagements;
2. is generally known or easily ascertainable to non-parties of ordinary skill in the business of the Contractor;
3. is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
4. is independently developed by the recipient without any reliance on confidential information;
5. is, or later becomes, part of the public domain or may be lawfully obtained by the City or the Contractor from any non-party; or
6. is disclosed with the Disclosing Party's prior written consent.

*D.* Contractor agrees to comply with the Administrative Simplifications provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.

*E.* Notwithstanding any provision to the contrary contained herein, it is recognized that the City is a public entity of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 et seq. If a public records request is made for any information provided to the City pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary

confidential information, the City shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The City shall not be liable to the Contractor for disclosure of information required by court order or law.

**24. TRANSPARENCY (PSCRB 7-1-16)**

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent entity contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

**25. OWNERSHIP OF DOCUMENTS AND WORK PAPERS**

The City shall own all documents, files, reports, work papers, and working documentation, electronic or otherwise, created under this contract, or in connection with the project which is the subject of this contract, except for the Contractor's internal administrative and quality assurance files and internal correspondence. The Contractor shall deliver such documents and work papers to the City upon termination or completion of the contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from the City and subject to any copyright protections. By entering into this contract, the Contractor conveys, sells, assigns, and transfers to the City all rights, titles, and interest it may now have or hereafter acquire under the antitrust laws of the United States and the State of Mississippi that relate to the particular goods or services purchased or acquired by the City under this contract.

**26. FAILURE TO DELIVER**

In the event of failure of the Contractor to deliver goods or services in accordance with the contract terms and conditions, the City, after due written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the City may have.

**27. FORCE MAJEURE**

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its Subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the City immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the City determines it to be in its best interest to terminate the contract.

**28. INDEMNIFICATION**

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the City of Tupelo and its officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this contract. In the City's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim or suit, etc. the Contractor shall use legal counsel acceptable to the City; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the City shall be entitled to participate in said defense. The Contractor shall not settle any claim or suit, etc. without the City's concurrence, which the City shall not unreasonably withhold.

### **29. NO LIMITATION OF LIABILITY**

Nothing in this Contract shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for the damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.

### **30. ATTORNEYS' FEES AND EXPENSES**

Subject to other terms and conditions of this contract, in the event the Contractor defaults in any obligations under this contract, the Contractor shall pay to the City all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the City in enforcing this contract or otherwise reasonably related thereto. The Contractor agrees that under no circumstances shall the City be obligated to pay any attorneys' fees or costs of legal action to the Contractor. This clause shall not apply to any contracts entered into with another entity, board, or commission.

### **31. RECOVERY OF MONEY**

Whenever, under this contract, any sum of money shall be recoverable from or payable by the Contractor to the City, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the City. The rights of the City are in addition and without prejudice to any other right the City may have to claim the amount of any loss or damage suffered by the City on account of the acts or omissions of the Contractor.

### **32. SEVERABILITY**

If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the contract that can be given effect without the invalid or unenforceable provision and to this end, the provisions hereof are severable. In such event, the parties shall amend the contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

### **33. WAIVER**

No delay or omission by either party to this contract in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this contract shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this contract will void, waive, or change any other term or condition. No waiver by one party to this contract of a default by the other party will imply, be construed as, or require waiver of future or other defaults. Failure by the City at

any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the City to enforce any provision at any time in accordance with its terms.

#### **34. CITY PROPERTY**

The Contractor will be responsible for the proper custody and care of any City-owned or City-leased property furnished for the Contractor's use in connection with the performance of this contract. The Contractor will reimburse the City for any loss or damage, normal wear and tear excepted.

#### **35. UNSATISFACTORY WORK**

If, at any time during the contract term, the service performed or work done by the Contractor is considered by the City to create a condition that threatens the health, safety, or welfare of the general public, the City, its property, or its employees, or for whom the contracted services are to be rendered, the Contractor shall, on being notified by the City, immediately correct the deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, the City shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

#### **36. ANTI-ASSIGNMENT/SUBCONTRACTING**

The Contractor acknowledges that it was selected by the City to perform the services required hereunder based, in part, upon the Contractor's skills, expertise, and proper response to the Request for Proposal. The Contractor shall not assign, subcontract, or otherwise transfer this contract in whole or in part without the prior written consent of the City, which the City may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer by the Contractor of its obligations without such consent shall be null and void. No such approval by the City of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the City in addition to the total contractual price agreed upon in this contract. Subcontracts shall be subject to the terms and conditions of this contract and to any conditions of approval that the City may deem necessary. Subject to the foregoing, this contract shall be binding upon the respective successors and assigns of the parties.

#### **37. THIRD PARTY ACTION NOTIFICATION**

The Contractor shall give the City prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this contract.

#### **38. INSURANCE REQUIREMENTS**

Within 24 hours following the signing of this contract, respondent shall provide copies of insurance policies including all endorsements and bonding requirements as follows.

The Respondent shall save and hold the City harmless from and against all liability, claims and demands on account of personal injuries (including without limitation workmen's compensation and death claims) or property loss or damages of any kind whatsoever, which arise out of or be in any manner connected with, or are claimed to arise out of or be in any manner connected with, the performance of any contract, regardless of whether such injury, loss or damage shall be caused by, or be claimed to be caused by, the negligence or other fault of the Responder, any subcontractor, agent or employee.



A. Commercial General Liability - in the amount of one million dollars (\$1,000,000.00) per occurrence.

B. Worker's Compensation - Proposer shall provide a policy with employer's liability coverage with limits of not less than one million dollars (\$1,000,000.00) per occurrence for each accident or illness. The Worker's Compensation policy shall state that it cannot be cancelled or materially changed without first giving thirty (30) days prior notice thereof in writing to the Owner. Firms that have owner/operators that have filed a "Notice of Election to be Exempt" shall supply a signed copy of said notice. Any such exemption shall meet the requirements that qualify for an exemption under the applicable Worker's Compensation law.

C. Business Automobile Liability -- Proposer shall provide coverage for all owned, non-owned and hired vehicles with limits of not less than \$1,000,000.00 per occurrence, Combined Single Limits (CSL) or its equivalent.

39. Contractor agrees to abide by all local, state, and federal Environmental and Historical Laws as established.

#### **FEDERAL CLAUSES**

**40. Contractor agrees to the following federal clauses:**

The following is a list of frequent compliance issues with Federal procurement requirements when Tribal or local government or private nonprofit (PNP) Applicants use cooperative purchasing programs for procurements.

If an Applicant plans to use Federal funds to pay or reimburse equipment expenses or services under a contract, that contract must contain the applicable clauses described in Appendix II to the Uniform Rules (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326. Additionally, FEMA recommends certain contract clauses recommended by FEMA.

This appendix outlines the federally required contract provisions in addition to FEMA- recommended provisions applicable to PA applicant contracts. For some of the required clauses, sample language or references to find sample language are listed below. Sample language for certain required clauses (remedies, termination for cause and convenience, changes) is not listed since these must be drafted in accordance with the non-Federal entity's applicable local laws and procedures. For the clauses which require that exact language be included, the required language is specifically identified below.

The non-Federal entity alone is responsible for ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.

**REMEDIES:** Applies to all FEMA grant and cooperative agreement programs.

Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, A.

**TERMINATION FOR CAUSE AND CONVENIENCE:** Applies to all FEMA grant and cooperative agreement programs.

All contracts exceeding \$10,000 must address termination for cause and for convenience by the non-Federal entity, including how it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, B.

**EQUAL EMPLOYMENT OPPORTUNITY:** This requirement applies to all FEMA grant and cooperative agreement programs and exact language below is required.

Standard: Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964- 1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, C.

Key Definitions.

Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Required Language: 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the

compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State, Territorial, or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**DAVIS-BACON ACT:** For construction projects over \$10 million (based on expected total cost):

All laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:

- The number of employees of contractors and sub-contractors working on the project;
- The number of employees on the project hired directly and hired through a third party;
- The wages and benefits of workers on the project by classification; and
- Whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

Other applicable language contained in 29 C.F.R. § 5.5(a) shall apply.

**"COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT:** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3, as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** This requirement applies to all FEMA contracts awarded by the non-federal entity exceeding \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These

requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Standard: Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity exceeding \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 29 C.F.R. Part 200, Appendix II, E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work exceeding the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked beyond 40 hours in the work week.

Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

Suggested Language: 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* The **(write in the name of the Federal agency or the loan or grant recipient)** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act.

- (1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT:**

This requirement applies to contracts awarded by a non-Federal entity of amounts exceeding \$150,000 under a federal grant.

Standard: If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C.

§§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, G.

Suggested Language: The following provides a sample contract clause.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000.00 financed in whole or part with Federal Assistance provided by FEMA.

**DEBARMENT AND SUSPENSION:** This requirement applies to all FEMA grant and cooperative agreement programs.

**Standard:** Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

**Requirements:**

1. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530.
2. In general, an "excluded" party cannot receive a federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any non-procurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipients.
3. Specifically, a covered transaction includes the following contracts for goods or services:
  - a. The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
  - b. The contract requires the approval of FEMA, regardless of amount.
  - c. The contract is for federally required audit services.
  - d. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

**Suggested Language:** The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

**Suspension and Debarment**

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**BYRD ANTI-LOBBYING AMENDMENT:** This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II, I; 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

**Standard:** Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the Federal awarding agency.

**Suggested Language:**

**Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

**Required Certification:** If applicable, contractors must sign and submit to the non-Federal entity the certification attached hereto.

**PROCUREMENT OF RECOVERED MATERIALS:** This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.

**Standard:** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II, J; and 2

C.F.R. § 200.322.

**Requirements:** The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or



the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Suggested Language:

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - b. Meeting contract performance requirements; or
  - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

**PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered

telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

- (1) This clause does not prohibit contractors from providing—
- (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
- (i) Covered telecommunications equipment or services that:
    - i. Are not used as a substantial or essential component of any system; and
    - ii. Are not used as critical technology of any system.
  - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

**DOMESTIC PREFERENCE FOR PROCUREMENTS:** As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### **RECOMMENDED CONTRACT PROVISIONS**

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts.

Although FEMA does not currently require additional provisions, FEMA recommends the following for PA applicant contracts:

#### **ACCESS TO RECORDS.**

Standard: All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS and FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, FEMA is prohibited from providing reimbursement to any SLTT government, or PNP organization for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

#### Suggested Language:

Access to Records. The following access to records requirements apply to this contract:

1. The Contractor agrees to City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives' access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
4. In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**CHANGES:** FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

Standard: To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

**DHS SEAL, LOGO, AND FLAGS:** FEMA recommends that Applicants include a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**Standard:** Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).

**Suggested Language:** “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

**COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS:** FEMA recommends that Applicants include an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

**Standard:** The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.

**Suggested Language:** “This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

**NO OBLIGATION BY FEDERAL GOVERNMENT:** FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**Standard:** FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.

**Suggested Language:** “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS:**

FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31

U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Suggested Language. "The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract."

**AFFIRMATIVE SOCIOECONOMIC STEPS:** If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

**LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT AND DATA RIGHTS:** The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

WHEREUPON the foregoing Agreement is hereby approved by each party on this the \_\_\_ day of \_\_\_\_\_, 2024.

CITY

\_\_\_\_\_  
Todd, Jordan, Mayor

ATTEST:

\_\_\_\_\_  
Kim Hanna, CFO/City Clerk

CONTRACTOR

By: 

Its: President

**ATTACHMENT A**  
**PUBLIC ADVERTISEMENT**

**ATTACHMENT B**  
**CONFLICTS OF INTEREST**

1. List the names of Members of the Board of Directors or other Governing Body:

<u>Brooks Wallace</u>	<u>Jeff Dungan</u>
<u>Lee Mock</u>	<u>Les Dungan</u>
<u>Ryan Holmes</u>	<u></u>

2. Are any Members of the Governing Body or Project Staff also City of Tupelo employees?

Check one, only:  YES  NO

3. If Yes, please list the name of the City employee(s) and the position held within the City.

<u></u>	<u></u>
<u></u>	<u></u>

4. Are any Members of the Governing Body or Project Staff also Spouses, Parents, or Children of the City of Tupelo Employees?

Check one, only:  YES  NO

5. If Yes, List the Name and Relationship to the MSDH employee:

<u></u>	<u></u>
<u></u>	<u></u>

6. List all other current contracts with the City of Tupelo (include \$ amount/start/end dates):

<u></u>	<u></u>
<u></u>	<u></u>

7. Contractor's Signature:

<u></u>	<u>April 16, 2024</u>
Signature	Date

ATTACHMENT C

APPENDIX A, 44 C.F.R. PART 18-CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

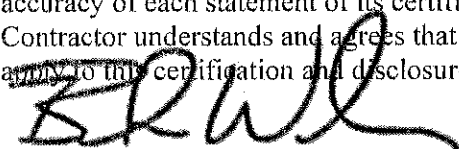
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, DebrisTech, LLC, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

  
Signature of Contractor's Authorized Official

Brooks Wallace, President  
Name and Title of Contractor's Authorized Official

April 16, 2024  
Date



**ATTACHMENT D**

**RFP 2023-056PW**

**ATTACHMENT E**  
**SCOPE OF WORK**  
**PER RFP RESPONSE**

**ATTACHMENT F**

**CITY OF TUPELO CONTRACT JUSTIFICATION  
FOR DEBRIS MONITORING**

**Detailed description of contractual services to be performed including location, program, purpose, and condition or regulatory agency establishing the requirement for contract personnel services:**

Debris Monitoring for Federal Declaration 2023-056PW including Vegetative, Construction and Demolition, Damaged Structures, Removal of Structures, White Goods, Household Hazardous Waste, Electronic Waste, Soil/Mud/Sand, Stumps, Leaners and Hangers, Vehicles and or Vessels.

**Justification of request, including assessment of current personnel resources (i.e. utilization of current position vacancies, temporary increase in workload above capability of current workforce, level of expertise required, position classification not available to agency):**

Due to the overwhelming amount of Debris the existing City Employees, Equipment, and Mutual Aid Agreements will not be sufficient to perform the required services.

**Qualifications that make this contractor the best suited to perform this task:**

Contractor has Scored per the Request for Proposal to be more than sufficient to complete the task including A) quality of response, B) ability to perform, C) personnel/equipment/facilities/financial resources, D) record of past performance, and E) price.

**Justification of modification request (if applicable):**

NA

**Consequence of contract being disapproved:**

The City will not have the time/equipment/personnel to complete the project within the allotted time frame to qualify for the FEMA Public Assistance Alternative Procedures Pilot Program for Debris Monitoring or complete the task within 90 days.

I have reviewed this contract request and determined that these services are needed and cannot be provided by current staff or through the staffing of a vacant position.

\_\_\_\_\_  
Mayor, City of Tupelo

\_\_\_\_\_  
Date

## ATTACHMENT G

### Mandatory Addendum to City of Tupelo Contracts October 28, 2022

The City of Tupelo (hereinafter "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 (11<sup>th</sup>) 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.
10. TUPELO may not and does not agree to the payment of attorney fees of a “prevailing party” unless specifically authorized by statute. E.g. Miss. Code Anno. § 31-7-309 (1972 as amended) payment of interest on outstanding invoice. Miss AG Op., Nowak, 2009 WL 367665 (Miss.A.G.).
11. 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).
12. TUPELO does not agree to submit to binding arbitration.  
Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
13. TUPELO will make payments for all amounts owed under a contract agreement in accordance with state law.  
Miss. Code Ann. § 31-7-305.
14. 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).
15. 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).
16. 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.

- 17. TUPELO is prohibited from binding its successors in office to contracts, including leases, which result in taking away the 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).

- 18. 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 or for any longer period than twenty-five years.

Miss. Code Anno. 21-27-1

- 19. 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

- 20. All payments shall be made by TUPELO within forty-five (45) days of invoice, unless disputed. In the case of a bona fide dispute, TUPELO shall pay only the amount of the invoice not disputed. Interest shall be paid at a rate of one and one-half percent (1- ½ %) per month or portion thereof on the unpaid balance from the expiration of such forty-five-day period until such time as the warrant or check is mailed or otherwise delivered to the vendor.

Miss. Code Anno. §31-7-305 (1972 as amended)

Acknowledged and agreed:

\_\_\_\_\_  
TUPELO  
Date:

  
\_\_\_\_\_  
CONTRACTOR  
Date: April 16, 2024






# TUPELO MONITOR CONTRACT Debristech (4.16.2024)

Final Audit Report

2024-04-16

Created:	2024-04-16
By:	Debra McCormick (debra@debristech.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAd60HcF7wQWbWdOYxjRczrqg-6XgY62ox

## "TUPELO MONITOR CONTRACT Debristech (4.16.2024)" History

-  Document created by Debra McCormick (debra@debristech.com)  
2024-04-16 - 5:48:59 PM GMT - IP address: 12.191.210.98
-  Document emailed to Brooks Wallace (brooks@debristech.com) for signature  
2024-04-16 - 5:49:06 PM GMT
-  Email viewed by Brooks Wallace (brooks@debristech.com)  
2024-04-16 - 6:32:12 PM GMT - IP address: 142.190.94.98
-  Document e-signed by Brooks Wallace (brooks@debristech.com)  
Signature Date: 2024-04-16 - 6:32:36 PM GMT - Time Source: server- IP address: 142.190.94.98
-  Agreement completed.  
2024-04-16 - 6:32:36 PM GMT



## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Tanner Newman, DDS Director  
**DATE** November 2, 2023  
**SUBJECT:** IN THE MATTER OF DEVELOPMENT CODE AMENDMENT – SIGNS TN

---

**Request:**

For discussion, review and approval.





## AGENDA REQUEST

**TO:** Mayor and City Council  
**FROM:** Ben Logan, City Attorney  
**DATE** April 11, 2024  
**SUBJECT:** IN THE MATTER OF DEVELOPMENT CODE AMENDMENTS TA-23-01

---

**Request:**

These development code amendments deal with residential uses by adding and revising definitions, changing uses within base zoning districts, updating tables and providing supplemental standards. These amendments will be considered separately by subject matter below:

- TA 23-01 (1) Definitions. Enacted in part 12-19-2023.
- TA 23-01 (2) Multifamily. Enacted in part 4-2-2024.
- TA 23-01 (3) Temporary Shelters. Moved to Study Agenda 2-20-2024.
- TA 23-01 (4) Congregate Living. Moved to Study Agenda 2-20-2024.
- TA 23-01 (5) Errata and Addenda of Separate Ordinances. Moved to Study Agenda 2-20-2024

These matters will be moved up when completed.